



Australian  
Human Rights  
Commission

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# Guidelines: Equivalent Access under the *Disability Standards for Accessible Public Transport 2002 (Cth)*

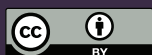
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JULY 2020



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**Dr Ben Gauntlett**

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*Disability Discrimination Commissioner  
Australian Human Rights Commission*



## FOREWORDS

# Australian Human Rights Commission

The Australian Human Rights Commission (the Commission) welcomes this opportunity to partner with the Department of Infrastructure, Transport, Regional Development and Communications on the development of the 'Guidelines: Equivalent Access under the *Disability Standards for Accessible Public Transport 2002 (Cth)*' (the Guidelines).

Public transport by its nature is for everyone. It gets us to school, work, recreation activities and home. Its role in connecting all the essential elements of our lives means that ensuring its accessibility is critical.

The *Disability Standards for Accessible Public Transport 2002 (Cth)* (the Transport Standards), together with the *Disability Discrimination Act 1992 (Cth)* (the Disability Discrimination Act), provide a pathway to accessible public transport. This pathway includes the provision of 'equivalent access'—a process through which equipment or facilities may be varied from what is otherwise required by the Transport Standards to provide access to public transport, as long as an equivalent standard of amenity, availability, comfort, convenience, dignity, price and safety is maintained and appropriate consultation takes place.

The Guidelines provide information on the operation of the equivalent access provisions of the Transport Standards, their interaction with the Disability Discrimination Act, and practical guidance regarding considerations when developing or assessing equivalent access measures.

I look forward to operators and providers using these Guidelines to ensure that public transport services and infrastructure are accessible.

A handwritten signature in black ink, appearing to read 'B Gauntlett', written in a cursive style.

**Dr Ben Gauntlett**  
**Disability Discrimination Commissioner**



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**Hon Michael McCormack MP**

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*Deputy Prime Minister  
Minister for Infrastructure, Transport  
and Regional Development*

# Department of Infrastructure, Transport, Regional Development and Communications

I welcome the development of the Guidelines: Equivalent Access under the *Disability Standards for Accessible Public Transport 2002* (Cth).

The Guidelines provide practical assistance to transport operators and providers in the delivery of accessible public transport and promote flexibility and innovation. The Guidelines encourage communication and collaboration between operators and passengers with disability, with the potential for long-term solutions to be developed.

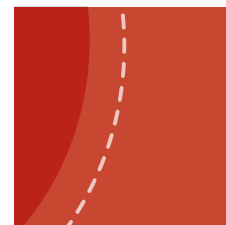
I congratulate the Commission for their ongoing leadership. The Guidelines show how Governments, business and community can work together to achieve better outcomes for people with disability, create better transport systems and build confidence in each other as we work in partnership.

The Australian, State and Territory Governments are also actively working together on further reforms to the Transport Standards. These reforms will place people with disability front and centre, recognising that access to public transport is a right for people with disability and is not just about being compliant with standards, but about providing an ongoing service for people with disability.

I look forward to seeing continued improvement in public transport accessibility as an outcome of all groups working together.

*Michael McCormack*

**Hon Michael McCormack MP  
Deputy Prime Minister  
Minister for Infrastructure, Transport and Regional Development**



These Guidelines have been developed by the Australian Human Rights Commission (the Commission) to provide clear and practical assistance to facilitate compliance with the *Disability Standards for Accessible Public Transport 2002* (Cth) (the Transport Standards) through the use of equivalent access.

These Guidelines are distinct from the *Disability Standards for Accessible Public Transport Guidelines 2004* (No. 3) (Cth) (Transport Standards Guidelines), which seek to provide general guidance on the Transport Standards.

The Guidelines provide:

- information about the operation of the federal *Disability Discrimination Act 1992* (Cth) (the Disability Discrimination Act) in relation to:
  - » unlawful disability discrimination in access to premises and the provision of goods, services and facilities
  - » when discrimination may not be unlawful
  - » the relationship between the Disability Discrimination Act and the Transport Standards
- information about the operation of the Transport Standards in relation to:
  - » compliance with the Transport Standards by equivalent access
  - » when failure to comply with the Transport Standards may not be unlawful
- practical guidance for using equivalent access to comply with the Transport Standards.

These Guidelines do not provide guidance on any other disability standards made under the Disability Discrimination Act or other regulatory instruments relevant to the provision of public transport.

Equal access to the physical environment, transportation and other facilities and services is viewed as a pre-requisite for people with disability to live independently, participate fully in all aspects of life and have unrestricted enjoyment of their human rights.<sup>1</sup> The *United Nations Convention on the Rights of Persons with Disabilities* (CRPD), which Australia ratified in 2008, requires States Parties to take appropriate measures to ensure people with disability have equal access to the physical environment, to transportation, to information and communications and to other facilities and services open or provided to the public, both in urban and in rural areas.<sup>2</sup>

The Disability Discrimination Act seeks to eliminate discrimination against people with disability.<sup>3</sup> The Disability Discrimination Act is supplemented by a series of Disability Standards, which include the Transport Standards.

The Transport Standards aim to enable operators and providers to remove disability discrimination from public transport services.<sup>4</sup> Compliance with the Transport Standards can be achieved by applying the specifications set out in the Transport Standards or by using methods or equipment that deliver equivalent access. Use of equivalent access:

- potentially offers operators and providers flexibility in the delivery of accessible public transport
- supports innovation by providing an opportunity to harness new technology to improve accessibility
- offers the potential for the delivery of public transport that exceeds minimum published accessibility standards

- encourages communication and collaboration between operators and providers, through required consultation with passengers with disability, organisations representing people with disability and other stakeholders, which may result in long-term access solutions developed through co-design rather than as a result of a complaint or litigation.

## 1.1 A need for guidance

Operators and providers have previously reported that they would benefit from greater clarity around using the equivalent access provisions in the Transport Standards.<sup>5</sup>

Some operators and providers indicated that they are reluctant to use equivalent access solutions as there is no way to confirm that these solutions comply with the Transport Standards.<sup>6</sup>

Equivalence of access can only be authoritatively determined if a complaint about access is lodged with the Commission that cannot be conciliated and proceedings are brought in a federal court. In such cases, the provisions will be tested during the process of determining whether or not discrimination has occurred with the Court deciding upon whether equivalent access has been provided. As a result, the flexibility that the provisions give comes with a degree of uncertainty over whether or not alternative forms of access will be found to be equivalent.<sup>7</sup>

Compliance with the Transport Standards in rural, regional and remote locations appears to be progressing at a slower pace than in urban and metropolitan areas, resulting in frustration and disappointment among people with disability and their representatives.<sup>8</sup> Some operators and providers have expressed apprehension at the specific challenges these locations present in achieving compliance with the Transport Standards, including low passenger numbers and prohibitive costs.<sup>9</sup> Operators and providers are more likely to rely on legacy rolling stock and other conveyances (for example, trains procured before the commencement of the Transport Standards or buses purchased from metropolitan operators).

In rural, regional and remote locations fewer staff may also be available to deliver equivalent access by direct assistance. Guidance on the use of equivalent access would assist operators and providers in rural, regional and remote locations to deliver more accessible transport to passengers with disability.

In response to this identified need for clarification and guidance, the Department of Infrastructure, Transport, Regional Development and Communications approached the Commission to develop these Guidelines. While these Guidelines do not provide all of the answers to questions about equivalent access, they draw together existing law and guidance material and provide some frameworks for assessing whether particular proposals satisfy these legal requirements.

## 1.2 The development of these Guidelines

### (a) Process

To develop the Guidelines the Commission conducted a number of targeted consultations. Consultation workshops were held with people with disability and their representatives, representatives of operators and providers of public transport, state and federal government departments responsible for the provision of public transport and related infrastructure, and other related organisations.

An Issues Paper was released to stakeholders in June 2019 and face-to-face consultation workshops were held in Sydney, Melbourne, Darwin and Brisbane in July and August 2019. Some organisations also provided written submissions.

A smaller group of stakeholders, representative of the larger group engaged through consultations, was asked to provide feedback on an earlier draft of these Guidelines. In total, over 40 organisations were represented in consultations (see [Appendix 1](#) for a complete list).

The information gathered during the consultation process is drawn on throughout these Guidelines.



## (b) Main themes from the consultations

The two main themes that emerged from the consultations were the importance of equivalent access, and the need for guidance.

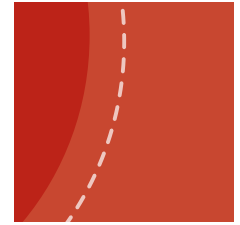
During the consultation process the Commission heard that equivalent access offers a potential mechanism to comply with the Transport Standards which promotes flexibility, innovation and cooperation.

However, operators and providers also indicated that uncertainty about how equivalent access provisions are interpreted acts as a disincentive to their use. There was general support for more guidance about equivalent access to assist in increased use.

*'Equivalent access is an excellent mechanism. Even when Standards are modernised, Equivalent access will still be needed to cover situations, new technology and change not foreseen by a Standard. In that sense, Equivalent access can keep a Standard relevant and capable.'*

Submission to the Commission from Spinal Life Australia<sup>10</sup>





These Guidelines are issued under section 67(1)(k) of the Disability Discrimination Act, which empowers the Commission to prepare and publish guidelines for the avoidance of discrimination on the ground of disability.

## 2.1 Who are these Guidelines for?

These Guidelines have been developed to provide practical assistance to operators and providers to offer equivalent access to public transport and related infrastructure in compliance with the Disability Discrimination Act and the Transport Standards.

These Guidelines may also be of assistance to people with disability and their representatives in assisting them to understand their rights in relation to public transport, and offer a potential means of promoting collaboration between all stakeholder groups.

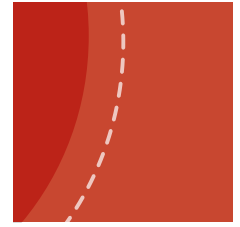
## 2.2 Why should operators and providers use these Guidelines?

These Guidelines provide guidance to operators and providers for the effective implementation of the Transport Standards. They may assist operators and providers to assess their own access initiatives for consistency with the Disability Discrimination Act and the Transport Standards and develop equivalent access solutions in response to challenging technical compliance situations.

The Guidelines are not intended to constitute legal advice. Organisations or individuals should seek their own legal advice if they have concerns regarding their compliance with the Disability Discrimination Act, the Transport Standards or relevant state or territory anti-discrimination legislation.

An organisation or individual will not be protected from a finding of unlawful discrimination by claiming that they complied with, or relied on, these Guidelines. However, the Commission considers that using these Guidelines will help operators and providers avoid and, if necessary, respond to allegations that measures intended to make public transport accessible do not constitute equivalent access.

It is also important to note that in order to demonstrate unjustifiable hardship, operators and providers will need to show that they have exhausted all opportunities for providing equivalent access.<sup>11</sup> If operators and providers have not used or applied the Guidelines it will be very difficult for them to demonstrate this.



The following terms used in these Guidelines have the same meaning as in the Transport Standards.

**Conveyance<sup>12</sup>**

A 'conveyance' includes any of the following to the extent that they are used to provide a public transport service:

- aircraft
- buses or coaches
- ferries
- taxis
- trains, trams, light rail, monorails, rack railways
- any other rolling stock,<sup>13</sup> vehicle or vessel classified as public transport within its jurisdiction by regulation or administrative action of any Government in Australia.

Conveyances do not include:

- charter boats, including water taxis
- limousines, including chauffeured hire cars
- self-drive rental cars.

**Direct assistance<sup>14</sup>**

'Direct assistance' is help given by an operator or provider:

- to make public transport accessible to a person with disability when premises, infrastructure or conveyances do not fully comply with the specifications of the Transport Standards
- to provide non-discriminatory access on request.

**Equivalent access<sup>15</sup>**

'Equivalent access' is a process, often involving the provision of direct assistance, under which an operator or provider is allowed to vary the equipment or facilities that give access to a public transport service, so long as an equivalent standard of amenity, availability, comfort, convenience, dignity, price and safety is maintained.

Equivalent access does not include a segregated or parallel service.

**Infrastructure<sup>16</sup>**

'Infrastructure' is any structure or facility that is used by passengers in conjunction with travelling on a public transport service.

Infrastructure does not include any area beyond immediate boarding points (for example, bus stops, wharves, ranks, rail stations, terminals).

### **Operator<sup>17</sup>**

An 'operator' is a person or an organisation (including the staff of the organisation) that provides a public transport service to the public or to sections of the public. A public transport service may have more than one operator.

### **Premises<sup>18</sup>**

'Premises' are structures, buildings or attached facilities that an operator provides for passenger use as part of a public transport service.

### **Provider<sup>19</sup>**

A 'provider' is a person or organisation that is responsible for the supply or maintenance of public transport infrastructure. A provider may or may not be an operator.

### **Public transport service<sup>20</sup>**

A 'public transport service' is an enterprise that conveys members of the public by land, water or air. A public transport service includes: community transport conveyances that are funded or subsidised by charity or public money and that offer services to the public; and foreign aircraft and vessels that carry passengers to, from, or in Australia and that offer services to the public. A public transport service does not include a service that provides adventure travel (for example, white-water rafting, ballooning or amusement park rides) except to the extent that the service operates to move the public from one location to another distant location.





## 4.1 Overview of the Disability Discrimination Act

The Disability Discrimination Act aims to eliminate discrimination, as far as possible, against people with disability.<sup>21</sup> The Disability Discrimination Act protects people against unlawful discrimination on a number of grounds, including:

- past, present, future or imputed disability
- association with a person with disability
- having a carer or assistant
- having an assistance animal
- having a disability aid.<sup>22</sup>

It is unlawful to discriminate against a person with disability in a number of areas of public life including:

- employment
- education
- access to premises
- goods, services and facilities
- administration of Commonwealth laws and programs.<sup>23</sup>

It may not be unlawful to discriminate against a person on the ground of disability if avoiding the discrimination would impose an 'unjustifiable hardship' on the person engaging in the discrimination.<sup>24</sup> Development and implementation of a Disability Action Plan may be considered when determining whether a hardship is an unjustifiable hardship.<sup>25</sup>

The Commission has the power to grant temporary exemptions from certain provisions of the Disability Discrimination Act.<sup>26</sup> The effect of a temporary exemption is that discrimination covered by the exemption is not unlawful under the Disability Discrimination Act while the exemption remains in force.

The Commission has developed criteria and procedures to guide it in exercising its statutory discretion regarding temporary exemptions under the Disability Discrimination Act.<sup>27</sup> See [section 8.2](#) below for further details.

The Disability Discrimination Act provides for the formulation of disability standards in relation to any area of public life in which disability discrimination is unlawful. It is unlawful to contravene a disability standard.<sup>28</sup> If a person complies with a disability standard, then the person is in compliance with the requirements of the Disability Discrimination Act.<sup>29</sup>

More detailed information about the provisions of the Disability Discrimination Act relevant to these Guidelines is set out in [Appendix 2](#).

## 4.2 Overview of the Transport Standards

The Transport Standards are disability standards formulated under the Disability Discrimination Act. The purpose of the Transport Standards is to enable public transport operators and providers to remove disability discrimination from public transport services.<sup>30</sup>

The Transport Standards apply to:

- operators of public transport services and the conveyances they use to provide those services
- providers of supporting public transport premises and infrastructure.<sup>31</sup>

The Transport Standards do not apply to charter boats, limousines or self-drive rental cars.<sup>32</sup> Dedicated school buses, small aircraft and airports that do not accept regular public transport services have also been excluded from the operation of certain physical access provisions of the Transport Standards.<sup>33</sup>

It is important to note that public transport services, conveyances, premises and infrastructure not covered by the Transport Standards remain subject to the provisions of the Disability Discrimination Act.<sup>34</sup>

The Transport Standards set out minimum requirements for conveyances, premises and infrastructure that operators and providers must comply with when providing public transport services.<sup>35</sup> These are mandatory performance outcomes covering a range of accessibility issues.<sup>36</sup> For example, there are minimal technical requirements for ramps (Part 6) and toilets (Part 15). The Transport Standards allow for a variety of design solutions to satisfy any particular requirement.<sup>37</sup>

The Transport Standards set compliance target dates at 31 December every five years from 2007 until 2022 for all operators and providers to progressively remove constraints on accessibility within public transport conveyances, premises and infrastructure, other than rail or trams.<sup>38</sup> The compliance target date for rail and tram operators and providers is 31 December 2032.<sup>39</sup> New conveyances, premises and infrastructure must comply with the Transport Standards immediately.<sup>40</sup> Compliance can be through the provision of equivalent access.<sup>41</sup>

Operators and providers can achieve compliance with the Transport Standards in one of two ways:

- by applying relevant specifications in the Transport Standards before the target dates
- by offering equivalent access.<sup>42</sup>

The Commission has the power to grant temporary exemptions from certain provisions of the Transport Standards.<sup>43</sup> See [section 8.2](#) below for further details.

The Transport Standards must be reviewed every five years to assess:

- their efficiency and effectiveness
- whether discrimination has been removed, as far as possible, according to the requirements for compliance they set out
- if and how they should be amended.<sup>44</sup>

Detailed information about provisions of the Transport Standards relevant to these Guidelines is set out in [Appendix 2](#).

## 4.3 What is equivalent access?

Equivalent access allows operators and providers to vary the equipment or facilities that give access to public transport for people with disability, so long as an equivalent standard of amenity, availability, comfort, convenience, dignity, price and safety is maintained.<sup>45</sup>

## Transport Standards

### Section 33.3 Equivalent access

1. Compliance with these Standards may be achieved by:
  - a. applying relevant specifications in these Standards before the target dates; or
  - b. using methods, equipment and facilities that provide alternative means of access to the public transport service concerned (but not using separate or parallel services) with equivalence of amenity, availability, comfort, convenience, dignity, price and safety.
2. This may include direct assistance over and above that required simply to overcome discrimination.

### Section 33.4 Consultation about proposals for equivalent access

The operator or provider of a public transport service must consult with passengers with disabilities who use the service, or with organisations representing people with disabilities, about any proposal for equivalent access.

### Section 33.5 Equivalent access without discrimination

Operators and providers must be able to demonstrate that equivalent access provides public transport without discrimination 'as far as possible'.

Equivalent access may involve the provision of direct assistance.<sup>46</sup> Direct assistance is help given by an operator or provider:

- to make public transport accessible to a person with disability when premises, infrastructure or conveyances do not comply with the specifications of the Transport Standards, or
- to provide non-discriminatory access on request.<sup>47</sup>

Direct assistance should be provided to the person in a way that gives an equivalent level of access. The level of assistance provided should be in response to the person's independence and should enable the person to preserve their dignity.<sup>48</sup> Examples of direct assistance may include assistance in moving from a wheelchair into a fixed seat (where an allocated space is not available)<sup>49</sup> or providing information about the approach of the person's stop.<sup>50</sup>

Equivalent access cannot be provided by offering a segregated or parallel service.<sup>51</sup> For example, providing an accessible taxi service as an alternative to an inaccessible bus service is not equivalent access.<sup>52</sup>

Operators and providers must consult with passengers with disability who use the service, or with organisations representing people with disability, about any proposal for equivalent access.<sup>53</sup>

Equivalent access must provide public transport without discrimination, as far as possible.<sup>54</sup>

To prove 'unjustifiable hardship', an operator or provider must also prove that the opportunities for providing equivalent access have been exhausted.<sup>55</sup>

The Federal Court of Australia has characterised equivalent access as a defence to allegations that an operator or provider has failed to comply with the Transport Standards.<sup>56</sup> Generally, it is up to a respondent to establish facts that support a defence to an applicant's allegation.<sup>57</sup> This means that, if a complaint was made alleging that an operator or provider had contravened the Transport Standards, and if the complainant established that there had been non-compliance with the relevant specifications in the Transport Standards, it would be up to the operator or provider to show that it complied with the Transport Standards by means of equivalent access.

# Factors to consider when planning to provide equivalent access



Operators and providers of public transport should consider the following factors when planning to provide equivalent access:

- the need for equivalent access (that is, why this is appropriate instead of compliance with the specifications of the Transport Standards by the target date) (see [section 5.1](#))
- that the proposed measure is not a segregated or parallel service (see [section 5.2](#))
- that the proposed measure provides equivalent amenity, availability, comfort, convenience, dignity, price and safety (see [section 5.3](#))
- that passengers with disability who use the service or organisations representing people with disability have been consulted (see [section 5.4](#)).

## 5.1 Identify the need for equivalent access

The Transport Standards state that operators and providers can use equivalent access to comply with the Transport Standards as an alternative to applying the specifications in the Transport Standards by the target date.<sup>58</sup>

There may be a number of reasons why an operator or provider may not be in a position to apply the specifications in the Transport Standards by the target date, including:

- applying all of the relevant specifications by the target date may be unaffordable
- it may not be practicable to apply the specifications in the Transport Standards (for example because of reliance on legacy conveyances and infrastructure, geographical constraints or the heritage status of buildings)
- the specifications in the Transport Standards may not be 'fit for purpose' (for example, where the requirements of the Transport Standards are inconsistent with Australian Standards or where technological and other developments offer more accessible options).





Equivalent access must be assessed against the nature of the public transport offered by the operator or provider.

*'Strict compliance with the Transport Standards [specifications] may not offer the most accessible solution.'*

Melbourne Consultation Participant

## 5.2 Ensure the proposed measure is not a segregated or parallel service

Equivalent access cannot be provided by offering a segregated or parallel service.<sup>59</sup> For example, providing an accessible taxi service as an alternative to an inaccessible bus service is not equivalent access.<sup>60</sup>

While a segregated or parallel service may offer the same level of functionality as a non-segregated service, the segregation of people with disability is inconsistent with the objects of the Disability Discrimination Act and the Transport Standards. The Disability Discrimination Act and the Transport Standards both aim to remove discrimination and promote access by people with disability to the same services and premises as other members of the community. This is also in line with the objects of the CRPD.

When considering possible equivalent access measures, operators and providers should take all reasonable steps to ensure the measure is as inclusive as possible and does not result in the segregation of passengers with disability.

## 5.3 Ensure the proposed measure provides equivalent amenity, availability, comfort, convenience, dignity, price and safety

### (a) Overview

The Transport Standards and the Transport Standards Guidelines do not define the terms 'equivalence', 'amenity', 'availability', 'comfort', 'convenience', 'dignity', 'price' or 'safety'.

When a term is not defined a court may consider the ordinary use of a term. This may include how the term is defined in a dictionary, or the meaning that the term has previously been given by a court. To date, there have not been any cases in relation to the Transport Standards in which a court has set out the meaning of these terms.

Courts will generally seek to ensure that each word in a legal instrument is given some meaning and effect.<sup>61</sup> Here, where there are a variety of domains across which equivalence is to be provided (amenity, availability, comfort, convenience, dignity, price and safety), each one will be given a meaning that is separate and distinct from the others.

In some cases the meaning of a word or phrase will also be determined by its context and the purpose of the legislation it appears in, particularly where the literal meaning would lead to absurd or inconsistent results.<sup>62</sup> Adopting a meaning of a word or phrase that promotes the purpose or objects of the relevant legislation is the preferred approach.<sup>63</sup> One of the key objects of the Disability Discrimination Act is to 'eliminate, as far as possible, discrimination against persons on the ground of disability' in particular areas of public life, including the provision of public transport.<sup>64</sup>

Similarly, the purpose of the Transport Standards is to 'enable operators and providers to remove discrimination from public transport services'.<sup>65</sup> These principles point towards a beneficial interpretation of equivalent access that requires a high threshold for equivalence.

At the same time, the Transport Standards are meant to be of practical utility and so, where they provide for an alternative means of achieving compliance, a court is likely to give terms within the Transport Standards an interpretation that is as certain as possible so that those alternative means of achieving compliance can be realised.

As part of its consultation in relation to these guidelines, the Commission sought the views of industry participants about their understanding of these terms. The understanding of industry participants is a useful reference point when assessing the ordinary use of the terms. However, they should not be treated as the definitive legal meanings of these words. It is possible that a court considering these issues for the first time may reach a different view about their meaning.

The Australasian Railway Association Accessibility Working Group has developed a set of definitions for the terms which comprise equivalent access. These are outlined in [Appendix 3](#).

The discussion below takes into consideration feedback the Commission received during the consultation process in relation to a number of these key terms. In some cases, it also takes into consideration how these terms have been interpreted in other legal contexts. Some care must be taken when seeking to rely on these cases as the difference in context may have an impact on the meaning given to a term.

### (b) Equivalence

The main requirement of equivalent access is that, while the means of access including equipment or facilities may be different, the quality of experience (measured in terms of amenity, availability, comfort, convenience, dignity, price and safety) should be the same for passengers with disability.

In a case dealing with the use of the word 'equivalent' in a different context one judge referred to the dictionary definition and determined that:

For an occurrence to be said to be equivalent to another it must have equality in value or significance; or correspondence in import, characteristic or meaning; or have identical effect or be virtually the same thing.<sup>66</sup>

The other judges in this case also referred to the dictionary and found that 'equivalent' meant:

1. equal in value, measure, force, effect, significance, etc
2. corresponding in position, function, etc.

The Transport Standards are explicit about the criteria in respect of which equivalence must be measured. Equivalence is measured against standards of amenity, availability, comfort, convenience, dignity, price and safety.

Although the context of the case referred to above is different from the context of the Transport Standards, the tests applied by those judges are useful guidance on the way in which the same term may be interpreted in that what is equivalent is outcome-focused.



### (c) Amenity

The Commission is not aware of any court decisions on the meaning of 'amenity'.

The dictionary defines 'amenity' as:

1. The quality of being pleasant or agreeable in situation, prospect, disposition, etc.; pleasantness: *the amenity of the climate*.<sup>67</sup>

### Assessing amenity

The following questions have been developed to assist operators and providers to assess equivalent access in relation to amenity. This list is not exhaustive and should be treated as a starting point to assess amenity.

- Does the equivalent access measure allow passengers to easily access the bathroom facilities and return to their seat, in the same manner they would be able to if the conveyance complied with the relevant specifications outlined in the Transport Standards?
- Does the equivalent access measure allow passengers to sit in proximity to their travel companions, in the same manner they would be able to if the conveyance complied with the relevant specifications in the Transport Standards?
- Does the equivalent access measure allow passengers to access the food and drink facilities, and other services, provided by the operator or provider in the same manner they would be able to if the conveyance, infrastructure or premises complied with the relevant specifications of the Transport Standards?
- Where equivalent access is provided by direct assistance, does this deliver the same access to all facilities provided by the operator or provider (for example, shopping, restaurants, and leisure activities at stations and airports) as would be provided if the conveyance, infrastructure or premises complied with the relevant specifications of the Transport Standards?
- Does the equivalent access measure (for example a ramp or lift) provide the same ease of access at peak travel times, or does it introduce additional delays and frustration for the passenger?
- Does the equivalent access measure provide the same access to a particularly desirable feature of a public transport service, for example the view, for a passenger with disability as it does for other passengers?

### (d) Availability

The Commission is not aware of any court decisions on the meaning of 'availability'.

The dictionary defines 'availability' as the 'state of being available'.<sup>68</sup> 'Available' is defined as:

1. Suitable or ready for use; at hand; of use or service; *available resources*.
2. Having sufficient power or efficacy; valid.<sup>69</sup>

In the context of a public transport service, it seems likely that 'availability' (either alone or in conjunction with 'convenience') would also take into account the frequency of the service.

### Assessing availability

The following questions have been developed to assist operators and providers to assess equivalent access in relation to availability. This list is not exhaustive and should be treated as a starting point to assess availability.

- Does the conveyance to which the equivalent access measure applies travel as frequently on a route as a conveyance that complied with the relevant specification of the Transport Standards would?
- Does the conveyance to which the equivalent access measure applies stop at as many stops on the route as a conveyance that met the relevant specifications of the Transport Standards would?
- Does the conveyance to which the equivalent access measure applies provide as many accessible spaces as a conveyance that complies with the relevant specifications in the Transport Standards would?
- Where equivalent access is provided by way of direct assistance by a staff member, is the staff member readily available to assist with boarding and alighting, or must assistance be pre-booked?
- Where the equivalent access measure relates to the provision of information, does the operator or provider make this information available in a number of different accessible formats?

## (e) Comfort

The Commission is not aware of any court decisions on the meaning of 'comfort'.

The dictionary defines 'comfort' as including:

*-noun* 7. a cause or matter of relief or satisfaction. 8. a state or ease, with freedom from pain and anxiety, and satisfaction of bodily wants. 9. that which promotes such a state.<sup>70</sup>

### Assessing comfort

The following questions have been developed to assist operators and providers to assess equivalent access in relation to comfort. This list is not exhaustive and should be treated as a starting point to assess comfort.

- Does the equivalent access measure provide the same amount of access to the bathroom facilities as would be provided if the conveyance, infrastructure or premises complied with the relevant specifications of the Transport Standards?
- Does the equivalent access measure in relation to the provision of information create additional anxiety for a passenger than would be experienced if the conveyance, infrastructure or premises complied with the relevant specifications in the Transport Standards? For example, reliance on a driver remembering to inform a passenger of the correct stop, as opposed to audible or visual announcements operating automatically.
- Does the equivalent access measure allow passengers who use mobility aids to manoeuvre in the same way as if the conveyance, infrastructure or premises complied with the relevant specifications in the Transport Standards?
- Does the equivalent access measure result in additional exposure to the elements for passengers than they would experience if the conveyance, infrastructure or premises complied with the relevant specifications in the Transport Standards?
- Does the equivalent access measure impose additional procedures on the passenger which may cause stress, frustration, or both?

### (f) Convenience

The Commission is not aware of any relevant court decisions on the meaning of 'convenience'.

The dictionary defines 'convenience' with reference to 'convenient'.<sup>71</sup> 'Convenient' is defined as:

1. agreeable to the needs or purpose; well-suited with respect to facility or ease in use; favourable, easy, or comfortable for use.
2. at hand; easily accessible.<sup>72</sup>

It is the convenience of the passenger that is important, rather than that of the operator or provider.

Some stakeholders also suggested that convenience should be considered through the prism of dignity. The meaning to be given to 'dignity' is considered in more detail below.

### Assessing convenience

The following questions have been developed to assist operators and providers to assess equivalent access in relation to convenience. This list is not exhaustive and should be treated as a starting point to assess convenience.

- Does the equivalent access measure allow all passengers to board the same number of conveyances on a route as they would be able to if the conveyances met the relevant specifications in the Transport Standards?
- Does the equivalent access measure provide the same level or detail of information as would be provided if the conveyance, infrastructure or premises complied with the relevant specifications in the Transport Standards? For example, are visual announcements as detailed as audio announcements?
- Does the equivalent access measure result in additional steps or legs to a journey, or additional travel time, than would be required if the conveyance, infrastructure or premises complied with the relevant specifications in the Transport Standards?
- Does the equivalent access measure (for example, the requirement to contact a call centre to request direct assistance) require an additional step for the passenger than would be required if the conveyance, infrastructure or premises complied with the relevant specifications in the Transport Standards?
- If equivalent access is provided by way of direct assistance, does this involve additional waiting time for the passenger than would be required if the conveyance, infrastructure or premises complied with the relevant specifications in the Transport Standards?

## (g) Dignity

The term 'dignity' may be the most difficult to define in the context of equivalent access. The concept of dignity resonates strongly with people with disability in their struggle for equality and inclusion.

*'Dignity is about being the "same", not "special".'*

Darwin Consultation Participant

Human rights law recognises that 'dignity' is something that is inherent to all people. The Universal Declaration of Human Rights provides in article 1 that all human beings are born free and equal in dignity and rights.

The CRPD lists a number of principles that underpin the Convention. The first of these is:

Respect for inherent dignity, individual autonomy including the freedom to make one's own choices, and independence of persons.<sup>73</sup>

Dignity is referred to several times in the CRPD in conjunction with the concepts of autonomy<sup>74</sup> and self-worth.<sup>75</sup>



When the Australian Law Reform Commission produced its report on *Equality, Capacity and Disability in Commonwealth Laws*, it identified 'dignity' as the first of five framing principles for guiding recommendations for reform. It said this of 'dignity':

Dignity is one of the guiding principles of the CRPD and is recognised in a number of other international human rights instruments. In Australia, the National Disability Strategy (NDS) prioritised the concept of dignity in its principles. Similarly, the Productivity Commission identified human dignity as 'an inherent right' of persons with disability and suggested that dignity as a human being is linked to self-determination, decision-making and choice.<sup>76</sup>

The meaning of 'dignity' has been considered by courts in the United Kingdom in applying provisions of the Human Rights Act 1998. In a case dealing with the right of persons with disability to be lifted in an appropriate manner by their carers, the UK High Court observed:

The recognition and protection of human dignity is one of the core values – in truth *the* core value – of our society and, indeed, of all the societies which are part of the European family of nations and which have embraced the principles of the [European Convention for the Protection of Human Rights and Fundamental Freedoms]. It is a core value of the common law, long pre-dating the Convention and the [Charter of Fundamental Rights of the European Union]. The invocation of the dignity of the patient in the form of declaration habitually used when the court is exercising its inherent declaratory jurisdiction in relation to the gravely ill or dying is not some meaningless incantation designed to comfort the living or to assuage the consciences of those involved in making life and death decisions: it is a solemn affirmation of the law's and of society's recognition of our humanity and of human dignity as something fundamental.<sup>77</sup>

In the context of the Transport Standards, whether a method of equivalent access maintains an equivalent standard of dignity for passengers will depend on a number of contextual factors. It will be important for operators and providers to consider how to maximise the autonomy of passengers and ensure that people with disability are not stigmatised or singled out by the process adopted.

### Assessing dignity

The following questions have been developed to assist operators and providers to assess equivalent access in relation to dignity. This list is not exhaustive and should be treated as a starting point to assess dignity.

- Does the equivalent access measure require passengers with disability to disclose personal information they would not be required to disclose if the conveyance, premises or infrastructure complied with the specifications of the Transport Standards?
- Does the equivalent access measure make access to a conveyance, infrastructure or premises more reliant on the goodwill of staff or other passengers than if the conveyance, premises or infrastructure were compliant with the specifications of the Transport Standards?
- Does the equivalent access measure result in passengers with disability being highly visible or otherwise exposed (for example, use of identifying lanyards, wristbands, etc.)?
- Does the equivalent access measure have the potential to create a perception that passengers with disability are inconveniencing other passengers (for example, where an allocated space takes up space in a high traffic area or where other passengers must wait for a passenger with disability to board or alight)?
- Where equivalent access is being provided by direct assistance, does the proposed measure result in passengers with disability being physically touched in a way that could undermine their dignity (for example, when being assisted to board a conveyance or transfer from a wheelchair into a fixed seat)?



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## (h) Price

The dictionary defines 'price' as:

1. The sum or amount of money or its equivalent for which anything is bought, sold or offered for sale.<sup>78</sup>

In the context of the Transport Standards price refers to the price paid by a passenger to access a service, rather than the costs faced by the operator or provider.

This focus on the perspective of the customer is consistent with the purpose of the Transport Standards to eliminate discrimination against persons on the ground of disability. It is also consistent with a beneficial approach to the interpretation of Transport Standards.



### Assessing price

The following questions have been developed to assist operators and providers to assess equivalent access in relation to price. This list is not exhaustive and should be treated as a starting point to assess price.

- Do passengers incur any additional costs in order to benefit from an equivalent access measure that they would not incur if the conveyance, infrastructure or premises complied with the relevant specifications in the Transport Standards? For example, the use of taxis, purchase of equipment, purchase of mobile data, or a booking fee.
- If equivalent access is provided by way of direct assistance, does this result in an additional cost for the passenger?
- Is the equivalent access measure available to passengers who wish to purchase a discounted fare?
- Do passengers have to travel in a certain class in order to benefit from or access the equivalent access measure?

### (i) Safety

Safety is a term used in many legal contexts. Its meaning is unlikely to be controversial when considering the requirement that any form of equivalent access maintain an equivalent standard of safety.<sup>79</sup>

The dictionary defines 'safety' as:

1. the state of being safe; freedom from injury or danger.
2. the quality of insuring against hurt, injury, danger, or risk.<sup>80</sup>

### Assessing safety

The following questions have been developed to assist operators and providers to assess equivalent access in relation to safety. This list is not exhaustive and should be treated as a starting point to assess safety.

- Do the equivalent access measures in place regarding tactile markings identify boarding and disembarking locations in a manner that ensures the safety of passengers in the same way as if the conveyance, infrastructure or premises would if they complied with the relevant specifications in the Transport Standards?
- Do the equivalent access measures in place in relation to information also apply to announcements regarding emergencies in the same way as if the conveyance, infrastructure or premises complied with the relevant specifications in the Transport Standards?
- If equivalent access is provided by way of direct assistance, does any associated wait time in case of emergency evacuation place passengers with disability at additional risk?
- When providing equivalent access to information about upcoming stops, are passengers with disability at additional risk of disembarking at the wrong location and becoming stranded or being unsafe in a way they would not be if the conveyance complied with the relevant specifications in the Transport Standards?
- Where equivalent access is provided by way of direct assistance, have staff been trained in how to provide this assistance in a manner that is safe for both the passenger and themselves?

## 5.4 Consult passengers with disability who use the service or organisations representing people with disability

The Transport Standards require operators and providers to consult with passengers with disability who use the service or with organisations representing persons with disability about any proposal for equivalent access.<sup>81</sup>

Consultation involves seeking out the views of relevant parties and taking those views into account in the decision making process.<sup>82</sup> The process must give the person consulted a meaningful opportunity to express their views.<sup>83</sup> It is important for operators and providers to both engage in consultation and keep records of the consultations that they have engaged in. Furthermore, it is the proposal for equivalent access that must be consulted upon. If the proposal changes in a material way further consultation must occur to confer about any changes.

### (a) Who to consult

The Transport Standards Guidelines note that the most important consultation is expected to be between operators, local government and passengers.<sup>84</sup>

Operators and providers should consult with:

- passengers with disability who use the service
- organisations representing people with disability.

Passengers will have specific knowledge and experience of the service crucial to the implementation of any equivalent access measure. Organisations representing people with disability may have more technical expertise and be in a position to offer a systemic perspective. Therefore, it is important to consider the contributions of both individuals and organisations.

*'Nothing about us without us.'*

Brisbane Consultation Participant

In determining who to consult with operators and providers should be aware of the difference between:

- the disability sector – individuals and organisations **delivering services to** people with disability
- the disability community – individuals with disability and membership organisations of people **with disability** who are public transport users.

Disability sector organisations will often have knowledge and expertise that may assist operators and providers who are considering equivalent access measures. However, operators and providers should avoid over-reliance on consulting people without a lived experience of disability or organisations not made up of people with a lived experience of disability.

Federal, state and local government authorities may have Accessibility Reference Groups, comprised of individuals with disability and the organisations that represent them. Accessibility Reference Groups should be included in the consultation process.

Who should be consulted may depend on the scope and purpose of the consultation. The type of measure being considered, number of routes/ locations affected, likely number of passengers affected, and other factors may mean that consultations vary in size, stakeholders and scope. An assessment of the nature of passengers who have or could use the service should be undertaken.

Those asked to participate in the consultations should include users of the relevant service. For example, where a service is located in a regional, rural or remote area, users in these areas, rather than in metropolitan areas, should be a key part of the consultation process.

Equivalent access measures are likely to benefit passengers other than passengers with disability, such as parents with small children and using prams, people with luggage and shopping carts. As such, operators and providers may wish to consider consulting with passengers without disability who may also benefit or otherwise be impacted by an equivalent access measure.

Many people with disability participating in consultation processes, whether on their own behalf or on behalf of a representative organisation, do so on a voluntary or unpaid basis. Consultation processes should be sufficiently well-funded to facilitate participation by people with disability. Given the expertise that people with disability bring to the consultation process, and the time involved, operators and providers may wish to consider providing remuneration.

Stakeholders noted the importance of acknowledging and recognising the time and expertise of people with disability participating in consultations, including those participating on behalf of representative organisations.

Such recognition may take the form of financial incentives (for example, gift vouchers) or compensation for the time and cost associated with participation (for example, compensation for the cost of travel necessary to participate in the consultation process).

*'We're expected to be consulted and solve everyone's problems, but no one is giving you a job for it.'*

Darwin Consultation Participant

The Transport Standards Guidelines also encourage consultation with all levels of government to ensure that accessible public transport initiatives will reflect local and regional needs.<sup>85</sup>



## South Australia Disability Access and Inclusion Committee<sup>86</sup>

The Disability Access and Inclusion Committee (DAIC) provides advice to the South Australian Department of Planning, Transport and Infrastructure (DPTI) on all matters relating to accessibility and inclusion in the public transport and infrastructure space. The Committee focuses on supporting the Department to meet legislative requirements of the Disability Discrimination Act and the Transport Standards and implement improved accessible outcomes across the organisation.

Guidance and advice are provided by DAIC participants on behalf of the disability community with respect to proposals for equivalent access where adherence to technical requirements cannot be met or is undesirable/impractical to meet. This advice is considered to be provided in an expert manner by skilled advocates of the disability community.

DAIC (under various names) commenced in 2007 and currently consists of eight external members and three departmental staff. The current external members all have lived experience of disability, enabling them to provide expert, authentic and relevant advice. The Committee is made up of members involved by virtue of their positions with disability organisations, and community representatives. Organisational members provide guidance and advice relevant to their personal experience, and relevant to their organisation and its members. Community representatives are public transport users dedicated to providing advocacy and guidance to improve transport and infrastructure for people with disability. Member participation was previously voluntary, but has been remunerated since mid-2019.

The DAIC is scheduled to meet once a month for two hours, however each year approximately nine or ten meetings occur, with some scheduled meetings cancelled due to no subject matter or failure to meet quorum.

**Example subject matter:** DAIC recently provided advice in regard to the design and implementation of Smart Stops with Voice Announcers for the metropolitan bus network. This included identification of a change to tactile aspects of the system that improved interaction for all users.

### (b) When to consult

Operators and providers should consult people with disability and their representatives as early as possible and throughout the process of planning, developing and implementing equivalent access.

Consultation should begin at the inception and planning stage. Where equipment or conveyances are being purchased, consultation should commence before procurement. Stakeholders noted that for those delivering on procurement contracts, operators or providers, and not passengers, are the clients. As such, it may be appropriate to develop deliverables and requirements in consultation with passengers with disability and their representatives.

The final proposal for equivalent access should be a part of the consultations.

### (c) Consultation process

#### (i) Meaningful

Any consultation process with passengers with disability and organisations representing people with disability should be meaningful. For consultation to be meaningful, operators and providers should ensure that the person who is responsible for the consultation process has the relevant experience and knowledge to respond to stakeholder feedback.

Operators and providers should provide clear information on the purpose, scope and process for consultation. Stakeholder contributions should have a material impact on the equivalent access process and its outcome.

Where aspects of the equivalent access being considered are not open to change, this should be clearly communicated to stakeholders, together with the reasons for this (for example, contractual arrangements with conveyance or infrastructure suppliers).

*'Transport operators and providers should be upfront about the level of influence stakeholders will have.'*

Melbourne Consultation Participant

During the Commission's consultation process, there was broad support for the use of co-design and customer/user-centred design models when considering and implementing equivalent access measures.

Both these models involve those directly and indirectly affected by the product or service being developed (for example, customers, end-users, researchers, consultants, and funding bodies) in identifying the issue or problem to be addressed, developing potential solutions and implementing and testing solutions.<sup>87</sup>

*'Co-design is a process that can provide the all-important "certainty" for both users and providers/operators across the contexts of safety, functionality, user-friendliness, dignity, compliance, risk-management and overall social and economic performance through everyone capable of being a customer/participant being included and getting a service.'*

Submission to the Commission from Spinal Life Australia'<sup>88</sup>

### *(ii) Accessible*

Consultation processes should also be accessible to people with disability. A number of factors may contribute to the accessibility of a consultation process including:

- People with disability and their representatives should be given reasonable notice of consultation processes to maximise the capacity for their participation.
- People with disability and their representatives should be offered different ways to contribute to the consultation process, for example, face-to-face consultation workshops, written submissions, telephone or online surveys.
- The communication needs of people with disability should be accommodated (for example, by providing Auslan interpreters at face-to-face consultations).

- The timing of meetings and workshops should accommodate, as far as possible, potential constraints on the time available to people with disability and their representatives. For example, some people with disability may be constrained by medication regimes, support arrangements or access to transport.
- Timeframes for the provision of submissions or other input should take into consideration the time required for individuals with disability to consider and respond, the ability for organisations representing people with disability to consult members where appropriate and the need of organisations of people with disability to accommodate competing demands on what are often limited resources.
- Consultation meeting or workshop venues should be accessible to people with disability and easily accessed by accessible public transport.
- Documents such as discussion papers or background information should be available to participants with disability in a range of formats, for example, hard copy print version, and electronic versions compatible with screen readers.
- People with disability should not be required to fund disability-related support or aids needed to participate in the consultation process (for example, a person with disability should not be required to use their NDIS funding to cover the costs associated with having an attendant).



Consultation of passengers with disability or their representatives in rural, regional or remote locations may be challenging due to lower population density and larger geographical coverage.

Operators and providers in rural, regional and remote locations should take these issues into account when consulting on equivalent access. Additional effort may be required to ensure meaningful participation by passengers with disability and their representatives. Also, operators and providers should focus on equitable and dignified access to transport and how this can be achieved, rather than the lowest standard of access people with disability may be willing to accept.

#### *(iii) Appropriate*

The size, purpose and scope of the consultation may vary according to the equivalent access being considered. In some circumstances, use of technology and scale models may be useful in consultation. For example, in a large project, such as the building of a new station, it may be useful to create a scale model of the station or a virtual reality tour to assist in meaningful consultation of passengers with disability and organisations representing people with disability. User testing of proposed equivalent access is also likely to assist and is consistent with a user-centred design model.

#### *(iv) Communication*

Effective communication is crucial to a meaningful consultation process. Operators and providers may find it useful to develop a communication strategy when considering equivalent access. Consultation participants should be kept informed of progress, for example, relevant findings of a consultation process, how participant input will be implemented and possible next steps.

#### *(v) Outcome*

There is no requirement that a passenger with disability or organisations representing people with disability agree with all aspects of the operator or provider's proposal. Similarly, if all parties agree on the proposal it does not mean that a court will not reach a decision that the requirements of equivalent access have not been met.

#### *(vi) Later review*

Although not required by the Transport Standards, it is prudent to undertake a later review of the methods, equipment and facilities that have been put in place to provide equivalent access for the following reasons:

- It reflects good practice in community consultation and engagement of stakeholders.
- Information about the implementation and use of the equivalent access measure and any feedback received may help operators and providers respond to allegations that equivalent access was not provided.
- It may allow operators and providers to take advantage of changes in technology to provide improved access solutions.
- It may allow an equivalent access solution to be adjusted to meet new passenger needs.

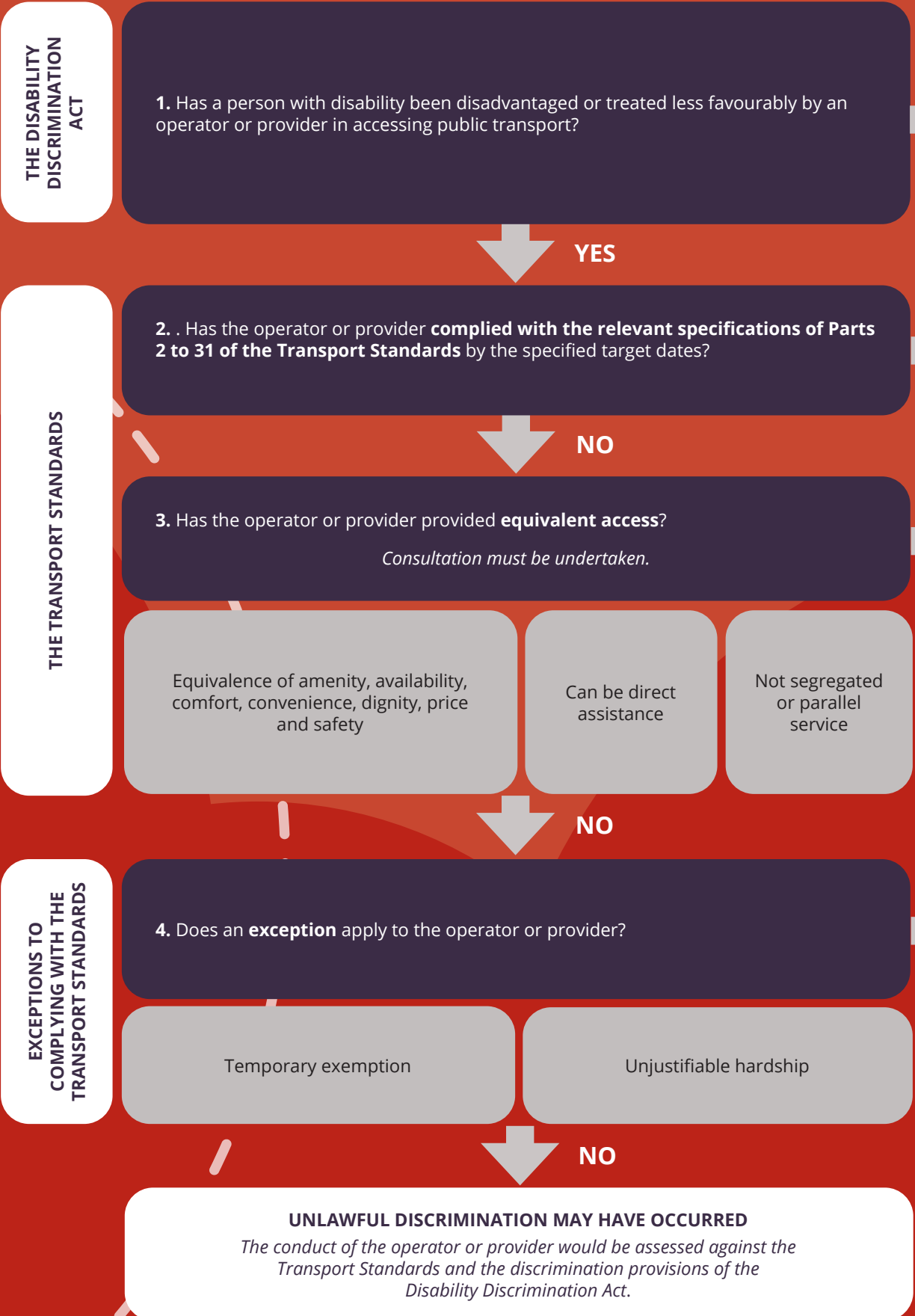
It may be helpful to include passengers with disability and their representatives who participated in the original consultation in the later review.





# Disability discrimination and public transport under the *Disability Discrimination Act 1992* (Cth)

The diagram below provides a summary of the legal framework relating to equivalent access under the Transport Standards.



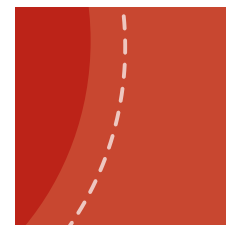
NO

YES

YES

YES

IT IS UNLIKELY THAT  
UNLAWFUL DISCRIMINATION  
HAS OCCURED



The examples below have been developed in consultation with stakeholders and with reference to the Transport Standards and the Transport Standards Guidelines. They are offered as general guidance only.

### Documenting equivalent access

It is recommended that operators and providers document the steps taken when seeking to apply equivalent access provisions to achieve compliance with the Transport Standards. A template for documenting such processes is set out in [Appendix 4](#).

Disability Action Plans (DAPs) may also be used to document equivalent access processes and measures. DAPs must include provisions relating to:

- devising of policies and programs to achieve the objects of the Disability Discrimination Act
- communication of these policies and programs to staff
- review of practices with a view to identifying discriminatory practices
- goals and targets to enable assessment of the success of the DAP in achieving the objects of the Disability Discrimination Act
- additional means of evaluating the policies and programs
- appointment of persons to implement the provisions of the DAP.<sup>89</sup>

DAPs may also include any other provisions not inconsistent with the objects of the Disability Discrimination Act.

DAPs can be given to the Commission, which must make them available to the public.<sup>90</sup>

More information about DAPs, including a DAP Register and resources for developing a DAP, is available on the Commission's website at <https://www.humanrights.gov.au/our-work/disability-rights/action-plans-and-action-plan-guides>.



## 7.1 Example: braille placement in Queensland's New Generation Rollingstock trains<sup>91</sup>

### Why is equivalent access being considered?

The Queensland Government is delivering the New Generation Rollingstock (NGR) project, which includes the design, construction and maintenance of 75 new passenger trains for South East Queensland. Some accessibility issues have been identified that need to be addressed to improve functionality for people with disabilities and the wider community, and to meet requirements under the Transport Standards.

The NGR Project Team worked collaboratively with the combined Transport and Main Roads (TMR) and Queensland Rail (QR) Accessibility Reference Group (ARG) and technical advisers to develop recommendations for consideration by Government to improve the trains' accessibility. To ensure the consultation phase was conducted efficiently and effectively for all parties, TMR requested that the combined TMR and QR ARG establish a Project Working Group (PWG).

TMR previously undertook a separate Equivalent Access consultation process with the ARG to consider potential car layout designs for the NGR fleet. The Government undertook to modify NGR trains in accordance with the preferred car layout that was identified in that consultation.

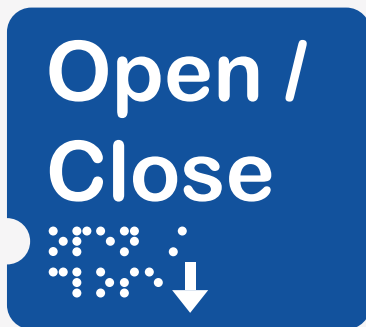
An issue of compliance with the Transport Standards yet to be resolved was the placement of braille on signage. As part of informal discussions with some ARG and PWG members about the issue of the placement of braille in relation to text, it was the opinion of all that placing braille under the text was the best approach to maintain consistency for users. Members advised that placing braille underneath the text provides consistency with the placement of braille on other trains across the Queensland Rail fleet and is a strong preference for passengers who are blind or vision impaired. Placing braille beneath the corresponding text gives passengers certainty in locating the braille text on signage.

Placement of braille underneath signage text is consistent with the placement of braille mandated by Specification D3.6 Braille and Tactile Signs of the NCC Building Code of Australia Volume 1 and a number of Australian Standards, including for example Australian Standard AS1428.1-2009 *Design for access and mobility General requirements for access - New building work*, and Australian Standard 1428.4.2-2018 *Design for access and mobility, Part 4.2: Means to assist the orientation of people with vision impairment - Wayfinding signs*.

However, placing braille beneath the text is not consistent with section 17.6(2) of the Transport Standards, which provides that 'If an operator or provider supplements a notice with braille characters, they must be placed to the left of the raised characters'. Although placing braille to the left of the corresponding text is consistent with section 17.6(2) of the Transport Standards, PWG and ARG members engaged considered it the inferior option due to its inconsistency with braille placement elsewhere.

It was concluded that compliance with the Transport Standards would be sought by means of equivalent access. The two options under consideration for the purpose of the Equivalent Access consultation were:

1. Placing braille underneath the corresponding text, which is the placement specified by Australian Standard AS1428.1–2009 and the *NCC Building Code of Australia Volume 1, Specification D3.6*.



2. Placing braille to the left of the corresponding text, which is specified in section 17.6(2) of the Transport Standards.



### Does the proposed measure constitute a parallel service?

Braille signage will be provided on all carriages, meaning that braille users will not be segregated from other passengers.

## Does the proposed measure deliver equivalence of amenity, availability, comfort, convenience, dignity, price and safety?

The table below sets out the definitions used by the New Generation Rollingstock Infrastructure Management and Delivery team at the Department of Transport and Main Roads when consulting on braille signage.

### Criteria 1: Safety

**Definition:** the state of being safe; freedom from injury or danger.

**Braille implication:**

- The use of braille promotes personal safety for a person with a disability during an emergency.
- The braille placement allows for people to access important information regardless of vision impairment.
- Consistent placement of braille below corresponding text allows for faster and more predictable communication in an emergency.

**Potential influencing factors:**

- Safety of a passenger using an emergency door release when they cannot see if there are any hazards or obstructions outside and may be exposed to danger by following the braille instructions to operate the emergency door release.

### Criteria 2: Amenity

**Definition:** agreeable features, circumstances, ways, etc.

**Braille implication:**

- Braille meets the required purpose to enable access to information regardless of disability (design is fit for purpose).
- The placement of braille is intuitive, consistent and predictable for users.

**Other influencing factors:**

- Impact of braille placement on size of text and other features.
- Consistency with braille placement on existing fleet.

### Criteria 3: Availability

**Definition:** the quality of being able to be used or obtained, at someone's disposal.

**Braille implication:**

- The placement of braille is predictable and consistent for passengers who are blind or vision impaired.

**Other influencing factors:**

- Sufficient space for text and other aspects of the train interior.

## Criteria 4: Comfort

**Definition:** a state of ease, with freedom from pain and anxiety, and satisfaction of bodily wants.

**Braille implication:**

- Consistent placement of braille facilitates passengers with vision impairment to access written information more easily.

**Other influencing factors:**

- Ease of physical access to braille.

## Criteria 5: Convenience

**Definition:** (Convenient) agreeable to the needs or purpose; well-suited with respect to facility or ease in use; favourable, easy, or comfortable for use.

By definition, Convenience is a combination of Amenity and Comfort.

## Criteria 6: Dignity

**Definition:** the right of a person to be valued and respected for their own sake, and to be treated ethically.

**Braille implication:**

- Braille enables independent communication with passengers with disabilities.
- Usage of alternative means of communication to promote integration and inclusion of blind and vision impaired passengers.
- Signs are suitable to meet the needs of all users.

**Other influencing factors:**

- Key information is accessible to all.

## Criteria 7: Price

**Definition:** the sum or amount of money or its equivalent for which anything is bought, sold, or offered for sale.

The price to use the braille placement would be the same no matter what design was chosen.



The Consultation Group agreed to consider both braille placement options against most of the seven assessment criteria, noting that there was a high degree of overlap in considerations between the various categories. For the criterion Convenience, the Consultation Group agreed that it overlapped with earlier criteria (Amenity and Comfort) and therefore did not need to be considered separately. The Consultation Group was informed that Price was not a relevant comparator between the braille placement options, as the context of Price was in relation to the price for the users, as opposed to price for the State if it was required to modify existing infrastructure to fit a particular signage option.

The Consultation Group provided comments in relation to each criterion and, for most criteria, expressed which option was preferred. This feedback is summarised in the table below:

Criterion	Option 1 – braille underneath	Option 2 – braille to the left	Preferred?
Safety	<b>Advantages</b> <ul style="list-style-type: none"> <li>• Easier to use</li> <li>• Consistent with built environments, so its location is habitual to the users’ other experiences, resulting in a better safety outcome</li> <li>• More comprehensible in a longitudinal arrangement (more similar to how a person would read a letter or a book – run your hand down) as opposed to a lateral arrangement</li> <li>• A format that may be more comprehensible for a passenger with a learning disability</li> </ul>	<b>Advantages</b> None identified	Option 1 (braille underneath)
	<b>Disadvantages</b> None identified	<b>Disadvantages</b> <ul style="list-style-type: none"> <li>• Not consistent with braille placement in built environment</li> <li>• As a result, less familiar to users and potentially leading to a poorer safety outcome</li> </ul>	

Criterion	Option 1 – braille underneath	Option 2 – braille to the left	Preferred?
<b>Amenity</b>	<b>Advantages</b> <ul style="list-style-type: none"> <li>• Consistency</li> <li>• Braille users are habituated and familiar with finding braille beneath the text</li> </ul>	<b>Advantages</b> <ul style="list-style-type: none"> <li>• Slightly higher placement for low-placed signs</li> </ul>	Option 1 (braille underneath)
	<b>Disadvantages</b> <ul style="list-style-type: none"> <li>• Being placed beneath the text of an already low-placed sign may make it too low for some people</li> </ul>	<b>Disadvantages</b> <ul style="list-style-type: none"> <li>• Inconsistency with positioning in other environments</li> <li>• More difficult to find, potentially leading to confusion</li> </ul>	
<b>Availability</b>	<b>Advantages</b> <ul style="list-style-type: none"> <li>• Consistency</li> </ul>	<b>Advantages</b> <p>None identified</p>	Option 1 (braille underneath)
	<b>Disadvantages</b> <p>None identified</p>	<b>Disadvantages</b> <ul style="list-style-type: none"> <li>• Inconsistency</li> </ul>	
<b>Comfort</b>	<b>Advantages</b> <ul style="list-style-type: none"> <li>• Consistency</li> </ul>	<b>Advantages</b> <p>None identified</p>	Option 1 (braille underneath)
	<b>Disadvantages</b> <p>None identified</p>	<b>Disadvantages</b> <ul style="list-style-type: none"> <li>• Inconsistency</li> </ul>	
<b>Convenience</b>	The Consultation Group agreed that as Convenience overlapped with prior criteria, it would not be considered separately.		–
<b>Dignity</b>	The Consultation Group did not express a preference for either option based on this criterion as part of the discussions.		–
<b>Price</b>	<p>The Consultation Group did not express a preference for either option based on this criterion as part of the discussions.</p> <p>While it was noted that there could be a cost to the State if modifications were required to accommodate braille placement on the left, it was confirmed that the context of 'Price' as a criterion, was in relation to the price for the users, as opposed to price for the State.</p>		–



## Have passengers with disability using the service and/or organisations representing people with disability been consulted?

For the braille placement to achieve compliance with the Transport Standards according to the principles of Equivalent Access, the NGR Project Team consulted with passengers with a disability who use the service, and with organisations representing people who are blind or have low vision who may use the service. The NGR Project Team sought to consult with a range of organisations and individuals who were considered to comprehensively represent passengers who are blind or have low vision, as well as the broader disability sector.

The consultation took place at a workshop at which representatives from the disability sector, in particular those representing passengers who are blind or vision impaired, conducted a rigorous assessment of each braille placement option to determine their compliance with the Transport Standards according to the principles of Equivalent Access.

Two options for the placement of braille were considered in the workshop:

1. braille placed underneath text
2. braille placed to the left of text.

Each member of the Consultation Group was asked to express an overall preference between the two options under consideration. In a unanimous decision, each member of the Consultation Group expressed a clear preference for Option 1—braille being placed underneath the text. This was also consistent with the feedback for each of the assessment criteria where the Consultation Group expressed a preference, with Option 1 preferred in all four of those criteria (Safety, Amenity, Availability and Comfort).

## 7.2 Hypothetical example: accessible boarding on a regional bus<sup>92</sup>

This example is drawn from the Transport Standards Guidelines and is provided for general reference. It should not be viewed as a definitive example of equivalent access.

### Why is equivalent access being considered?

TownBus provides a bus service in a small town and surrounding area. TownBus's two buses have boarding ramps which comply with the specifications in Parts 6 and 8 of the Transport Standards when deployed at compliant bus stops. However, not all bus stops are compliant and on some occasions, buses stop by the side of the road to collect passengers. If a passenger needing the boarding ramp is boarding the bus at a non-compliant bus stop or by the side of the road, the ramp gradient no longer meets the requirements of section 6.4 of the Transport Standards.

TownCouncil has a plan to upgrade existing bus stops in line with the Transport Standards, but this is likely to take several years and would still leave the needs of those boarding on the side of the road unmet.

TownBus and TownCouncil undertook a joint initiative to explore an equivalent access solution to achieve compliance with the Transport Standards.

After consulting with relevant stakeholders (including passengers with disability who use the service, organisations representing people with disability, engineers, consultants, driver representatives, etc.), a boarding platform device was considered.

### Does the proposed measure constitute a parallel service?

The proposed boarding platform device did not appear to constitute a parallel service as it would be used on buses carrying all passengers and not just passengers requiring the use of a boarding device.

### Does the proposed measure deliver equivalence of amenity, availability, comfort, convenience, dignity, price and safety?

**Amenity:** The boarding device appeared to deliver equivalent amenity. The use of a boarding platform is no less pleasant an experience for the passenger than the use of a ramp.

**Availability:** The boarding device would be installed on both buses, and as such, equivalence of availability of services was achieved.

**Comfort:** Passengers with disability consulted in the development of the boarding device reported equivalence of comfort.

**Convenience and Dignity:** The proposed boarding device would be attached to the back of the bus with brackets/fittings or pulled behind the bus in a trailer. As such, the driver would need to step out of the bus, unload the boarding device and roll it to the bus entrance. This may add some time to the boarding time required when the ramp is deployed. While stakeholders noted this could be viewed as impacting on convenience and dignity, there was consensus that this was outweighed by the fact that the bus service would be accessible to more people requiring a boarding device, especially those living outside the town (and therefore sometimes boarding on the side of the road).

**Price:** There was no additional cost to customers as a result of the adoption of the boarding device.

**Safety:** Based on consultation and expert advice, the boarding device was deemed in some ways to be safer than boarding ramp access.

## Have passengers with disability using the service and/or organisations representing people with disability been consulted?

TownBus and TownCouncil held a face-to-face consultation with passengers with mobility disability who use the service, with a local organisation delivering services to people with disability and with a peak body representing people with physical disability, as well as other stakeholders. This consultation focussed on identifying the issues, proposing possible solutions and developing a set of principles to guide procurement/development of the boarding platform device.

A smaller group of stakeholders were invited to trial the boarding platform device to provide feedback on their experience and suggest modifications as appropriate. Input from this consultation was incorporated into the design of the device used.

## When and how will the measure be reviewed?

Six months after the introduction of the boarding platform device, a stakeholder group including passengers with disability and the representative organisation will be convened to review the effectiveness of the measure. Feedback from this consultation will be considered alongside any unprompted feedback (for example, complaints) and the input of drivers and their representatives.



## 7.3 Hypothetical example: access on a rail network where not all stations are yet compliant with the Transport Standards<sup>93</sup>

This example is drawn from the Transport Standards Guidelines and is provided for general reference. It should not be viewed as a definitive example of equivalent access.

### Why is equivalent access being considered?

CityTrains operates a rail transport service in a large metropolitan centre. It also provides related premises and infrastructure. CityTrains is government owned.

Station A was built over 100 years ago and does not comply with the relevant specifications of the Transport Standards. CityTrains has been informed that upgrades to the station to achieve compliance will take longer than may otherwise be the case for a number of reasons, including that the station sits in a densely built residential and commercial area and that access to the platform is via a bridge over the train tracks. Only one train line stops at Station A, with services in both directions stopping at Station A two to three times per hour.

Station B is approximately as old as Station A and a couple of stops closer to the metropolitan centre on the same line as Station A. Station B has already been upgraded to achieve compliance with the relevant specifications of the Transport Standards. The same services stop at both stations, but some express services also stop at Station B.

CityTrains has a scheme offering passengers with disability taxi travel between compliant and non-compliant stations. However, CityTrains is concerned that this is not sustainable and could be considered to constitute a parallel service.

After consulting with passengers with disability who use the service, a peak organisation representing people with disability, an access consultant, a resident advocacy group from the area in which Station A is located and other stakeholders, CityTrains decided to operate a minibus shuttle service between Station A and Station B for the time required for Station A to be upgraded. The shuttle service would be open to all passengers and is expected to benefit passengers with disability, passengers with prams, passengers with bikes and passengers with luggage, among others.

### Does the proposed measure constitute a parallel service?

As the shuttle service would be available to all passengers, it would not appear to constitute a parallel service.

### Does the proposed measure deliver equivalence of amenity, availability, comfort, convenience, dignity, price and safety?

**Amenity:** The shuttle bus service appeared to deliver equivalent amenity. Travelling on a shuttle bus is no less pleasant an experience for the passenger than travelling on the train.

**Availability:** The shuttle service is expected to operate in a circuit between the stations with services leaving every 10 minutes. It therefore delivered increased availability of services.

**Comfort and Convenience:** The use of the shuttle bus would add an additional step to the journey and, depending on traffic conditions, additional time. In light of the temporary nature of the measure and frequency of services, stakeholders considered this was the most comfortable and convenient option to deliver access during the upgrade of Station A.

**Dignity:** The shuttle bus service appears to deliver equivalence of dignity.

**Price:** Passengers would not incur an additional cost as a result of the service.

**Safety:** Buses would stop at well-lit stops in front/opposite the stations and those consulted considered this would deliver equivalence of safety.

## Have passengers with disability using the service and/or organisations representing people with disability been consulted?

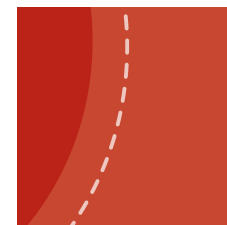
CityTrains consulted passengers with disability and an organisation representing people with disability to identify the access issue and to identify possible forms of equivalent access.

A smaller group made up of passengers with disability, an organisation representing people with disability and other stakeholders were involved at different points of the design process, including in identifying key specifications for the design of the bus, trialling the bus and the service and evaluating the service when it was piloted.

## When and how will the measure be reviewed?

A mailing list of interested passengers with disability and organisations of people with disability was established. This list would be used to update list members on progress of the upgrade of Station A. Three months after the commencement of the shuttle bus service, a link will be sent to list members to review and comment on the shuttle bus service.





## 8.1 Can the Australian Human Rights Commission certify equivalent access?

The Commission does not have the power to certify equivalent access under the Disability Discrimination Act or the Transport Standards, and there is no certifying procedure available elsewhere.

Using these Guidelines, each individual or operator or provider must satisfy themselves that any proposed equivalent access delivers an equivalent standard of amenity, availability, comfort, convenience, dignity, price and safety. They must also be satisfied that the proposed equivalent access is not a parallel service and has been developed in consultation with passengers with disability or organisations representing people with disability.

## 8.2 What is the relationship between equivalent access and exemptions under the Disability Discrimination Act?

Section 55 of the Disability Discrimination Act and section 33A.1 of the Transport Standards give the Commission the power to grant temporary exemptions from certain provisions of the Disability Discrimination Act and the Transport Standards.

The effect of a temporary exemption is that discrimination covered by the exemption is not unlawful under the Disability Discrimination Act while the exemption remains in force. In practical terms, this means that the activities or circumstances falling within an exemption cannot be the subject of a successful complaint under the Disability Discrimination Act. Situations that might otherwise be unlawful under the Disability Discrimination Act cannot be effectively contested through the usual discrimination complaints process, with its consequent legal remedies.

As the Disability Discrimination Act and the Transport Standards already provide for permanent exemptions and defences that render any alleged discrimination not unlawful, and because the Commission's exemption power must be interpreted in light of the objects of the Disability Discrimination Act and the Transport Standards, the Commission considers that exemptions should not be granted lightly. Temporary exemptions may be granted where there are external factors that mean that immediate compliance is not possible and where steps are being taken to achieve compliance.

If a method, piece of equipment or facility delivers equivalent access under the Transport Standards, it is not necessary to apply to the Commission for an exemption. This is because equivalent access is lawful under the Transport Standards and exemptions are concerned with potentially unlawful conduct.

The Commission has developed criteria and procedures to guide it in exercising its statutory discretion regarding exemptions under the Disability Discrimination Act and the Transport Standards. These guidelines are available at: <https://www.humanrights.gov.au/temporary-exemptions-under-disability-discrimination-act-1992-cth>.



## 8.3 What happens if someone makes a complaint to the Commission?

If someone makes a complaint to the Commission alleging contravention of the Transport Standards, the Commission may investigate and, where appropriate, try to help the parties resolve the complaint by conciliation.

If the Commission terminates a complaint because there is no reasonable prospect of the matter being resolved or for some other reason, the complainant can make an application to the Federal Circuit Court or the Federal Court of Australia for the court to hear and decide the allegations.

More information about how to make a complaint and what happens when a complaint is received, including conciliation, is available on the Commission's website at <https://www.humanrights.gov.au/complaints>.

### Example of a conciliated complaint

The complainant has anxiety and has an assistance dog. She alleged a bus driver did not allow her to enter the bus with her assistance dog, despite her showing him a card from the training organisation and the dog wearing a cape identifying it as an assistance animal.

On being advised of the complaint, the bus operator indicated a willingness to try to resolve the matter by conciliation.

The complaint was resolved with an agreement that the bus operator pay the complainant \$2,000 and write to her apologising for the incident. The operator undertook to deliver training to staff regarding passengers with assistance animals, including the right of passengers to travel with their assistance animals and the documents that can be provided to identify an animal as an assistance animal. The operator agreed to place posters at staff depots regarding passengers with assistance animals and to advise staff that passengers with animals trained by the organisation that trained the complainant's assistance dogs would be allowed to travel with their assistance animal.

In the six years to 30 June 2019, the Commission received approximately 300 complaints (averaging approximately 50 complaints per year) alleging disability discrimination in the provision of public transport.<sup>94</sup> During the same time period, a total of 4,835 complaints were lodged under the Disability Discrimination Act alleging discrimination in a range of areas, including employment, education, provision of services and access to premises.

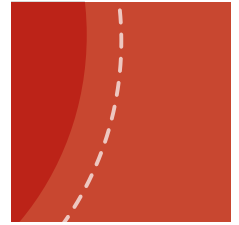
In the 2018–2019 reporting year, the Commission received approximately 47 complaints alleging disability discrimination in relation to public transport. At the time these Guidelines were being drafted,<sup>95</sup> 40 out of the 47 complaints had been finalised.

Of these, 20 were resolved by conciliation and 14 were terminated. The Commission must terminate a complaint before a complainant is able to make an application to the court for the court to hear the allegations. At the time these Guidelines were being drafted, none of the terminated complaints lodged in 2018–2019 alleging disability discrimination in public transport had resulted in applications to the Federal Court of Australia or the Federal Circuit Court.



Issues raised in complaints to the Commission have included:

- inaccessibility of transport premises and infrastructure to people with physical and mobility impairments—for example lack of handrails or ramp access, insufficient accessible parking, insufficient shelter
- inaccessibility of conveyances and their facilities to people with mobility and physical impairments—for example inaccessible train bathroom facilities, lack of continuous access paths, lack of designated spaces for passengers using a wheelchair
- customer service and logistical issues—for example failure to advise passengers with limited mobility of lack of lift access at destination points, failure to provide direct assistance to enable passengers using wheelchairs to board or alight from conveyances in a dignified manner, not allowing passengers with motorised wheelchairs to enter conveyances despite the availability of ramp access, not allowing passengers to board conveyances when accompanied by an assistance animal
- inaccessibility of information to passengers who are blind or have a vision impairment—for example, low contrast electronic information screens, lack of audible stop announcements
- inaccessibility of information to passengers who are deaf or hard of hearing—for example, lack of visual announcements and alerts so passengers miss flights.



## Australian Human Rights Commission

### National Information Service

The Commission's National Information Service provides information and referrals for individuals and organisations about a range of human rights and discrimination issues. The National Information Service does not offer legal advice. The service is free and confidential.

Phone: 1300 656 419 or 02 9284 9888

Email: [infoservice@humanrights.gov.au](mailto:infoservice@humanrights.gov.au)

Fax: 02 9284 9611

Online for small businesses: [Small Business Enquiry Form](#)

TTY: 1800 620 241 (toll free)

National Relay Service: [internet-relay.nrscall.gov.au](http://internet-relay.nrscall.gov.au) or 1300 555 727 (Speak and Listen)

Translating and Interpreting Service: 131 450 or [www.tisnational.gov.au](http://www.tisnational.gov.au)

### Federal Discrimination Law Online

Federal Discrimination Law is produced by the Commission's legal section and provides an overview of the federal unlawful discrimination laws and examines the significant issues that have arisen in federal unlawful discrimination cases. It was last updated in 2016.

The publication can be downloaded from the Commission's website at <https://www.humanrights.gov.au/our-work/legal/publications/federal-discrimination-law-2016>.

### Disability Rights

The Commission's website provides information and guidance on compliance with disability standards and the development of Disability Action Plans. For more information visit <https://www.humanrights.gov.au/our-work/disability-rights>.

### Training and Educational Resources

In addition to these Guidelines, the Commission can provide assistance in the form of diversity and inclusion training workshops and educational resources. For more information, please contact us by sending an email to [training@humanrights.gov.au](mailto:training@humanrights.gov.au).

## Department of Infrastructure, Transport, Regional Development and Communications

For information on the Transport Standards, past and current reviews of the Transport Standards and other developments, visit <https://www.infrastructure.gov.au/transport/disabilities/>.

### **The Whole Journey: A guide for thinking beyond compliance**

In response to the second review of the Transport Standards, the Australian Government developed *The Whole Journey: A guide for thinking beyond compliance* to create accessible public transport journeys.

The Guide seeks to encourage policy makers, planners, designers, builders, certifiers and operators to think beyond compliance and the physical and governance boundaries of services and infrastructure and focus instead on people's accessibility needs across their whole journey.

The guide is available on the Department's website at <https://www.infrastructure.gov.au/transport/disabilities/whole-journey/index.aspx>.

## State and territory Human Rights Commissions

State and territory human rights commissions are able to provide information about the human rights and anti-discrimination legislation they administer. Links to each Commission's home page are set out below.

- ACT Human Rights Commission: <https://hrc.act.gov.au/>
- Anti-Discrimination NSW: <https://www.antidiscrimination.justice.nsw.gov.au/>
- NT Anti-Discrimination Commission: <http://www.adc.nt.gov.au/>
- Queensland Human Rights Commission: <https://www.qhrc.qld.gov.au/>
- SA Equal Opportunity Commission: <https://eoc.sa.gov.au/>
- Equal Opportunity Tasmania: <https://equalopportunity.tas.gov.au/>
- Victorian Equal Opportunity and Human Rights Commission: <https://www.humanrightscommission.vic.gov.au/>
- WA Equal Opportunity Commission: <http://www.eoc.wa.gov.au/>

# Appendix 1:

## Individuals and organisations consulted in the development of these Guidelines

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The Commission would like to thank the individuals with disability and the representatives from the following organisations who contributed their valuable expertise and time to inform the development of the Guidelines:

### Participants in the consultation process

Australian Taxi Industry Association

Australasian Railway Association

Blind Citizens Australia

Brisbane City Council

Bus Association Victoria

Bus Industry Confederation

City of Sydney

Commercial Passenger Vehicles Victoria

Commonwealth Attorney General's Department

Council for Intellectual Disability

Deaf Australia

Department of Infrastructure, Transport, Regional Development and Communications

Department of Transport and Main Roads, Accessibility Reference Group Queensland

Department of Transport Victoria

Disability Resources Centre Advocacy

Guide Dogs Queensland

Inclusion Moves

Integrated disAbility Action Inc

**Participants in the consultation process**

National Disability Insurance Agency

National Disability Services

NSW Accessible Transport Advisory Committee

Northern Territory Anti-Discrimination Commission

Northern Territory Government, Department of Infrastructure, Planning and Logistics

People with Disability Australia

Physical Disability Australia

Physical Disability Council of NSW

Public Interest Advocacy Centre

Public Transport Authority of Western Australia

Queensland Advocacy

Queensland Department of Transport and Main Roads

Queensland Rail

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## Participants in the consultation process

Queenslanders With Disability Network

Royal Automobile Club of Queensland

South Australia Department of Planning, Transport and Infrastructure

Spinal Cord Injuries Australia

Spinal Life Australia

Sydney Metro

Sydney Trains

Transport for NSW

University of Southern Queensland

Victorian Equal Opportunity and Human Rights Commission

Victorian Public Transport Ombudsman

Vision Australia

Visionary Design Development

Yarra Trams

# Appendix 2:

## Provisions of the Disability Discrimination Act and the Transport Standards relevant to these Guidelines

### Provisions of the Disability Discrimination Act relevant to these Guidelines

For the purposes of the Guidelines, the relevant sections of the Disability Discrimination Act are those which:

- define disability
- define direct and indirect discrimination
- make disability discrimination unlawful in access to premises and goods, services and facilities
- make it not unlawful to discriminate against a person with disability where avoiding the discrimination would impose an unjustifiable hardship
- relate to disability standards
- empower the Commission to grant temporary exemptions
- relate to Disability Action Plans.

More detail about these sections is set out below.

#### (a) Definition of disability

The Disability Discrimination Act defines *disability* as follows:<sup>96</sup>

**disability**, in relation to a person, means:

- (a) total or partial loss of the person's bodily or mental functions; or
- (b) total or partial loss of a part of the body; or
- (c) the presence in the body of organisms causing disease or illness; or
- (d) the presence in the body of organisms capable of causing disease or illness; or
- (e) the malfunction, malformation or disfigurement of a part of the person's body; or
- (f) a disorder or malfunction that results in the person learning differently from a person without the disorder or malfunction; or

- (g) a disorder, illness or disease that affects a person's thought processes, perception of reality, emotions or judgment or that results in disturbed behaviour;

and includes a disability that:

- (h) presently exists; or
- (i) previously existed but no longer exists; or
- (j) may exist in the future (including because of a genetic predisposition to that disability); or
- (k) is imputed to a person.

To avoid doubt, a **disability** that is otherwise covered by this definition includes behaviour that is a symptom or manifestation of the disability.

#### (b) Direct and indirect disability discrimination

*Direct* disability discrimination occurs when a person with disability is treated less favourably because they have a disability than someone without the disability would be treated in the same or similar circumstances.<sup>97</sup>

For example, it could constitute direct disability discrimination not to allow a person with disability on a bus because the person has an assistance animal.

*Indirect* disability discrimination can occur when a person with disability does not or cannot comply with a requirement or condition because of the disability, the requirement is likely to disadvantage persons with disability and the requirement is not reasonable under the circumstances.<sup>98</sup>

For example, it could constitute indirect disability discrimination if a person who uses a wheelchair is unable to access toilet facilities at a station because the only facilities available are not wheelchair accessible.

#### (c) Discrimination in access to premises

It is unlawful to discriminate against a person on the ground of their disability:

- by refusing the person access to, or use of, premises which the public or a section of the public is entitled or allowed to enter or use



- in the terms or conditions under which the person is allowed to enter or use the premises
- in relation to the provision of access to such premises
- by refusing to allow the person to use facilities in such premises which the public or a section of the public are entitled or allowed to use
- in the terms or conditions under which the person is allowed to use such facilities
- by requiring the person to leave the premises or stop using the facilities.<sup>99</sup>

This applies to premises and/or facilities provided for payment or not.

#### **(d) Discrimination in goods, services and facilities**

It is unlawful to discriminate against a person on the ground of their disability:

- by refusing to provide the person with goods or services or make available facilities
- in the terms or conditions on which the person is provided with the goods or services or access to facilities
- in the manner in which the goods, services or access to facilities are provided.<sup>100</sup>

This applies to goods, services and/or facilities provided for payment or not.

#### **(e) Unjustifiable hardship**

It is not unlawful to discriminate against a person on the ground of disability if avoiding the discrimination would impose an *unjustifiable hardship*.<sup>101</sup>

All the relevant circumstances of a particular case must be considered when determining whether a hardship is an unjustifiable hardship, including:

- the nature of the benefit or the detriment likely to accrue to, or be suffered by, any person concerned

- the effect of the disability of any person concerned
- the financial circumstances and the estimated amount of expenditure required
- the availability of financial or other assistance
- a Disability Action Plan.<sup>102</sup>

#### **(f) Disability standards**

Disability standards may be formulated in relation to any area of public life in which it is unlawful to discriminate against people with disability under the Disability Discrimination Act.<sup>103</sup>

It is unlawful to contravene a disability standard.<sup>104</sup>

If a person acts in compliance with a disability standard, certain provisions of the Disability Discrimination Act, including those making disability discrimination unlawful in certain areas of public life, do not apply.<sup>105</sup>

To date, the following disability standards have been formulated:

- Disability Standards for Accessible Public Transport 2002
- Disability Standards for Education 2005
- Disability (Access to Premises – Buildings) Standards 2010.

More information about disability standards is available on the Commission's website at <https://www.humanrights.gov.au/our-work/disability-rights/disability-standards>.

#### **(g) Temporary exemptions**

The Commission has the power to grant temporary exemptions from certain provisions of the Disability Discrimination Act for up to a maximum of 5 years at a time.<sup>106</sup>

The effect of a temporary exemption is that discrimination covered by the exemption is not unlawful under the Disability Discrimination Act while the exemption remains in force. In practical terms, this means that the activities or circumstances falling within an exemption cannot be the subject of a successful complaint under the Disability Discrimination Act.

The Commission has developed criteria and procedures to guide it in exercising its statutory discretion regarding exemptions under the Disability Discrimination Act. These guidelines are available at: <https://www.humanrights.gov.au/temporary-exemptions-under-disability-discrimination-act-1992-cth>.

### (h) Disability Action Plans

Operators and providers of transport services and infrastructure may prepare and implement a Disability Action Plan (DAP).<sup>107</sup>

DAPs must include provisions relating to:

- devising of policies and programs to achieve the objects of the Disability Discrimination Act
- communication of these policies and programs to staff
- review of practices with a view to identifying discriminatory practices
- goals and targets to enable assessment of the success of the DAP in achieving the objects of the Disability Discrimination Act
- additional means of evaluating the policies and programs
- appointment of persons to implement the provisions of the DAP.<sup>108</sup>

DAPs may also include any other provisions not inconsistent with the objects of the Disability Discrimination Act.

DAPs can be given to the Commission, which must make them available to the public.<sup>109</sup>

More information about DAPs, including a DAP Register and resources for developing a DAP, is available on the Commission's website at <https://www.humanrights.gov.au/our-work/disability-rights/action-plans-and-action-plan-guides>.

## Provisions of the Transport Standards relevant to the Guidelines

For the purposes of the Guidelines, the relevant sections of the Transport Standards are those which:

- enable operators and providers to comply with the Transport Standards by providing equivalent access
- relate to the provision of direct assistance
- make it not unlawful not to comply with the Transport Standards if compliance would cause unjustifiable hardship
- empower the Commission to grant temporary exemptions.

More detail about these sections is set out below.

### (a) Equivalent access

Operators and providers can achieve compliance with the Transport Standards in one of the following two ways:

- by applying relevant specifications in the Transport Standards before the target dates, or
- by offering equivalent access to public transport services.<sup>110</sup>

*Equivalent access* is a process, often involving the provision of direct assistance, under which an operator or provider is permitted to vary the method, equipment or facilities that give access to a public transport service, so long as an equivalent standard of amenity, availability, comfort, convenience, dignity, price and safety is maintained.<sup>111</sup>

Equivalent access does not include a separate, segregated or parallel service, such as an accessible taxi service being provided as an alternative to an inaccessible bus service.<sup>112</sup>

Operators and providers must consult with passengers with disability who use the service, or with organisations representing people with disability, about any proposal for equivalent access.<sup>113</sup>

Equivalent access must provide public transport without discrimination, as far as possible.<sup>114</sup>

The Federal Court of Australia has characterised equivalent access as a defence to allegations that an operator or provider has failed to comply with the Transport Standards.<sup>115</sup> Generally, it is up to a respondent to establish facts that support a defence to an applicant's allegation.<sup>116</sup>

This means that, if a complaint was made alleging that an operator or provider had contravened the Transport Standards, and if the complainant established that there had been non-compliance with the relevant specifications in the Transport Standards, it would be up to the operator or provider to show that it complied with the Transport Standards by means of equivalent access.

### **(b) Direct assistance**

*Direct assistance* is help given by an operator or provider:

- to make public transport accessible to a person with a disability when premises, infrastructure or conveyances do not fully comply with the Transport Standards, or
- to provide non-discriminatory access on request.<sup>117</sup>

Operators and providers can offer direct assistance to passengers, including as a means of providing equivalent access.<sup>118</sup>

The Transport Standards require provision of direct assistance to passengers if:

- it is necessary to provide equivalent access to a transport service, and
- direct access can reasonably be provided without unjustifiable hardship.<sup>119</sup>

The level of assistance provided should be tailored to the person's independence and should enable that person to preserve their dignity.<sup>120</sup>

### **(c) Unjustifiable hardship**

It is not unlawful to fail to comply with a requirement of the Transport Standards if, and to the extent that, compliance would impose unjustifiable hardship.<sup>121</sup> However, compliance is required to the maximum extent not involving unjustifiable hardship.<sup>122</sup>

All the relevant circumstances of a particular case must be considered when determining whether compliance with a requirement in the Transport Standards would involve unjustifiable hardship, including:

- any additional capital, costs or loss of revenue likely to result from compliance with the Transport Standards
- any reduction in capital or costs, or increase in revenue, likely to result from compliance with the Transport Standards
- whether the transport service operates on a commercial or a cost-recovery basis
- the extent to which the service is provided by a public authority for public purposes
- the financial position of the operator or provider
- any impact compliance with the Transport Standards is likely to have on the financial viability of the operator or provider
- any exceptional operational, technical or geographic factors affecting an operator or provider's ability to comply with the Transport Standards
- the resources available to an operator or provider including any external assistance
- any benefit, particularly to passengers with disability, likely to result from compliance with the Transport Standards and any detriment likely to result from non-compliance with the Transport Standards

- any detriment likely to be suffered by an operator, provider, passenger or other person if compliance with the Transport Standards is required
- where detriment involves loss of heritage values, the extent to which relevant heritage values are essential or incidental to the transport service provided
- whether compliance with the Transport Standards could reasonably be achieved by less onerous means, including by providing equivalent access
- any good faith efforts to comply with the Transport Standards
- the terms of a Disability Action Plan provided to the Commission and evidence regarding its implementation
- the nature and results of relevant consultations about achieving compliance with the Transport Standards
- if a person is seeking a longer period to comply with the Transport Standards, whether the additional time is reasonable and what undertakings the person is prepared to make.<sup>123</sup>

To prove unjustifiable hardship, an operator or provider must also prove that the opportunities for providing equivalent access have been exhausted.<sup>124</sup>

#### **(d) Temporary exemptions**

The Commission has the power to grant temporary exemptions from certain provisions of the Transport Standards.<sup>125</sup>

The effect of a temporary exemption is that the operators and providers covered by the exemption do not contravene the Transport Standards while the exemption remains in force, so long as the failure to comply with the Transport Standards is in accordance with the terms of the exemption.<sup>126</sup>

In practical terms, this means that the activities or circumstances falling within an exemption cannot be the subject of a successful complaint under the Disability Discrimination Act.

The Commission has developed criteria and procedures to guide it in exercising its statutory discretion regarding exemptions under the Disability Discrimination Act, including under the Transport Standards. These guidelines are available at: <https://www.humanrights.gov.au/temporary-exemptions-under-disability-discrimination-act-1992-cth>.

# Appendix 3:

## Definitions developed by the Australasian Railway Association Accessibility Working Group

### Australasian Railway Association Accessibility Working Group

The Australasian Railway Association (ARA) is a not-for-profit member-based association that represents rail in Australia and New Zealand. Its members include rail operators, track owners and managers, manufacturers, construction companies and other firms in the rail sector.

The ARA has an Accessibility Working Group (the ARA Working Group). The ARA Working Group is comprised of accessibility representatives from the following ARA members:

- Department of Planning, Transport and Infrastructure SA
- Metro Trains Melbourne
- Public Transport Authority of Western Australia
- Public Transport Victoria
- Queensland Rail
- Sydney Trains / NSW Trains / Transport for NSW
- V/Line
- Yarra Trams.

In developing rail specific guidance in relation to the Transport Standards the Working Group has recently developed a number of working definitions of the terms used in relation to 'equivalent access'. These definitions are provided for reference only.

### Equivalent access definitions

The definitions proposed by the ARA Working Group, including how they may apply in a public transport context, are outlined below.

#### (a) Equivalence

May be synonymous with 'alternative' but should be equal to or similar. It does not need to be the same process or requirement but should provide the same outcome.

#### (b) Amenity

Agreeable features, circumstances, ways, etc.; relates to the level of facility quality and availability for all; all features of public transport should provide a comfortable and pleasant experience to all passengers. Examples of design elements to consider include location and proximity of things like sanitary facilities and help points, ability to travel with companions, comfort, and enjoyment.

#### (c) Availability

The quality of being able to be used or obtained, at someone's disposal. Example of design elements to consider include distances someone is required to travel, number and designation of priority seating and allocated spaces, the location of facilities relative to the accessible path of travel and the provision of information.

#### (d) Comfort

A state of ease, with freedom from pain and anxiety, and satisfaction of bodily wants. Examples of design elements to consider include unobstructed access paths, seating configuration, layouts allowing for ease of movement, temperature, location and the availability of sanitary facilities.

#### (e) Convenience

Public transport should be easy to use for all passengers; agreeable to needs or purpose; well suited with respect to facility or ease in use; favourable, easy or comfortable for use; the amount of time or effort that a user is required to engage with a service.

### **(f) Dignity**

The right of a person to be valued and respected for their own sake, and to be treated ethically; may relate to both respect towards others but also through one's perception; all passengers should have appropriate access to public transport so far as is reasonably practicable and be treated in a respectful way that places value on them as an individual; dignified access means a person can access a public transport service through good design and processes that are safe, comfortable and convenient. Examples of design elements to consider include appropriate movement for customers with disabilities, positioning of all facilities to promote inclusion, absence of segregated areas, means of space and seat designation (for example, signage, floor markings) and the ability to travel with companions. Examples of processes to consider include staff training, direct assistance provision and customer service.

### **(g) Price**

The sum or amount of money or its equivalent for which anything is bought, sold or offered for sale. For the purposes of equivalent access consultation, price should be interpreted from the customer's perspective, not as the difference in cost to the operator or provider between design options.

### **(h) Safety**

The state of being safe; freedom from injury or danger. Examples of design elements to consider include handrails, emergency call systems, hazard TGSIs, access to support, colour and luminance contrast, spatial dimensions, position of obstacles. Safety must be consistent with the obligations of rail operators and providers under the Rail Safety National Law.

# Appendix 4:

## Template for record of planning and implementation of equivalent access

This template can be a useful tool for operators and providers to record in writing the practical steps taken to implement equivalent access under the Transport Standards. This is not a legal requirement under the Transport Standards.

Documenting these steps in writing may help address complaints alleging that the measure does not deliver equivalent access.

Disability Action Plans may also offer a useful framework for the documentation of equivalent access. More information about Disability Action Plans is available at <https://www.humanrights.gov.au/our-work/disability-rights/action-plans-and-action-plan-guides>.

Description of equivalent access measure/strategy
Identified need for equivalent access
<ul style="list-style-type: none"><li>• Which specification(s) of the Transport Standards cannot be complied with by the target date and why?</li><li>• Which specification(s) of the Transport Standards are not fit for purpose and why?</li><li>• Who has been, or is likely to be, affected (for example, passengers with a specific disability)?</li><li>• What information is available to support this view?</li></ul>
Measure delivers equivalent access
<ul style="list-style-type: none"><li>• Why has this measure been identified as potentially delivering equivalent access?</li><li>• What information did you rely on when making this decision?</li><li>• Have similar measures been used in Australia or overseas to deliver equivalent access to public transport?</li><li>• Could the measure be considered a separate or parallel service?</li></ul>

<ul style="list-style-type: none"> <li>• <b>Does the measure deliver equivalent amenity, availability, comfort, convenience, dignity, price and safety? Consider the assessment questions outlined in the Guidelines.</b></li> <li>• <b>What information is available to support this view?</b></li> </ul>
<p><b>Consultation</b></p> <ul style="list-style-type: none"> <li>• <b>Have passengers with disability using the service and/or organisations of people with disability been consulted?</b></li> <li>• <b>How were passengers with disability identified and invited to participate in consultations?</b></li> <li>• <b>Who was consulted?</b></li> <li>• <b>When were passengers with disability and/or organisations representing people with disability consulted and what were they consulted about?</b></li> <li>• <b>What steps were taken to make consultations meaningful and accessible?</b></li> <li>• <b>How did consultations influence the choice of equivalent access measure, its development and its implementation?</b></li> <li>• <b>Did the consultation include any element of co-design?</b></li> </ul>
<p><b>Evaluation and Review</b></p> <ul style="list-style-type: none"> <li>• <b>When and how will you monitor the effectiveness of the measure to ensure it delivers and continues to deliver equivalent access to public transport without discrimination?</b></li> <li>• <b>When and how will you assess if the equivalent access measure remains the most appropriate way to deliver access to public transport (for example, if new technology becomes available or there is capacity to comply with the specifications of the Transport Standards)?</b></li> <li>• <b>Will those who were involved in the original consultation process be included in the evaluation and review of the measure?</b></li> </ul>



## References

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- 2 *Convention on the Rights of Persons with Disabilities*, opened for signature 30 March 2007, 2515 UNTS 3 (entered into force 3 May 2008) art 9.
- 3 *Disability Discrimination Act 1992* (Cth) s 3.
- 4 *Disability Standards for Accessible Public Transport 2002* (Cth) s 1.2(2).
- 5 The Allen Consulting Group, *Review of the Disability Standards for Accessible Public Transport* (Final Report, October 2009) 144.
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- 15 *Disability Standards for Accessible Public Transport 2002* (Cth) s 1.16.
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- 19 *Disability Standards for Accessible Public Transport 2002* (Cth) s 1.22.
- 20 *Disability Standards for Accessible Public Transport 2002* (Cth) s 1.23.
- 21 *Disability Discrimination Act 1992* (Cth) s 3.
- 22 *Disability Discrimination Act 1992* (Cth) ss 5–9. See also *Disability Discrimination Act 1992* (Cth) s 4 (definition of 'disability').
- 23 *Disability Discrimination Act 1992* (Cth) ss 15–30.
- 24 *Disability Discrimination Act 1992* (Cth) ss 11, 21B, 29A.
- 25 *Disability Discrimination Act 1992* (Cth) ss 11, 59–64.
- 26 *Disability Discrimination Act 1992* (Cth) s 55. See also Australian Human Rights Commission, *Exemptions* <<https://www.humanrights.gov.au/our-work/legal/exemptions>> for a list of decisions and current exemption applications.
- 27 Australian Human Rights Commission, *Temporary exemptions under the Disability Discrimination Act 1992* (Cth) <<https://www.humanrights.gov.au/our-work/legal/temporary-exemptions-under-disability-discrimination-act-1992-cth>>.
- 28 *Disability Discrimination Act 1992* (Cth) ss 31–4.
- 29 *Disability Discrimination Act 1992* (Cth) s 34.
- 30 *Disability Standards for Accessible Public Transport 2002* (Cth) s 1.2(2).
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- 34 *Disability Standards for Accessible Public Transport Guidelines 2004 (No. 3)* (Cth) s 35.3.
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- 37 Attorney-General's Department, *Regulation Impact Statement on Draft Standards for Accessible Public Transport* (1999), section 7.3.
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- 39 *Disability Standards for Accessible Public Transport 2002* (Cth) ss 2–32, sch 1.
- 40 *Disability Standards for Accessible Public Transport 2002* (Cth) s 33.1.
- 41 *Disability Standards for Accessible Public Transport 2002* (Cth) s 33.3.
- 42 *Disability Standards for Accessible Public Transport 2002* (Cth) s 33.3(1). It will not be unlawful to fail to comply with the Transport Standards if, and to the extent that, compliance would impose unjustifiable hardship on any person or organisation (see section 33.7(1)).
- 43 *Disability Standards for Accessible Public Transport 2002* (Cth) ss 33A.1–33A.2.
- 44 *Disability Standards for Accessible Public Transport 2002* (Cth) s 34.1.
- 45 *Disability Standards for Accessible Public Transport 2002* (Cth) s 1.16.
- 46 *Disability Standards for Accessible Public Transport 2002* (Cth) s 1.16.
- 47 *Disability Standards for Accessible Public Transport 2002* (Cth) s 1.15.
- 48 *Disability Standards for Accessible Public Transport Guidelines 2004 (No 3)* (Cth). s 33.8.
- 49 *Disability Standards for Accessible Public Transport Guidelines 2004 (No 3)* (Cth) s 33.10.
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- 56 *Access for All Alliance (Hervey Bay) Inc v Hervey Bay City Council* [2007] FCA 615, [73].
- 57 *Purkess v Crittenden* (1965) 114 CLR 164 at 168 (Barwick CJ, Kitto and Taylor JJ).

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- 61 *Project Blue Sky Inc v Australian Broadcasting Authority* (1998) 194 CLR 355 at 382 (McHugh, Gummow, Kirby and Hayne JJ), referring to *Commonwealth v Baume* (1905) 2 CLR 405 at 414 (Griffiths CJ).
- 62 *Project Blue Sky Inc v Australian Broadcasting Authority* (1998) 194 CLR 355 at 384 [78] (McHugh, Gummow, Kirby and Hayne JJ).
- 63 *Acts Interpretation Act 1901* (Cth), s 15AA. These purposes should be borne in mind when construing the requirements for equivalent access. This is consistent with the general principle that beneficial and remedial legislation, like laws that prohibit discrimination, should be given a liberal and beneficial construction.
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- 66 *Federal Commissioner of Taxation v Radilo Enterprises Pty Ltd* (1997) 72 FCR 300 at 307 (Lee J).
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- 82 For example, *TVW Enterprises Ltd v Duffy (No 2)* (1985) 7 FCR 172 at 178 (Toohey J).
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- 88 Spinal Life Australia, Submission to the Australian Human Rights Commission, *Guidelines: Equivalent Access Under the Disability Standards for Accessible Public Transport 2002* (July 2019) 3.
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- 104 *Disability Discrimination Act 1992* (Cth) s 32.
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