



SUBMISSION

Review of the Disability Standards for Accessible Public Transport 2002

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Role of the Public Transport Ombudsman

The Public Transport Ombudsman Limited (PTO) is an independent industry-based Ombudsman scheme, established in 2004 to receive, investigate and resolve complaints about public transport services provided by Victorian public transport operators that are members of the PTO scheme. PTO scheme members include passenger train, tram and bus companies, and others involved in providing public transport services, such as Public Transport Victoria (PTV), VicTrack and Southern Cross Station. The scheme is funded by the industry, based on an annual fixed membership fee and on a variable user-pays basis, calculated on annual complaint numbers.

The PTO complies with the *National Benchmarks for Industry-Based Customer Dispute Resolution Schemes 1997* and uses the principles of alternative dispute resolution to effectively and efficiently handle complaints. If a complaint cannot be resolved through agreement, the Ombudsman is able to make a binding decision to resolve the complaint, or may dismiss the complaint.

The PTO has extensive experience in handling customer complaints and working with the public transport industry to improve customer service practices and internal dispute resolution (IDR) processes. We also play an important role in the identification of systemic issues facing the public transport industry, including investigation and resolution for issues within PTO jurisdiction and referral to appropriate agencies for other issues. This includes issues associated with the accessibility of public transport vehicles and infrastructure.

We undertake regular engagement work with disability advocacy services and their clients to increase awareness and accessibility to our independent dispute resolution service. Our office has also investigated a number of individual complaints relating to the accessibility of public transport services and infrastructure. This experience informs our comments.

Further information about the operation of the PTO, including public reports can be found on our website www.ptovic.com.au.

Our Vision

Through providing leading dispute resolution services, we will contribute to improving how public transport services meet the needs of the Victorian community.

Our Organisational Values

Excellence: Quality focused, Accountable, Responsive, Accurate
We strive for excellence because we value what we do

Integrity: Open, Confident, Strong, Committed
We are transparent, honest and consistent

Leadership: Inspired, Creative, Courageous, Effective
We lead through encouragement, guidance and innovation

Respect: Empathic, Considerate, Honest, Fair
We treat ourselves and others with dignity

Independence: Equitable, Reasonable, Consistent, Transparent
We are impartial and objective

Review of the Disability Standards for Accessible Public Transport

Thank you for the opportunity to provide comment on the 2012 Review of the Disability Standards for Accessible Public Transport 2002 (the Standards).

Comments are based on our experience in handling consumer complaints about the accessibility of services provided by Victorian public transport operators. We have responded to select questions in Section C of the Issues Paper, as relevant to our case data.

Has accessibility to public transport improved since the review in 2007?

Since the first Transport Standards review in 2007, there has been an increase in the number of accessible public transport services in Victoria, including the introduction of more low floored buses and trams and the construction of accessible tram and bus stops and railway stations.¹

While more services have become accessible, my office continues to receive complaints from consumers about their ability to access public transport.²

The year on year increase in complaints to my office can in part, be attributed to a small increase in awareness of the existence of our service.³ It can also be attributed to a targeted awareness program undertaken in 2011 and 2012 with community agencies providing disability services, to ensure they understand our role and their clients' rights to access our services.⁴

While complaint numbers to our service are relatively low, they are indicative of continued systemic problems with the accessibility of public transport in Victoria.

Inaccessible journeys continue to occur despite infrastructure and rolling stock meeting the requirements set out in the Standards.

This submission focuses on key areas of complaints to my office, including:

- boarding and disembarking;
- information provision at stations and stops and on vehicles;
- the new ticketing system - myki; and
- stations, stops and vehicle design.

Case studies are provided to illustrate some of the issues raised with my office and are based on consumer statements about their experience. In some instances, my office has not investigated the complaint and the operator has not been provided with an opportunity to respond to the statement. When a complaint is referred back to the operator for direct resolution, my office is not privy to the outcome of the complaint. Each case study is marked to indicate whether an investigation was undertaken by my office.

Throughout this submission a reference to vehicles includes buses, trains and/or trams.

¹ As outlined on the PTV website <http://corp.ptv.vic.gov.au/managing-victoria-s-public-transport-network/accessibility-of-public-transport/action-plan-2006-12/>

² The PTO received complaints about disability access as follows: 12 in 2007, 14 in 2008, 20 in 2009, 19 in 2010, 89 in 2011 and 99 in 2012.

³ In 2007 unprompted awareness of the PTO was 5% and prompted 33%. In 2012 unprompted awareness of the PTO was 7% and prompted 52%, as measured by a PTV- commissioned survey of Victorian commuters.

⁴ For more information about the agencies we have worked with please see our 2011 and 2012 Annual Reports <http://www.ptovic.com.au/publications-a-media/annual-reports>

Investigating and resolving complaints about accessibility

Complaints about the accessibility of public transport service are within the PTO's jurisdiction to investigate. However, there are limits to the extent of investigations my office can undertake and to the outcomes we can achieve, as outlined below:

- Both the Victorian Government through Public Transport Victoria (PTV) and transport operators have responsibilities under the *Disability Discrimination Act 1992 (Cth)*, the *Equal Opportunity Act 2010 (Vic)* and the Standards. My office only has jurisdiction to review the actions of operators and does not have any power to review the actions of the Victorian Government or PTV in its role as system administrator.
- My office can identify when an operator is not complying with legislation, regulation or standards, but does not have an enforcement role. Where issues of potential non-compliance are identified, we may refer these to the relevant regulator or body that administers the legislation, regulation or standards. Alternatively, we may refer the consumer to the most appropriate dispute resolution forum, such as the Australian Human Rights Commission (AHRC) or the Victorian Equal Opportunity and Human Rights Commission (VEOHRC).
- As the Public Transport Ombudsman, I have the power to make a binding decision to resolve a complaint. The value of any decision cannot exceed \$5,000 (or \$10,000 with the agreement of all parties). A determination directing an operator to make a service(s) accessible would likely exceed these monetary limits. It is therefore very difficult for my office to effectively resolve the root cause of accessibility complaints.

My office does investigate specific incidents relating to accessibility, including whether the operator's policy was followed by staff, the nature of the interaction between the consumer and operator staff, complaint handling and what steps could be taken to avoid the problem arising in the future.

Complaints are often resolved through the provision of information about accessible services, staff training, the implementation of new policies or processes to increase accessibility, the provision of compensation and apologies.

Boarding and disembarking public transport services

My office continues to receive complaints from consumers with disabilities who have had difficulty in, or have been unable to, board or disembark vehicles that are accessible by design.

Consumers complain that some operator staff are unwilling, or are prohibited by internal policies or occupational health and safety risk assessments, from providing a reasonable level of direct assistance to make journeys on accessible vehicles actually accessible.

While the need to balance the welfare of employees and the rights of consumers with disabilities to have access to transport services is difficult, my office remains concerned at the pace of progress in resolving these issues and the continued limits on accessibility they impose.

The below case studies highlight common complaints to our office about boarding or disembarking public transport services.

P2011/0431 – Investigation

Wheelchair tipping while boarding low floored bus

A consumer in a wheelchair attempted to board a low floored bus.

The bus was too far away from the curb to enable the front access ramp to be appropriately deployed. The bus driver did not attempt to move closer to the curb despite the consumer being in position at the stop with the clear intention of boarding the bus.

After the consumer commented that she couldn't board the bus in its current position, the driver did not attempt to move closer to the curb, but deployed the ramp at the middle of the bus and instructed the consumer to board. The angle of the ramp was too steep and as a result, the consumer's wheelchair tipped and she fell to the ground. She sustained several minor injuries, requiring an overnight stay in hospital for observation.

The consumer was deeply affected by the incident and her confidence in being able to use public transport independently was diminished.

As a result of our investigation, the bus company provided a letter of apology, confirmed that the driver had been counselled about the incident and a driver's responsibilities in providing accessible services. The bus company also provided additional training to drivers operating similar buses.

In the above case, taking time to manoeuvre the bus closer to the bus stop before deploying the ramp would have removed the risk of tipping and would have allowed an independent and accessible journey, as intended by the Standards.

P2011/1251 – Investigation

Access to allocated space on trains

A consumer in a wheelchair complained about regularly being unable to access the allocated space in the first carriage of the train.

He explained this was due to the operator failing to prevent cyclists from boarding at the first door of the first carriage or from storing bikes in the space adjacent to the first door of the first carriage. It is a condition of travel determined under section 220(D) of the *Transport (Compliance and Miscellaneous) Act 1983 (Vic)* that bicycles must not be boarded in this way. The condition is to ensure that the allocated space required under the Standards is available for people with wheelchairs or other mobility aids.

Anecdotally, we understand that often cyclists use the front carriage to limit the impact their bicycle has on the comfort of other commuters, given there is more space (as intended under the Standards). Often cyclists are unaware of the prohibition on carrying bicycles in the front carriage.

My office has recently undertaken an investigation into a similar complaint.⁵ The operator advised it provided allocated space as required by the Standards. However, it advised that it did not have to display the international symbol of accessibility on the floor area of the allocated space as required by section 9.10 of the Standards, as the AHRC had granted it an exemption (via the Australasian Railway Association).

Given no symbol is displayed on the floor area of the allocated space, my office queried how other commuters were meant to know what the purpose of the space was and what steps the operator had taken to inform its customers about the allocated space.

We have worked with the operator to identify practical and cost effective measures to improve the accessibility of services, thereby ensuring that not only are space allocation requirements complied with, but that the intentions of the Standards to provide accessible journeys are adhered to also.

Recommendations included:

- the placement of stickers in first carriages or on the first door of first carriages advising that bicycles are prohibited; or
- the placement of posters at stations advising commuters of the prohibition and the reasons for it; or
- an operational directive to train drivers instructing that before or while deploying a ramp they ask any commuter with a bicycle in the space near or adjacent to the first door of the front carriage to move down the carriage or move to another carriage; or
- a renewed education campaign through the many bicycle advocacy groups in Victoria.

Currently, the operator has not agreed to implement any of the above suggestions, as it considers them unnecessary.

In the case of requiring drivers to ask passengers with bicycles to vacate the allocated space, it advised that it did not consider this was a core responsibility of the driver role. Further, it argued that as drivers do not have 'move on' or enforcement powers it would not be effective, as they could not compel passengers with bicycles to move.

The operator did reconfirm with its Authorised Officers that they should take action if they came across the issue during their ticket inspection duties. The operator has indicated it may consider including some information about the prohibition of bicycles at the first door of the first carriage in a yet to be decided commuter etiquette campaign.

The complaint is near to resolution, with the consumer opting to pursue the majority of his concerns through the AHRC complaint process.

I am concerned however that the rights of access to allocated space are considered an issue of passenger etiquette and not operator responsibility.

While operators may be meeting the minimum technical requirements set out in the Standards, sometimes some operators are not taking the additional steps needed to meet the intentions of the Standards.

⁵ P2012/3396

P2012/1729-1 – Investigation

Failure to pick up

A consumer in a wheelchair complained after not being boarded at a metropolitan train station as he was not in position at the designated boarding point. He wasn't in position as it had been raining heavily and there was no shelter near the boarding point. When the announcement for the next train was made, he moved towards the designated point, and was still moving towards it when the train entered the station and stopped. The train departed before he could board. He was very concerned that despite being visible to the driver when moving towards the designated spot, (the incident occurred at 1.30pm, when passenger numbers were low) the driver did not get out of his cabin to enquire if he needed to board.

The consumer noted that on many previous occasions when drivers had seen him moving into position, they had elected to wait the very short time it took him to get in position and had provided the assistance he required. He did not understand the inconsistent approach.

The operator apologised, however advised that its drivers are only required to provide assistance and deploy boarding ramps if commuters are in position prior to the arrival of the train.

The consumer was dissatisfied with the response and considered that he and other people with disabilities were being discriminated against; he elected to pursue his complaint through VEOHRC.

In the above case, the operator had complied with the minimum requirements of the Standards, as an access ramp was on board and would have been deployed if the passenger was in position when the train came to a stop.

However, in this case the Standards were ineffective in creating an accessible journey. The consumer was the only person in a wheelchair moving up a relatively empty platform in the middle of the afternoon while it was raining. A reasonable interpretation of such a scene would conclude that the consumer was moving into position to catch the arriving train and that a ramp would need to be deployed to enable boarding.

Currently many train stations do not have appropriate shelter to enable people in wheelchairs or with mobility aids to wait in position when there is inclement weather. I understand that shelters are being built across the network, and once built will reduce the likelihood of incidents like the one described above occurring. Until then, additional assistance must be provided to commuters, including allowing a reasonable amount of time to get into position.

My office appreciates the challenges operators face in meeting timetables, which are sensitive to delays, including those caused by drivers waiting to assist passengers to board. However, additional obligations on operators to provide assistance where reasonable to do so would ensure that compliance with the Standards actually results in accessible journeys.

P2012/0424 - Non – Investigation

Inability to disembark from DSAPT compliant tram at compliant stop

The consumer contacted the PTO as he was dissatisfied that ramps are not deployed on low floor trams at accessible stops to allow passengers to disembark from the tram when the horizontal and/or vertical gap between the tram and the stop is too large for the wheelchair to traverse.

The complaint was referred to the AHRC as the consumer did not consider the operator was meeting the requirements of the Standards and wanted to pursue a complaint about non-compliance.

My office has received a number of similar complaints and has investigated this issue previously. The above case study provides a further example of compliance with the Standards not resulting in accessible journeys for some consumers.

In response to the above issue, the tram operator advised that after extensive risk assessments, it will not deploy ramps on any tram service unless it is an emergency. Drivers are instructed to take the consumer to the nearest accessible stop to allow them to disembark – resulting in some consumers being set down at stops that are not near their destination.

In late 2012, the operator trialled a gap eliminator in an attempt to find a solution to the problem.⁶ While this progress is to be commended, it is noted that a key action articulated in 2006 in the Victorian Government's 2006 - 2012 Accessible Public Transport Action Plan identified this problem and undertook to work with the tram operator to find an engineering solution.⁷

In 2013, while trials of engineering solutions have been undertaken, the issue has not yet been resolved and there has been no alteration in the operator's approach to providing direct assistance to consumers to ensure journeys are accessible.

Information provision at stations and stops and in vehicles

The amount of information available to commuters and the different formats it is available in has certainly improved since the last review.

Operators are creating new ways of communicating with their customers using new technologies – particularly smartphones and tablet devices – creating Apps, mobi sites and using social media to post real time service updates and to provide information on accessible journeys.

Automated audible and written announcements on newer services and electronic displays at stations and stops have all increased the accessibility of services too.

Problems can arise however, when services do not run to schedule or when disruptions occur.

At stations, stops and on vehicles electronic display boards or automated audible announcements may continue to announce the scheduled service, when that service has

⁶ See <http://www.yarratrams.com.au/media-centre/news/articles/2012/minding-the-gap/>

⁷ See Action 34 2006-2012 Accessible Public Transport in Victoria Action Plan page 36-37

changed. This can create confusion for all passengers and can be particularly disorientating for vision impaired or deaf consumers.

My office regularly receives complaints from consumers who have been unable to obtain accurate or up to date information about transport services due to the limitations of automated information. For example:

- An express train being altered to a stopping all station service is unable to provide accurate audible or written next stop announcements.
- Service alterations made over the public address system at a station are not also made in writing on the electronic displays. Messages such as 'Listen for Announcements' are unhelpful to people with a hearing impairment wanting to know how and where to board their service.

Consumers also complain that there is a lack of consistency in the practice of drivers making audible announcements when on trains, trams and buses, which impacts greatly on the accessibility of services.

P2011/0365 – Investigation

No announcements

A vision impaired consumer boarded a tram during peak hour. Due to the number of passengers on the tram, she had to board at the back doors. The tram driver did not announce any stops; as a result the consumer was unsure where she was on the tram route.

She made her way to the driver to ask when her stop was coming up and he advised they had already passed it. The driver did not offer any further help to the consumer to assist her to navigate back to the stop; the consumer had to rely on help offered by other passengers.

The tram operator apologised and advised that all drivers are required to announce stops in the central business district. It prepared notices for drivers confirming the responsibility to announce all stops.

Operators must ensure that where automated systems are unavailable or are faulty, or where there are unscheduled changes to services, that customer service staff and/or drivers provide announcements and direct assistance where necessary.

The ticketing system – myki

Victoria is progressively introducing a smartcard ticketing system – myki.

My office has received a number of complaints from consumers about the accessibility of the new system. Issues have included:

- Consumers with intellectual disabilities and acquired brain injuries being charged a higher default fare for forgetting to touch off at the end of their journey – something they did not have to do with the previous ticketing system.
- Consumers with a vision impairment having difficulty using myki ticket vending machines due to the colours and contrasts on the screens.

- Consumers with disabilities being unable to purchase a concession myki card at card vending machines as only full fare myki cards are dispensed.

P2012/2639 – Investigation

Unavailability of concession myki cards

The consumer complained that he had not used myki before and went to the station (which was unmanned) to purchase a card and load value on it so he could travel that day. The consumer had a disability and was entitled to travel on a concession myki. However, he was unable to purchase a concession myki at the card vending machine (only full fare cards are sold from machines).

He was unable to locate a retail location near the station and had no other means to purchase or travel with a valid ticket. He considered that he had been treated differently from someone without a disability, who could purchase a full fare myki card and have a valid entitlement to travel.

My office investigated, asking myki if the inability to purchase a concession myki at a card vending machine complied with the Standards and the *Disability Discrimination Act 1992* (Cth).

PTV and the Transport Ticketing Authority (myki) advised that as no consumers entitled to a concession myki (students, children, low income earners as well as people with disabilities) could purchase one at a vending machine; it did not consider that it was discriminating against people with a disability. It advised that it was an early design decision of the system to only allow full fare cards to be purchased at card vending machines and it considered that the machines complied with the Standards.

The consumer remains dissatisfied and my office recommended that he contact the AHRC Commission to pursue his complaint about discrimination and non-compliance with the Standards.

With any new system, continual review of how consumers interact with it needs to be undertaken to ensure that accessible design will result in accessible journeys.

Stations, stops and vehicle design

As outlined above, my office has jurisdiction to investigate and resolve complaints about the design of stations, stops and vehicles

Over the past two years a number of complaints have been made to my office about the design of a recently upgraded railway station in Melbourne. I have worked closely with the operator and PTV to identify how accessibility can be improved at the station through better customer service and communication.

Station Accessibility Systemic Investigation

The station upgrade was finalised in 2010. A ramp providing access to platforms was replaced with stairs and elevators. Accessibility problems arose when the elevators were out of service due to vandalism or malfunctions.

When elevators were out of service, consumers unable to use the stairs and who wanted to board a train were unable to do so. *Continued next page...*

Station Accessibility Systemic Investigation Continued

If disembarking at the station, consumers would need to decide to either; disembark at the station and wait for repairs to be completed before being able to exit the station, or elect to travel to a different train station.

Furthermore, the elevators were too small and did not provide maneuvering space for some mobility aids, resulting in consumers having to reverse in or reverse out of the elevator.

I worked with the operator and the Department of Transport to identify how accessibility could be improved. Strategies implemented included operator staff (including train drivers) advising consumers when elevators were out of order so informed decisions could be made about disembarking at the station or finding alternative modes of transport, better signage about how to access or exit the station if lifts were out of order and the stationing of additional customer service staff to provide direct assistance.

The issues identified at this station also prompted a review of design principles for future station upgrades to ensure that accessibility was improved.

My office also receives complaints about the accessibility of Southern Cross Station, the major transport hub in Melbourne with 40 million people using it annually.

P2011/0698 – Non-Investigation

Grey tones and vision impairment

The consumer complained about the high number of grey poles in pedestrian walking areas of Southern Cross station. The colour of some poles is very similar to the colour of the ground, making it very difficult for people with vision impairments to identify the poles and safely navigate around them. The consumer believed the placement of simple contrasting colour strips on the poles would assist her to move around the station more easily.

It is of concern that newly built infrastructure or purchased vehicles can continue to create problems for accessibility, given the Standards have now been in place for 11 years.

While the resolution of some of these issues have large cost implications, the impacts of design problems can be greatly reduced through the provision of good customer service and direct assistance when necessarily.

Complaint resolution processes

Currently, there are a number of avenues available to consumers to pursue a complaint about the accessibility of public transport in Victoria, as outlined below:

- lodge a complaint through the operator's internal dispute resolution process (IDR) and seek direct resolution with the operator;
- complain to my office if they have contacted the operator and are dissatisfied with the response provided. My office will then work with the parties to negotiate an agreed outcome;

- make a complaint to VEOHRC on the grounds that the operator discriminated against them in the provision of services, in contravention of the *Equal Opportunity Act 2010 (Vic)*; and
- make a complaint to the AHRC regarding non-compliance with the Standards.

While Victorians have more options available for making complaints than other jurisdictions, the ability to effectively resolve individual complaints and the systemic implications they raise remains problematic.

Individual complaints may be resolved through apologies, compensation payments or the provision of information – outcomes that are regularly achieved through the conciliation processes used by my office, VEOHRC and the AHRC. It is the experience of my office however, that systemic change is not regularly achieved.

Reasons for this include:

- a reliance by some operators on meeting minimum obligations for compliance and being unwilling to take any additional steps because of the cost or the lack of legislative/regulatory incentive to do so;
- a reluctance to provide direct assistance to consumers due to actual or perceived occupational health and safety considerations or assessments about what the core responsibilities of employees roles are; and
- the complaint handling team and the accessibility and compliance areas of the business not undertaking regular systemic reviews of complaints to identify when an issue may impact more than one person and develop ways to proactively manage it.

The other factor impacting the ability of dispute resolution bodies to effectively resolve complaints is a lack of jurisdiction or powers.

Where a complaint cannot be resolved by agreement, consumers may take action in the Federal Court or Federal Magistrates Court. Due to the costs and time associated with taking an action, many consumers elect not to pursue their complaints about non-compliance with the Standards.

As a result, there is little case law to provide judicial guidance on the interpretation of the Standards. Case law can help compel operators into adopting a culture of compliance, and where issues of non-compliance arise, can assist dispute resolution bodies in the early resolution of complaints through conciliation processes.

While the process for making an application to the Court is based on the *Disability Discrimination Act 1992 (Cth)* framework (and not the Standards), to ensure the Standards are effective and are complied with, steps should be taken to better enable consumers to pursue complaints through the Court system where this is appropriate.

This will allow individual complaints to be resolved, systemic issues to be identified and an incentive provided to operators to resolve those issues. It will also provide judicial guidance on issues of compliance with the Standards to operators, consumers, Government and dispute resolution bodies.

Conclusion

In the three years I have been the Victorian Public Transport Ombudsman, I have seen an increase in the accessibility of services and a genuine commitment by operators to meet the requirements of the Standards.

Nevertheless, I have also seen the disappointment of some consumers and disability advocacy services, on finding that public transport they thought would now be accessible under the Standards, may be accessible by design but are not always accessible in practice.

The implementation of accessible designs for infrastructure, rolling stock and communications does not remove the need for operators to continue to provide a reasonable amount of direct assistance to consumers when they need it.

The majority of complaints to my office about accessibility of services could have been avoided by the provision of direct assistance by one person to another - as highlighted in the case studies throughout this submission.

It is my view that a greater emphasis in section 33.6 of the Standards on the positive responsibilities of operators to provide direct assistance, coupled with practical guidance on what direct assistance entails, would improve the accessibility of public transport in Victoria.

P2012/3537-1 – Investigation

Direct assistance no longer provided

The consumer complained that he was no longer provided with direct assistance by station staff to get his wheel chair up a very steep ramp at a metropolitan train station.

He was advised that due to a change in the operator's occupational health and safety policy, station staff are no longer allowed to provide direct assistance. As a result, he was unable to use the station anymore and had to alter his working arrangements to accommodate the change, leading to a loss of income.

He met with the operator to voice his concerns and it reiterated that no direct assistance would be provided and offered him some taxi vouchers in recognition of the inconvenience caused by the change in policy. The consumer felt this was tokenistic and did little to resolve his problem in the long term – which was how to get to the top of a steep ramp which he should have been able to access.

The consumer decided to pursue his complaint through the AHRC.

Thank you for providing the opportunity to comment on the review of the Standards. If you require any additional information please feel free to contact me on (03) 8623 2111.

Yours sincerely

Janine Young
Ombudsman
Public Transport Ombudsman Limited