

## National Disability Strategy Implementation Reference Group

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### 2012 Review of the Disability Standards for Accessible Public Transport

Dear Disabilities Transport Access Secretariat

Please find attached the written submission by the National Disability Strategy Implementation Reference Group (NDSIRG) on the 2012 Review of the Disability Standards for Accessible Public Transport addressing issues of importance to the NDSIRG.

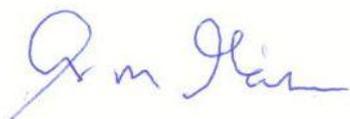
While NDSIRG has not necessarily structured its response according to the questions provided in the issues paper, it offers a number of overarching comments.

Overall, the NDSIRG view is that while there has been some improvement in the accessibility of public transport there remains scope for significant improvement, particularly in relation to dedicated school bus services where NDSIRG's preference would be for faster implementation, whilst being cognisant of the financial implications for providers and operators.

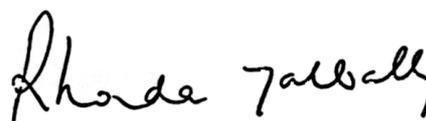
NDSIRG would also like to take this opportunity to urge the Department and the Minister to ensure the 2012 Review progresses in a timely manner.

Thank you for the opportunity to provide a submission to the Review. We would be happy to discuss the contents of this submission with you further.

Yours sincerely



Ms Lesley Hall  
Co-Chair  
26 April 2013



Dr Rhonda Galbally AO  
Co-Chair



## CONTENTS

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Submission by the National Disability Strategy Implementation Reference Group .....	3
Introduction .....	3
Setting the scene .....	3
Review of the Transport Standards .....	5
Aviation access.....	6
Need for more compliance.....	6
School buses.....	6
Other public transport providers.....	7
Incentives and exemptions .....	8
Accessibility requirements for people with disability.....	9
Making complaints.....	9
Discrimination definitions.....	10
Whole of journey accessibility.....	11
Integration with other government initiatives.....	11
National Disability Insurance Scheme.....	11
Commonwealth funded community programs.....	11
The need for better data .....	11
Findings from the 2007 Review.....	11
Data collection.....	12
It's all about people.....	12
Information sharing and best practice.....	12
Conclusion .....	12

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# 2012 REVIEW OF THE DISABILITY STANDARDS FOR ACCESSIBLE PUBLIC TRANSPORT

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## SUBMISSION BY THE NATIONAL DISABILITY STRATEGY IMPLEMENTATION REFERENCE GROUP

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### INTRODUCTION

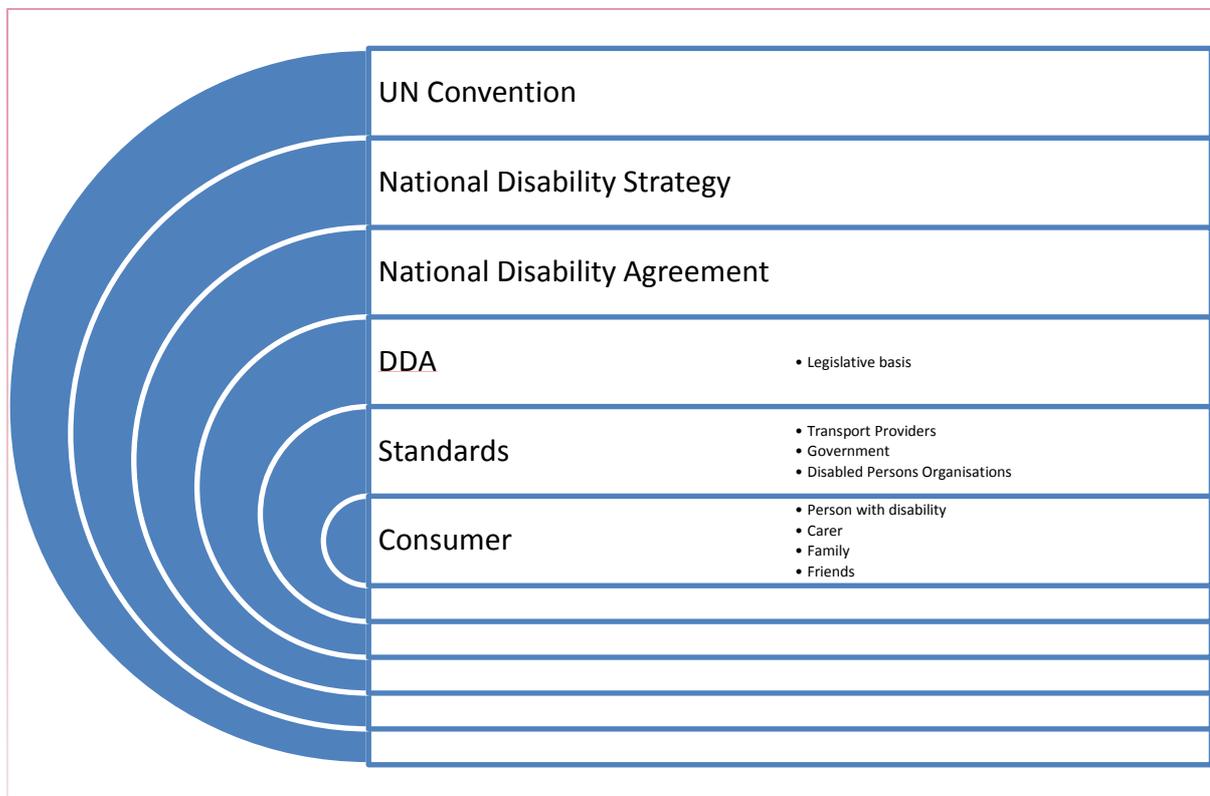
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The Australian Government has established the National Disability Strategy Implementation Reference Group (NDSIRG), comprising of representatives from the National People with Disabilities and Carer Council (NPWDACC) as well as representatives from the National Disability Organisations, to provide the Australian Government with advice on the implementation of the National Disability Strategy.

### SETTING THE SCENE

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Firstly, NDSIRG would like to provide our understanding of the relationship between relevant government legislation, policy and practice. This can be expressed diagrammatically as a consumer-centric model, as below:



On 17 July 2008, Australia ratified the United Nations Convention on the Rights of Persons with Disabilities (the Convention) and acceded to the Optional Protocol on 21 August 2009. The Convention aims to enhance opportunities for people with disability to participate in all aspects of social and political life including access to employment, education, health care, information, justice, public transport and the built environment.

The National Disability Strategy (NDS) was launched in March 2011 and endorsed by the Council of Australian Governments (COAG) in recognition that support for people with disability is a shared responsibility across the Commonwealth, states and territories. The NDS is an important mechanism to ensure that the principles underpinning the Convention are incorporated into policies and programs affecting people with disability, their families and carers.

The National Disability Agreement (NDA), signed by all members of COAG in 2009, provides the framework for ongoing collaboration on policy development, service delivery and economic and social reform of national importance. The NDA includes a priority for: "More consistent access to aids and equipment". There is a strong association between the provision of mobility aids and equipment by the states and territory Governments and the need for compliance of access specifications with the *Disability Standards for Accessible Public Transport 2002* (the Transport Standards).

Supporting the NDS, the *Disability Discrimination Act 1992* (the DDA) prohibits both direct and indirect discrimination on the grounds of disability, both to the person with disability as well as family members, carers and friends. The DDA allows the Government to make standards to provide information about what needs to be done to ensure that people with disability are not discriminated against. The purpose of the Transport Standards is to enable public transport operators and providers to remove discrimination from public transport services.

The Transport Standards establish minimum accessibility requirements for the providers and operators of 'public transport conveyances, infrastructure and premises'. They include a wide range of requirements for:

- access paths;
- manoeuvring areas;
- ramps and boarding devices;
- allocated spaces;
- doorways; controls;
- symbols;
- signs;
- waiting areas;
- boarding points;
- allocated spaces;
- surfaces;
- hand and grab rails;
- doorways and doors;
- lifts;

- stairs;
- toilets;
- Tactile Ground Surface Indicators (TGSIs);
- alarms;
- lighting;
- controls;
- furniture and fittings;
- street furniture;
- gateways;
- payment of fares;
- hearing augmentation-listening systems;
- information provision;
- booked services;
- food and drink services;
- belongings; and
- priority arrangements.

## REVIEW OF THE TRANSPORT STANDARDS

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Part 34 of the Transport Standards requires the Minister for Infrastructure and Transport, in consultation with the Attorney-General, to review the efficiency and effectiveness of the Transport Standards within five years of their taking effect, with subsequent reviews every five years. The review must include whether discrimination has been removed, as far as possible, according to the requirements for compliance set out in Schedule 1 of the Transport Standards; and, any necessary amendments to these Standards.

NDSIRG would like to stress that we must keep at the forefront of our minds at all times that the purpose of the Transport Standards is to **improve the ability of people with disability, their carers and family and friends to use public transport.**

To remember that we are aiming for an accessible public transport system, that recognizes the need for every stage in a journey to be accessible. An accessible public transport system tries to minimize or eliminate barriers and exclusion.

Public transport can deny many Australians the ability to get and keep a job, to participate in social activities and to visit family and friends.

Other public policy initiatives to improve accessibility of public infrastructure such as buildings and sports centres, or to increase employment of people with disability, will be undermined if the public transport system does not facilitate these policies.

While **NDSIRG generally agrees that there have been some improvements in public transport** we feel there remains scope for significant improvement.

## AVIATION ACCESS

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This paper does not offer comments on aviation access except to express our deep concern about lack of progress in improving accessibility in this mode of transport. Some of the things that NDSIRG continues to have deep concerns about relate to the policies of some carriers limiting the numbers of wheelchairs on flights and the carriage of assistance dogs.

NDSIRG would also like to see the Commonwealth strongly influence airport providers to improving access at airport terminals from “kerbside to check in” in terms of navigation and accessibility, acknowledging that airport terminals are managed by private entities.

Currently Australian airport operators facilitate the access of passengers with a disability to and from the terminals through a number of ways including safe pedestrian access, drop off and pick up points and parking options close to the terminal. Currently in Australia most airlines provide services for passengers with a disability from the check-in area through security and to boarding the flight. Similarly, passengers disembarking a flight are assisted by airline staff through to baggage collection.

However, passengers with a disability must leave their private vehicle or taxi from which they arrived from and move themselves and their luggage to the check-in areas. Similarly, they must move themselves and luggage from the baggage collection area to a vehicle/taxi. The level of inconvenience this causes to passengers with a disability will be affected by a number of factors including the extent of their disability and whether they are being met by a family or friend who can assist them. Similar considerations may also apply to some other travellers including the elderly, people with illnesses or temporary injuries that affect their mobility, and those travelling with very young children.

## NEED FOR MORE COMPLIANCE

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### SCHOOL BUSES

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The exclusion of dedicated school buses from physical access Parts of the Transport Standards was a response to the identified costs of these particular Parts, which require investment in low-floor buses or retro-fitting of coaches.

The 2007 Transport Standards Review (the 2007 Review) concluded that the basis for the exclusion needed to be tested against the potential costs and benefits of removing the exclusions. The Government’s response to the 2007 Review also noted that some operators and providers are utilising equivalent access provisions providing accessibility by means other than those specified in the Transport Standards), including through staff assistance or substitution of one type of service for another accessible one.

Recent government policy including the National Disability Insurance Scheme Act, the Gonski review, and Better Start for Children point to the Government’s recognition of the legal, economic, and social benefits of including people with disability, especially children, and their families and carers.

The 2007 Review contained a recommendation (Recommendation 14) on phased application of dedicated school bus services to physical access requirements in the Transport Standards, commencing in 2029 and being fully required by 2044, and the Government response to the review supported this recommendation in principle.

The Review found that the current exclusions to the physical access provisions of dedicated school buses limit the current and future provision of services for students with disability. The Government recognised the importance of providing students with disability every opportunity to participate in community life, including being able to travel alongside students without disability – including their own siblings – on dedicated school bus services.

While NDSIRG notes that there is not a substantial evidence base on the unmet need of school buses it **strongly supports the Government’s response to this recommendation** and would like to strongly state that we do not countenance any changes to the timeframes. Indeed, it is the view of NDSIRG that the current timeframes, which take implementation out to 2044, are not acceptable and are incompatible with the United Nations Convention on the Rights of Persons with Disabilities and the inclusion goals of the National Disability Strategy. While we recognise that there may be financial implications for providers and operators there are also significant implications including financial security, for people with disabilities.

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#### OTHER PUBLIC TRANSPORT PROVIDERS

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We note recent cases such as Julia Haraksin (Murrays Buses) and Graeme Innes (Railcorp) where transport providers have patently failed to adopt the Standards. Further, we feel that **the limited changes required** (for example, only 25 per cent of bus fleet needing to be accessible) and **the length of time given to providers to meet the Standards contributes to ongoing exclusion of people with disabilities, their carers, families and friends.**

These cases illustrate the direct and indirect discrimination that faces people with disability on a daily basis.

Sections 5 and 6 of the DDA define direct and indirect discrimination. In summary, direct disability discrimination arises if an operator or infrastructure provider treats a person with disability less favourably than another person in a similar situation.

Indirect disability discrimination arises when the impact of an operator’s or provider’s service is less favourable for a person with disability than for a person without disability. Section 6 of the DDA defines indirect discrimination as:

(1) a person (the *discriminator*) *discriminates* against another person (the *aggrieved person*) on the ground of a disability of the aggrieved person if:

- (a) the discriminator requires, or proposes to require, the aggrieved person to comply with a requirement or condition; and
- (b) because of the disability, the aggrieved person does not or would not comply, or is not able or would not be able to comply, with the requirement or condition; and
- (c) the requirement or condition has, or is likely to have, the effect of disadvantaging persons with the disability.

(2) a person (the *discriminator*) also *discriminates* against another person (the *aggrieved person*) on the ground of a disability of the aggrieved person if:

- (a) the discriminator requires, or proposes to require, the aggrieved person to comply with a requirement or condition; and
- (b) because of the disability, the aggrieved person would comply, or would be able to comply, with the requirement or condition only if the discriminator made reasonable adjustments for the person, but the discriminator does not do so or proposes not to do so; and
- (c) the failure to make reasonable adjustments has, or is likely to have, the effect of disadvantaging persons with the disability.

An example of indirect disability discrimination (not directed at a specific person) is the following comment or a variation of same, found in the “Conditions” on a transport providers’ website:

*“Due to safety requirements the company requires any passenger travelling with a wheelchair, must be accompanied by a carer or escort at all times”*

In this example a substantially higher proportion of persons without the disability are not required for safety or any other reason, to be accompanied by a carer or an escort at all times.

An example of direct discrimination is from the Compliance Target Dates – Public Transport Operators (Excluding Taxis) under which Hearing Augmentation required 100% compliance by 31 December 2007. The Transport Standards Section 26.2 covering Public Address Systems in conveyances states:

*“If a public address system is installed in buses, coaches, ferries trains and trams people who are deaf or have a hearing impairment must be able to receive a message equivalent to the message received by people without a hearing impairment: and it must comply with AS1428.2 (1992) Clause 21.1.”*

NDSIRG suggests it is unlikely that a high proportion of providers have complied with this and other requirements. In other words, there appears to be little compliance activity to test/monitor and change this. **NDSIRG believes that stronger national and more regular systems of reporting on compliance are required.**

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## INCENTIVES AND EXEMPTIONS

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The Henry Tax review stated *“Current road tax arrangements will not meet Australia's future transport challenges. Poorly functioning road networks harm the amenity, sustainability, liveability and productivity of our society. Moving from indiscriminate taxes to efficient prices would allow Australia to leverage the value of its existing transport infrastructure. Less congested roads, shorter travel times and investment in road infrastructure that addresses user demand would provide a foundation for further productivity growth, improved living standards and more sustainable cities.<sup>1</sup>”* NDISR supports the consideration of **incentives and possible exemptions to states and territories** to promote full and earlier adoption of the Transport Standards.

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[http://www.taxreview.treasury.gov.au/content/FinalReport.aspx?doc=html/publications/papers/Final\\_Report\\_Part\\_1/chapter\\_8.htm](http://www.taxreview.treasury.gov.au/content/FinalReport.aspx?doc=html/publications/papers/Final_Report_Part_1/chapter_8.htm) accessed 31 March 2013  
*National Disability Strategy Implementation Reference Group – Submission on the Disability Standards for Accessible Public Transport*

As a further example, and given its importance to greater social inclusion and giving children with disability the best start in life, NDSIRG would support consideration of incentives and possible tax exemptions for states and territories to earlier adoption of the Transport Standards as they relate to school buses, noting the Group's earlier advice above on this important issue.

This approach is consistent with Recommendation 7 of the 2007 Review *"Commonwealth, State and Territory governments provide funding for projects in regional and rural regions where local governments are unable to resource upgrades of public transport infrastructure."*

NDSIRG would also be very interested in reporting information to establish the mechanisms through which the Department of Infrastructure and Transport (the Department) checks and ensures whether regional and rural transport and infrastructure programs underway comply with the Transport Standards.

## ACCESSIBILITY REQUIREMENTS FOR PEOPLE WITH DISABILITY

Transport accessibility is not simply about physically accessible vehicles, important though they are.

There is a continuing need for **information to be accessible** from beginning to end, including arranging transport. For example, if a person is unable to access websites to look at timetables, book tickets, or use a telephone booking service to book a taxi they are unable to make informed decisions or fully utilise public transport.

There is a need for public transport information (such as maps, timetables, and announcements) to be more accessible. Audio and visual announcements are required for people with sensory impairment.

## MAKING COMPLAINTS

Recommendation 8 in the 2007 Review stated *"The AHRC (Australian Human Rights Commission) be tasked to provide greater support for representative complaints on behalf of people with disability, reducing the legal cost burden on individuals"*.

NDSIRG believes the mechanisms to report complaints remain problematic. Recent work by the Attorney-General's Department on the consolidation of anti-discrimination legislation gave rise to a hope that changes may be imminent. However that hope has been extinguished, if temporarily, by the Government's announcement that the Draft Human Rights and Anti-Discrimination Bill 2012 is not proceeding at this time.

The 2007 Review also stated *"While not directly monitored, compliance with the Transport Standards can be achieved through industry involvement and consultation and a mutual commitment to eradicating discrimination. Where this does not occur, there is a complaints-based mechanism that can be pursued. Complaints about compliance with the Transport Standards can be made to the AHRC, and managed through the AHRC complaints and conciliation process. Where this process does not resolve the issue, individuals can progress their complaint by application to the Federal Court or Federal Magistrates Court."*

*The Review reports that some stakeholders consider this approach places unreasonable cost and responsibility on people with disability in identifying non-compliance, and incurring the time and financial costs to obtain a resolution.*

*Disability representative organisations also reported concerns that the current system discourages complaints and thus does not drive compliance with the Transport Standards. The complaints-based approach to compliance reflects the DDA framework and is not specific to the Transport Standards.”*

Of particular **concern to NDSIRG is that current laws place the onus of proof on the complainant**. However, under section 361 of the Fair Work Act, where a complainant alleges that the discriminator has contravened the provisions by taking action for a particular reason etc, a rebuttable presumption operates whereby the discriminator is presumed to have taken the action for that reason, until the discriminator proves otherwise.

It is suggested that it would be sensible for complaints under the Transport Standards to take place with a rebuttable presumption. This could have been achieved by placing a fair work rebuttable presumption into the anti-discrimination statute which was under consideration by the government.

Further, rulings or results in individual complaints do not necessarily have any flow on effect to other providers. This means that – for example – another individual might have to make a complaint to another bus company on the same issues raised in the Haraksin/Murrays case.

NDSIRG suggests that advocacy bodies, trade unions and other representative organisations be **enabled to bring proceedings on behalf of complainants in the courts**. It is further suggested that in discrimination cases, each party should bear its own costs. This would encourage more complainants and bodies to bring curial proceedings to protect these persons and bodies from proscribed acts of discrimination.

In 2007, and again now, we suggest that relying on an individual to bring a complaint in relation to the Transport Standards is impracticable. The legislative framework of the DDA, and the Transport Standards made under this legislation, are formally the responsibility of the Attorney-General.

However, responsibility for implementation, monitoring and improving outcomes in relation to improved accessibility of transport, is a shared responsibility of many agencies and stakeholders, including the Commonwealth Department of Infrastructure and Transport and state and territory transport portfolios.

Whilst technically it is true that the DDA and hence the AHRC is the area where complaints should be heard, holding the Transport Standards in the Department of Infrastructure and Transport should infer a role for the Department to play in enforcing compliance, and facilitating complaints. Otherwise, it is an “all care and no responsibility” model for the Department.

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## DISCRIMINATION DEFINITIONS

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NDSIRG believes that the current **definitions of direct and indirect discrimination under the DDA** (outlined on page 7) **are unnecessarily complex**. While it would be possible not to define discrimination at all, and thus to leave it to the courts to determine whether or not discrimination has occurred, it is suggested this course of action would be inadvisable. Therefore, guidance needs to be given to courts, tribunals and administrators on what will constitute proscribed discrimination.

In most statutes, the proving of direct discrimination requires the comparator test to be applied, that is the situation of the complainant is juxtaposed with a mythical person without the relevant attribute. In many situations, and pregnancy is the clearest, the comparator test is difficult to apply. It is suggested that the comparison test be jettisoned in favour of the detriment test which operates in the ACT and in Victoria. Under this test, the question is simply whether the complainant suffered less favourable treatment on the grounds of the protected attribute? In other words, did the complainant suffer a detriment?

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## WHOLE OF JOURNEY ACCESSIBILITY

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In addition to comments made already about information being accessible, NDSIRG wishes to stress the need for whole-of-journey or “kerbside to check in” accessibility. This includes way finding/navigation, appropriate waiting areas and accessibility.

Issues such as the location of bus stops are crucial to ensuring accessibility. The length of the journey to reach a bus stop can also have a direct bearing on whether an individual will be able to access that service.

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## INTEGRATION WITH OTHER GOVERNMENT INITIATIVES

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### NATIONAL DISABILITY INSURANCE SCHEME

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In terms of complying with or bringing forward compliance schedules for accessible public transport, we suggest that transport providers be encouraged to align improved services with NDIS rollout activities to achieve the maximum possible benefits for participants. The Department of Infrastructure and Transport could play a leadership role in coordinating this approach, working with the NDIS Launch Transition Agency.

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### COMMONWEALTH FUNDED COMMUNITY PROGRAMS

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NDSIRG suggests steps be undertaken to apply greater influence over Commonwealth funded community programs that may rely on community transport, i.e. the Home and Community Care (HACC) Program, which is funded and operationalised by the Commonwealth in all states and territories with the exception of Victoria and Western Australia. This could take the form of giving weighting funding processes for new and existing service providers with good practice in relation to direct transport provision, that is, where a client’s transport is provided by a HACC worker.

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## THE NEED FOR BETTER DATA

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### FINDINGS FROM THE 2007 REVIEW

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Recommendation 1 of the 2007 Review identified the need for a common reporting framework and reporting timeline.

NDSIRG supports this recommendation and looks forward to reviewing this information.

In addition, the 2007 Review stated *“While a quantitative estimate of progress against the five year milestones is not possible due to the lack of detailed and comparable reporting, the Review reports evidence of increased investment in accessible public transport, and growth in accessible services and infrastructure.*

*National Disability Strategy Implementation Reference Group – Submission on the Disability Standards for Accessible Public Transport*

*It concludes that the Transport Standards have been effective in bringing forward investment in accessible infrastructure and conveyances, and has facilitated the removal of discrimination being experienced by people with disability, the ultimate objective of the Transport Standards.”*

NDSIRG hopes that the 2012 Review of the Disability Standards for Accessible Public Transport (the 2012 Review) will be able to draw on information from the 2007 Review as providing a comparable reporting base.

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## DATA COLLECTION

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In relation to the collection of data, NDSIRG suggests that the Department utilise other mechanisms to enhance its data collection, such as through the Gonski Review on gaining a better understanding of numbers of children with disability travelling to school and projections into the future.

Consistent with Recommendation 2 of the 2007 Review, NDSIRG urges the Department to continue to consult with the ABS to ensure that questions in disability surveys provide information that is useful and relevant to the Department.

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## IT'S ALL ABOUT PEOPLE

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Accessible public transport is not just about passengers with disability. It is also vital to provide training to staff to ensure they understand not just their responsibilities but also the equipment they need to operate. Our feedback from people with disability, their carers and family and friends is that often the missing link that makes a journey inaccessible is the attitudes or actions of staff – and in some cases, other passengers. Knowing how to operate lifts, equipment restraints, audio/visual equipment, etc is vital.

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## INFORMATION SHARING AND BEST PRACTICE

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While NDSIRG acknowledges the work of the Department and its various committees, including APTJC and APTNAC, we encourage the sharing of best practice and information sharing especially with smaller providers.

This could especially include international comparisons and suggestions.

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## CONCLUSION

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NDSIRG has some concerns about the recommendations of the 2007 Review not being implemented in a timely manner, particularly where the government response has accepted the recommendations.

NDSIRG urges the Department and the Minister to ensure the 2012 Review progresses in a timely manner through to public release of the report, which we await with great interest.

NDSIRG acknowledges that we all share the goal of improved public transport for people with disability; their carers, families and friends, and we commend your ongoing work to achieve this. Invariably, we want this to occur as soon as possible as we are aware of the enormous benefits to society when social inclusion principles become reality.

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