Australian Taxi Industry Association

Response to the Productivity Commission's draft report on the Disability Discrimination Act

The Australian Taxi Industry Association welcomes the opportunity to comment on the draft report on the DDA.

It notes that the Productivity Commission's draft finding 5.4 states:

> 'The Disability Discrimination Act 1992 appears to have been relatively effective in improving the accessibility of public transport in urban areas. However, it has been less effective in relation to taxis and in regional areas.'

ATIA has great difficulty in identifying the basis on which that finding in relation to taxis has been made.

As stated by HREOC some 7% of metropolitan and 9% of non-metropolitan taxis are wheelchair accessible. These estimates are somewhat dated and our understanding is that the proportions are notably higher, for example in Queensland WAT already account for 11% of the total taxi fleet.

WAT represents a much greater proportion of the Australian taxi fleet than does their target market represent as a proportion of the Australian Community. It is estimated that WAT bookings are only between 1 and 2% of total bookings and probably less than 1% of total demand for taxi services.

As genuine WAT work represents such a small proportion of total demand for taxi services it is essential that WAT drivers and operators undertake other 'traditional' taxi services if they are to achieve viable revenue levels that will enable them to continue in business. Without access to this other work it would be impossible to attract drivers and operators to provide any WAT service at all.

Indeed the fragility of WAT taxi businesses is demonstrated by the difficulty in attracting operators to take up available WAT licences. For example in 2002 the South Australian Government offered 15 WAT licences for tender but only 4 were taken up.

In all States and Territories at virtually anytime there are additional WAT licences available for issue if there were operators who wished to enter this segment of the taxi industry.

A critical factor influencing this decision making is the pricing structure for the carriage of wheel chair dependant passengers as determined by the State and Territory regulators. The extra time involved in loading and unloading such passengers is generally not reflected in these fare structures.

While some States have introduced a loading fee for wheelchair passengers, this is by no means universal. Even where it does apply, it appears that the levels do not reflect actual costs and therefore the loading fee does not have the full positive impact on WAT availability that was intended.

Under such circumstances, these inadequacies in the pricing structure operate as a major impediment to WAT drivers being proactive in responding to bookings, if they perceive other more financially attractive work is available.

This is an area where more effective Government intervention through appropriate pricing structures, backed by financial support, could be one of the most cost effective means of achieving tangible and immediate improvement in services to Australia's wheelchair dependant community.

Furthermore, as with demand for traditional taxis, there are peaks and troughs in demand for WAT. Between 8:15 and 10:00 am and 2:30 to 4:00 pm demand for school and similar services means that the waiting times for WAT increase. This is unavoidable and, as noted above, is common at times across the entire industry.

In many centres, outside of such period, the response times for WAT bookings are broadly of the same order as for the traditional taxi market.

Another important factor that can compromise the booking service provided by the taxi networks is the growing trend for many wheelchair dependant passengers to make direct bookings with individual WAT operators/drivers.

It is appreciated that the personalised service that such arrangements can deliver would be highly valued by these passengers. However, as this practise continues to grow, it compromises the overall efficiency with which the WAT fleet can respond to bookings.

With many WAT drivers committed for much of their time on directly booked work, then it will mean that the radio networks end up becoming, in effect, the service of last resort. As a consequence, resources available to respond to network bookings decline and waiting/response times increase.

Nor does this unavailability become limited to the immediate period of the directly booked job. Drivers will be unwilling to take work before hand where they consider that this work could leave them unable to fulfil their directly booked services.

So the inherent advantage of network bookings being able to offer the work to the nearest available WAT is being undermined to the detriment of many wheelchair dependant passengers.

Unfortunately the all too common response is for such passengers to join the process to seek to make direct bookings with identified WAT drivers/operators, thus exacerbating the problems for the networks and those seeking to make bookings through the networks.

We are also concerned that the examination of the role of the taxi industry in supporting the disabled community is at risk of becoming one-dimensional. The focus, which is undoubtedly extremely important, of providing personal transport access to the wheelchair dependant segment of the community is not the sole issue confronting the taxi industry in meeting the needs of those people with disabilities.

It is just as important that many of those people with disabilities find it extremely difficult to use many WAT vehicles and are better served by the more conventional vehicles that comprise the majority of the taxi fleet. For example many customers don't like travelling in WAT including:

- passengers with a sight impairment
- passengers who have had hip replacement as they generally prefer to slide into a sedan
- elderly passengers as they prefer to sit down into the cab rather than climb up into a WAT or be loaded via the hoist.

Therefore there is a need to maintain a balance when assessing the overall service performance of the taxi industry in meeting the travel needs of the disabled community.

ATIA had also hoped that the Commission would offer some comment on the issue of the location of tactile identifiers on the external body of passenger doors. While we are continuing to pursue this issue with the key stakeholders, encouragement by the Commission to deliver solutions that are both practical and give priority to safety would be appropriate.

There are a range of the Commission's finding and recommendations on which ATIA wishes to make specific comments. They are:

- Draft Recommendation 10.2

  By proposing that 'community wide benefits and cost' should be taken into account in assessing unjustifiable hardship defences the Commission should explain how such a provision would operate.

  If a business demonstrates that a proposed action imposed an 'unjustifiable hardship' on that business, then all the community benefits in the world won't alter the impact on the business by themselves.

  If there was a specific direct link to provide an appropriate level of compensation to the business then taking community-wide benefits and costs would have some relevance.

  Without such a link, which would presumably have to be backed by Government funding, nothing would alter the impact on the substance of the business' claim of 'unjustifiable hardship'.

- Draft Findings 11.3, 11.9,
- Draft Recommendations 11.2, 11.4.

ATIA has grave reservations about the thrust of the Commission's findings and recommendations relating to complaints.

Overall it was acknowledged that complaints under the DDA have declined since the legislation was introduced in 1993. Complaints are now running at just under 500 pa with very few (around 4%) relating to access to premises which includes public transport.

The Commission appears to base its view on reducing court costs for complainants on the basis that these costs are a major factor in complaints not being pursued, ie:

- 26% of complaints that are not conciliated are dropped for this reason
- 30% of settled complaints have left the complainant dissatisfied but were accepted because of the potential risks in initiating court action.

These percentages are probably not unrepresentative of commercial disputes generally where court costs are a major factor in people settling for less than their ideal outcome.

In general it could be expected that both parties would view a conciliated settlement as less that satisfactory in terms of their original expectations. Therefore the fact that some 30% of complainants who settle are dissatisfied should not by itself be a compelling argument to initiate groundbreaking changes.

Implementation of arrangements where potential complainants are protected from exposure to the legal costs they impose on defendants and interest groups and/or HREOC can initiate complaints opens up much greater risks of businesses being subject to what would be little more than commercial blackmail.

It is not too difficult to imagine someone with a real or imagined grievance approaching the 'offending' business with a demand for compensation backed by the advice that 'it costs me next to nothing to take the matter to Court but how much will it cost you?'

Such power would be better understood and applied with greater impact the more organised and articulate is the complainant.

In order for there to be a reasonable basis of fairness, at the very least, if there are circumstances where the complainant is protected from having costs awarded against them, then such arrangements should equally apply to defendants in such cases.

Similarly expanding the basis on which advocacy groups or HREOC can initiate complaints should be assessed with the greatest caution. Once established such "rights" would be virtually impossible to revoke.

Accordingly if it is decided that some expansion of powers should be granted, it should only be subject to review and approval by an external party.

For example, If HREOC was to be given such powers it should be subject to HREOC establishing to the Federal Attorney – General's satisfaction that initiation of the complaint was of sufficient importance to be in the national interest.

Our strong preference, however, is that such powers should not be created.

While the incidence of complaints made under the DDA against taxi operations is very low, there are cases that demonstrate the considerable costs imposed on business. These costs are incurred regardless of the rights or wrongs of the complaints made against the business operator.

Inevitably as complaints are relatively few, no individual taxi business has the in house expertise to ensure that they are fully aware of the current requirements and obligations that they face as part of doing business.

Consequently it is virtually inevitable that outside expertise must be engaged to provide assistance in addressing each complaint. So, as the experts are briefed on the circumstance of each complaint, the costs mount - not just the obvious costs that are incorporated into the expert's invoices but also the internal costs as critical management time is lost from the hands on operation of the business.

A major metropolitan network advised that in one case initiated by an individual that has so far proceeded to the Federal Magistrates' Court, its legal costs have exceeded $76,000, with the risk of escalating costs depending on the outcome of the case and any subsequent appeals.

Industry members have already had experience of complainants seeking either preferential treatment and/or 'financial assistance' where the complainants believe they have some 'leverage' over the business. Anything that will tilt the balance further in favour of complainants towards a universal situation where businesses are 'presumed guilty until proven innocent' can only lead to greater numbers of these types of complaints.

Overall ATIA recognises that the Commission must tread a fine line between identifying steps that will theoretically improve compliance with the DDA and what can be effectively delivered by businesses while they are still able to remain viable. We fear that in some cases, as discussed above, the recommendations of the Commission have the potential to impose intolerable burdens on businesses.

We would welcome the opportunity to discuss the comments with the commission.

John Bowe
President