Disability Framework for Action
2018-2020
Submission by the Anti-Discrimination Commissioner (Tas)
June 2017
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(the office of the Anti-Discrimination Commissioner)

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Introduction

Thank you for providing me with an opportunity to contribute toward the development of the Disability Framework for Action 2018-2020.

The DFA is a critical policy document governing the Tasmanian Government’s approach to addressing issues of importance to people with disability and I commend the Government for continuing to give these matters priority.

Much has changed since the original DFA was released in 2005. In some areas we have seen significant advances, much of which has been driven by the rights based approach underpinning the original document. Sadly in other areas there is still much to do.

Over recent years my office has played a significant role in helping to address many issues that remain on the Government’s agenda. This has resulted, I believe, in a clearer understanding of the work that we need to do to ensure that all Tasmanians with disability are treated equitably and fairly.

Many of these changes remain to be implemented in practice.

I am mindful also that we are entering a new phase in our approach to the way in which services are provided to disability as the roll out of the National Disability Insurance Scheme (NDIS) gains momentum. The implementation of the NDIS will present challenges for all agencies across both specialist and mainstream services.

The following outlines areas where I consider the DFA should underpin those efforts.

Please contact me if you wish to discuss any matters further.

Sarah Bolt
ANTI-DISCRIMINATION COMMISSIONER (TAS)

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Framework for Change

Since the adoption of the first Disability Framework for Action actions by Government and Agencies has been underpinned by a rights based approach to addressing the needs of people with disability in Tasmania.

This approach is a critical to determining the work that must be done to ensure that people with disability are fully included within the Tasmanian community.

The arrangements in place to the implement the DFA drives important change in the way in which Agencies develop their plans and priorities and I strongly support the continued adoption of this approach.

A rights based social model of disability

The rights based model adopted in the DFA reflects the principles set out in the United Nations Convention on the Rights of People with Disabilities (CRPD) ratified by Australia in July 2008.¹

The CRPD gives specific effect to the universal human rights obligations set out under core human rights instruments to which Australia is a party, including the Universal Declaration of Human Rights, the International Convention on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.

Together these instruments promote and protect the rights of all citizens, including people with disability, and provide protections and mechanisms to ensure that the human rights of people with disability are recognised.

Importantly, the CRPD also articulates a range of obligations and legal duties which, if implemented, will ensure that the rights of people with disability are realised, for example:

- **Article 9** requires that public spaces and buildings be accessible to persons with disabilities; and that transport and information is available on an equal basis with others.
- **Article 12** requires that appropriate measures are put in place to provide access to the support people with disability may require in exercising their legal capacity.
- **Article 13** requires parties to ensure effective access to justice for people with disability on an equal basis with others, including through the provision of appropriate procedural adjustments.
- **Article 15** requires parties to take effective measures to ensure that people with disability are prevented from being subjected to torture or cruel, inhuman or degrading treatment or punishment.
- **Article 19** recognises the equal right of people with disability to live in the community, with choices equal to others.


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- **Article 20** provides a right to personal mobility and requires countries to take effective measures to ensure people with disability enjoy the greatest possible independence. It also requires that people with disability and are provided with the mobility aids, devices, assistive technologies and other forms of assistance (including intermediaries) necessary at an affordable cost.
- **Article 23** provides measures to eliminate discrimination in relation to matters relating to marriage, family, parenthood and relationships.
- **Article 24** recognises the rights of people with disability to education in inclusive settings.
- **Article 25** accords people with disability the right to the highest attainable standards of health care.
- **Article 27** recognises the right of people with disability to work on an equal basis with others.

Many of these obligations reflect areas identified for action within the *National Disability Strategy* and the *Disability Framework for Action*.

They should also remain integral to the further development of the *Disability Framework for Action 2018-2022*.

**Compliance with Anti-Discrimination Protections**

Compliance with anti-discrimination protections at both State and Commonwealth levels also underpins the *Disability Framework for Action*.

The *Anti-Discrimination Act 1998 (Tas)* (ADA) provides that it is unlawful to discriminate against a person on the basis of disability in certain specified areas of activity.\(^2\) It also prohibits a person from engaging in conduct which offends, humiliates, intimidates, insults or ridicules another person on the basis of disability\(^3\) or inciting hatred toward, serious contempt for, or severe ridicule of a person or group of people on the grounds of disability.\(^4\)

There is no requirement under the ADA for the disability to be permanent. Nor is the protection afforded limited to Tasmanians. It applies to any person who is discriminated against in Tasmania or by a person or organisation in Tasmania.

Discrimination prohibited under the ADA includes both direct and indirect discrimination. Under section 14 of the ADA:

\(^2\) *Anti-Discrimination Act 1998 (Tas)* s16(k) identifies disability as a protected attribute. Section 22 outlines relevant areas of activity.

\(^3\) *Anti-Discrimination Act 1998 (Tas)* s17(1)

\(^4\) *Anti-Discrimination Act 1998 (Tas)* s19(b)

(2) Direct discrimination takes place if a person treats another person on the basis of any prescribed attribute, imputed prescribed attribute or a characteristic imputed to that attribute less favourably than a person without that attribute or characteristic.

(3) For direct discrimination to take place, it is not necessary—

(a) that the prescribed attribute be the sole or dominant ground for the unfavourable treatment; or

(b) that the person who discriminates regards the treatment as unfavourable; or

(c) that the person who discriminates has any particular motive in discriminating.

Indirect discrimination is described in section 15 of the ADA:

(1) Indirect discrimination takes place if a person imposes a condition, requirement or practice which is unreasonable in the circumstances and has the effect of disadvantaging a member of a group of people who—

(a) share, or are believed to share, a prescribed attribute; or

(b) share, or are believed to share, any of the characteristics imputed to that attribute more than a person who is not a member of that group.

(2) For indirect discrimination to take place, it is not necessary that the person who discriminates is aware that the condition, requirement or practice disadvantages the group of people.

Equivalent provisions exist in the Disability Discrimination Act 1992 (Cth)(DDA).\(^5\)

Under the ADA an exception applies where a respondent can demonstrate that the discrimination was ‘reasonably necessary’ to comply with ‘any law of this State or the Commonwealth’.\(^6\) An exception also applies where the discrimination is for the purpose of carrying out a scheme for the benefit of a group which is disadvantaged or has a special need because of a prescribed attribute\(^7\), or is through a ‘program, plan or arrangement designed to promote equal opportunity for a group of people who are disadvantaged or have a special need because of a prescribed attribute’.\(^8\) The DDA also provides an exemption for special measures aimed at ensuring people

\(^5\) Disability Discrimination Act 1992 (Cth) ss 4, 5, 7 and 24

\(^6\) Anti-Discrimination Act 1998 (Tas) s24

\(^7\) Anti-Discrimination Act 1998 (Tas) s25

\(^8\) Anti-Discrimination Act 1998 (Tas) s26

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with disability have equal opportunity with others and have access to facilities, services or opportunities to meet their particular needs. 9

Complaints

The number of complaints on the grounds of disability lodged with the Tasmanian Anti-Discrimination Commissioner is a key indicator identified in the current DFA as a basis for monitoring implementation of the DFA.

Table 1 provides information on the number and type of disability complaints received by Equal Opportunity Tasmania since 2013-14.

It demonstrates that complaints alleging unlawful discrimination or other forms of prohibited conduct on the basis of disability continue to be the highest source of complaint to the Anti-Discrimination Commissioner. They are also a significant source of complaint at the Commonwealth level. 10

This is a trend which has been evident since the introduction of the ADA.

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<td><strong>Total complaints</strong></td>
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<td><strong>Total complaints alleging offensive, insulting, intimidating, humiliating or ridiculing conduct</strong></td>
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<td><strong>Total complaints alleging incitement to hatred, serious contempt or severe ridicule</strong></td>
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We caution, however, about the limitation of using complaints data as a benchmark for gauging implementation of State obligations under the DFA. Whilst EoT remains committed to reducing

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9 Disability Discrimination Act 1992 (Cth) s45

10 In 2015-16, 37% of complaints to the Australian Human Rights Commission were lodged under the Disability Discrimination Act

11 Disability was added as an protected attribute to s 17(1) of the ADA from 1 January 2014

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discrimination and related prohibited conduct in the Tasmanian community, the number of complaints received by EoT is not necessarily indicative of discrimination within the Tasmanian community. A reduction in the number of complaints may, for example, result from reduced awareness of rights and mechanisms for redress. At the same time improved understanding of avenues for the protection of rights (through training, for example) may lead to a significant increase in the number of complaints lodged.

Nevertheless we consider that the level of discrimination complaint provides an important indicator of progress toward equity for people with disability within the Tasmanian community and support its continued use as a key indicator of progress toward DFA objectives.
Disability Ready and Responsive Services

The introduction of the National Disability Insurance Scheme (NDIS) represents a major change to the way in which services for people with disability are funded and delivered. Once fully implemented it will give participants more choice and control about the services and supports they can access through individualised planning and funding and impact on the ability of recipients to take part in everyday activities.

The NDIS is expected to provide support for approximately 10,600 Tasmanians.

Ensuring that people with disability receive the level and standard of individualised support they require to enable them to fully participate in their community must remain a crucial priority under the Disability Framework for Action during the transition to the new scheme. This includes arrangements for the coordinated delivery of services for people requiring both disability services and other service responses.

It will also be critical to ensure that mainstream services are better able to deliver non-discriminatory services to people with disability, including to those who do not meet the access requirements for the NDIS scheme.

It is a central underpinning of the NDIS that people with disability are serviced by mainstream systems where these are available. The Council of Australian Governments Principles to Determine Responsibilities of the NDIS and Other Service Systems provides an important statement of the division of responsibility between services that will be provided under the NDIS and those that will remain the responsibility of mainstream service providers as part of their universal service obligations. 12

However many people with disability encounter defensive responses when they seek to access services. They are left feeling they are the problem and that they do not have a right of access or have to pay for ensuring the services they receive are accessible. This is entirely inconsistent with discrimination law obligations.

Improving the responsiveness of mainstream services so that they are able meet the needs of people with disability in a non-discriminatory manner will be critical to ensure that all services meet their service obligations. This includes providing reasonable adjustments to services as required under both Commonwealth and State discrimination law.

For this to occur flexible service delivery must become a core value and practice of all State agencies, particularly those with front-line contact with the population.

12 Council of Australian Governments 'Principles to Determine the Responsibilities of the NDIS and Other Service Systems' available at www.coag.gov.au

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It is this aspect of the delivery of services to people with disability that we consider should be a priority for the State Government Agencies under the Disability Framework for Action in the forthcoming period.

The idea of disability ready and responsive services encompasses three key aspects. Firstly, organisations need to be pro-active in identifying and removing potential barriers facing people with disability accessing their services and having equality of opportunity in that access. Secondly, organisations need to develop knowledge and skills to be able to respond appropriately and inclusively when a person with disability seeks to access their services. Thirdly, all staff should be made aware of the procedures and a culture of service flexibility embedded in the agency (or agencies).

Taking time to identify barriers to the delivery of services to people with disability means that organisations take a planned approach to the removal of those barriers. By doing this, organisations can work out which barriers need to be removed as a priority and to allocate resources over an identified period to manage the removal of barriers. In many cases this may mean looking at ways in which reasonable adjustments can be made to services to meet the needs of people with disability. Not only does this mean physical and other barriers that prevent access to buildings or places where services are provided, it also means looking at where there may need to be changes to the way in which services are delivered to enable all people to be able to access them. This will apply across all service areas from the delivery of education services, justice services, housing, community services and transport. Whether it is the provision of materials in alternative formats that allow service users to understand the services that are being provided or identifying ways in which reasonable adjustments are made to the delivery of the service itself.

Importantly, it means staff and organisations must be given the necessary knowledge and skills to be inclusive of people with disability in their service delivery practice. This may include, for example:

- knowing how to recognise disability;
- producing information in a variety of relevant formats;
- having appropriate signage;
- using appropriate, inclusive language; and
- ensuring that buildings and services are accessible.

The planned approach to identifying and removing barriers and identifying where and how reasonable adjustments can be provided should include a mechanism for consulting with different disability groups and involving them in identifying priority actions to optimise accessibility. This approach is identified in the pro-active action planning mechanism under the Disability Discrimination Act 1992 (Cth).  

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Such work is not likely to identify all barriers or be able to achieve services that are completely free from all barriers. Rather, it is a process for identifying major and predictable barriers for particular disability types. It is about identifying systemic barriers that will predictably affect service users with disability.

Agencies and their staff also need to be supported to develop (or increase) their capacity and skills to respond appropriately to a person with disability who requires an individualised response to experience barrier-free access to services.

Organisations that are disability responsive model inclusive attitudes and preparedness to make further adjustments to meet individual needs arising from disability. Such flexibility needs to be built pro-actively. This would include, for example, having basic knowledge about alternative and augmentative communication systems; and/or having the capacity and flexibility to adjust service delivery arrangements to suit the needs of clients (eg, longer interview times, accessible facilities, arrangements for the inclusion of advocates or communication assistants) where required.

The introduction of flexible service arrangements includes sensitising front-line staff and systems to the needs of people with disability and eliminating negative attitudes and stereotypes.

At a whole of government level we consider there is a pressing need for Government to provide information, advice and training to reinforce universal service obligations to assist in meeting these needs.

At a minimum, we consider that all service providers should be provided with appropriate training to understand this requirement. This could include, for example, a well-developed mandatory whole of government core training module, developed in collaboration with disability stakeholders, aimed at improving the ability to identify whether a client or customer has a disability; an understanding of major disability types and major and predictable impacts that this may have on the way in which they interact with services; and ways in which capacity to address these needs can be improved.

Equipping service providers to recognise the presence of disability at first point of contact and have a broad understanding of adjustments that may be needed has the capacity to significantly improve the way in which people with disability interact with service systems and will contribute to developing a culture of inclusive service delivery.

**Areas for Action for inclusion in the Disability Framework for Action 2018-2022 to promote disability ready and responsive services**

1. Ensure that people with disability receive the level and standard of support they require to enable them to fully participate in their community.

2. Audit current service delivery approaches and practices to identify barriers to equal access to services and develop plans to remove those barriers.

3. Achieve and maintain relevant skills and resources (including the development of a whole of government training module and links to professional supports) needed to ensure that services

are both as inclusive as possible up front and responsive to the individual or particular needs that arise as a result of disability.

4. Develop procedures for identifying and assessing the needs of people with disability as they come into contact with services and throughout their ongoing interaction with those services.

5. Ensure protocols and procedures are understood by all relevant staff; that they are embedded into the culture of outputs and agencies; that they are well understood and supported by leaders across Government and Agencies; and that capacity is ensured to implement them in a timely, consistent and appropriate way.
Access to Premises

Access to buildings and public places remains critical to improving the capacity of people with disability to participate meaningfully in their community.

The need for improved accessibility to buildings is growing as Australia’s population ages and greater premium is placed on facilitating equitable access to services within the community. The roll-out of the National Disability Insurance Scheme (NDIS) will see these demands grow at a faster rate in coming years with the demand for full inclusion of people with disability in social, economic, sporting and cultural life.

The Disability (Access to Premises – Buildings) Standards 2010 (the Premises Standards) came into effect on 1 May 2011.

The objective of the Premises Standards is to provide improved accessibility to relevant buildings (and the facilities and services provided in those buildings) for people with disability and enhanced certainty to the building industry around accessibility requirements for new or upgraded buildings.

The Premises Standards provide a minimum benchmark against which improved accessibility to premises for people with disability can be measured. The Premises Standards provide a level of certainty around the accessibility features of new buildings and a measured approach to the upgrade of existing buildings.

They form an essential mechanism for meeting Australia’s commitment under the United Nations Convention on the Rights of Persons with Disabilities.14

Whilst significant progress has been made in implementing the Premises Standards, continued effort is required to ensure people with disability are provided with dignified, equitable, cost effective and reasonable access to public buildings.

Of particular concern in Tasmania is the need also to ensure that the fit out of both new and refurbished buildings address and maintain the access requirements of people with disability.

To assist in this process, EoT recommends that the Disability Framework for Action require each Agency undertake access audits on Agency owned and or leased properties and develop a plan of action to ensure that buildings occupied or leased by them meet disability access requirements.

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Areas for Action for inclusion in the Disability Framework for Action 2018-2022 to make buildings and public places more accessible:

1. Ensure all facilities are accessible to persons with disability (across all disability types) using the Premises Standards as the benchmark for accessibility and applying the Standards not only to building but also to fit-out.

2. Audit all existing facilities and establish building upgrade plans to address access deficits as far as possible.

3. Ensure all new fit out of facilities (either new buildings or newly used by the relevant Agencies or newly refurbished) addresses the access requirements of people with disability.

4. Improve education and training to raise awareness and understanding of the content and scope of Premises Standards and how they apply to both new and existing buildings.
Employment

Accessing meaningful employment opportunities remains a significant barrier for people with disability in Tasmania.

Of Tasmanians with a reported disability aged 15 years and over, 17.7 per cent are wage or salary earners and a further 3.4 per cent derive their income from business. The majority, however—62.3 per cent—are reliant on a government pension or allowance as their primary source of income.

The workforce participation rate for those with a reported disability aged 15–64 years and living in households is 45.8 per cent, compared with 81.3 per cent for those with no reported disability. The unemployment rate for those with a reported disability is 14.9 per cent compared with around 6.6 per cent for the population as a whole. This is the highest unemployment rate for people with disability across all states and territories.

Low employment rates mean the majority of Tasmanians with a reported disability have low income, with over 37 per cent reporting gross income in the lowest income bracket compared to 14.6 per cent for those with no reported disability, and over 60 per cent of people with a disability report their household income in the two lowest income brackets.

There are many factors contributing to the low employment rates of people with disability. These include lack of support from employers, slow implementation of national disability standards, and failure to provide people with disability with adequate opportunities to gain meaningful work. Workplace injury also remains a barrier to ongoing labor force participation in some instances.

Government bodies have an important role to play in demonstrating best practice and should be central to any renewed efforts to improve employment levels for people with disability. The release of the State Service Diversity and Inclusion Framework 2017-2020 is significant in this regard.

Increasing the employment levels of people with disability requires a comprehensive approach including:

- flexible recruitment processes;

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15 Australian Bureau of Statistics 2012 Survey of Disability, Ageing and Carers (Cat No. 4433.0, 2012) State Tables for Tasmania Table 8.2.

16 Ibid.

17 Ibid Table 9.

18 Ibid Table 8.2.


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- the provision of reasonable adjustments to enable jobs to be tailored to individual capabilities and needs
- effective training for all people involved in recruitment to ensure they understand the way in which inappropriate recruitment practices can create barriers to employment and employment opportunities
- further and continuing improvements to accessibility of communications, information technology, and physical environments of workplaces

Systemic barriers associated with inaccessible buildings, information and technologies continue to present a major barrier to the recruitment of people with disability. It is not uncommon for example for organisations to only consider the accessibility of their work premises when they are concerned about members of the public visiting. This indicates a lack of awareness that a person with disability may well seek to become not just a visitor, but an employee.

As outlined in an earlier section, this means that Agencies need to continue to adhere to the requirements under the Premises Standards in terms of both accessibility and fit out.

Where barriers to employment remain, however, there is a need for the implementation of effective workplace adjustment policies and procedures, including procedures to enable individual accommodations to be easily transported across and within Agencies as needed.

Full implementation of the NDIS may act to shift some of the intractable problems associated with employment of people with disability through reform in the way in which assistance is provided. However employers will continue to be responsible for the provision of work-specific support in line with requirements under discrimination law, including workplace modifications, work-specific aids and equipment and transport within work activities.\(^20\)

However, changes arising from the NDIS are unlikely to be sufficient unless there is a significant change in awareness about disability and to the attitudes and behaviours of employers to the recruitment of people with disability. Both conscious and unconscious views about people with disability strongly influence the likelihood of a person with disability being seriously considered for employment.

While many organisations strive for a diverse workforce, the reality is that most fall short of this ambition particularly when it comes to hiring and retaining people with an illness or disability.

The culture of many organisations continues to undervalue diversity and exclude from the workforce those who are perceived as ‘different’, including those with disability. As identified by the Office of the State Service Commissioner, this may be due to a range of factors, including.\(^21\)

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- Perceptions that employing people with disability may involve higher costs to the organisation, including the need to make expensive adjustments
- Assumptions that people with disability are less capable of performing satisfactorily, especially in pressured working environments that are short on resources, and may require extra support to do their job
- Lack of confidence in (and awareness of the needs of) people with disability, including a fear the employee might be easily offended and/or behave inappropriately and/or underperform
- A tendency for hiring managers to focus on the ‘type’ of disability rather than the particulars of an individual’s condition, work capacity and support needs
- Lack of interest and direction from senior management and hiring managers to making a commitment to the employment of people with disability
- The existence of recruitment hurdles, such as (potentially discriminatory) job requirements and conditions and recruitment processes that are not accessible in both communication and physical terms
- Limited understanding of the arrangements and funding attached to supporting the placement of people with disability in employment
- A lack of commitment, funding and/or administrative flexibility to allow for the creation of specific roles for people with disability by combining unfulfilled or under-resourced work tasks

At the same time, there is low recognition of the fact workers with disability can be more effective, loyal and reliable; often have low rates of absenteeism and are more innovative in looking for ways around problems because of their day-to-day experience of doing so in a broad range of circumstances.

It is important that focussed effort is directed at changing the perceptions of employers and shifting negative or uninformed attitudes towards employing people with disability. Whole of government training would assist in this regard, as will access to training and other tools to enable employees to recognise and address unconscious bias as provided for under the Diversity and Inclusion Framework 2017-2020.

At the same time, effort is required to ensure all government agencies remove barriers in recruitment processes that have the potential impede the recruitment of people with disability.

Recruitment practices often favour candidates without disability because of aspects of the actual process that create barriers to the recruitment process and/or the inclusion of requirements that create barriers to employment.

Non-essential criteria should not be included as part of the job description. The focus should be on what needs to be done rather than how or when the work should be done or what level of education previous incumbents have had. Such requirements represent real barriers to the recruitment of people with disability and they are so widespread they contribute to discriminatory recruitment practices.

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The provision of recruitment information in inaccessible formats, for example, creates a barrier in the recruitment process itself. Selection criteria requiring an applicant to hold a driver's licence may also create a barrier to employment.

A review by the Tasmanian Office of the State Service Commissioner in 2012 into the recruitment of people with disability into the State service, found that agencies advertising positions often included a number of requirements that created barriers to people with disability. This included:

- statements of duties not reflecting the inherent requirements of the job;
- statements of duties specifying how outcomes are to be achieved rather than what is to be accomplished; and
- specification of requirements which are less likely to be met by a person with disability.

The most common characteristics causing concern were:

- specified hours of work (whether the number or the span of hours);
- health and fitness standards;
- the requirement to hold a specific education qualification; and
- the requirement to hold a driver's licence (and similar).

Discriminatory practices at the recruitment stage are a significant source of complaint to Equal Opportunity Tasmania.

Case examples

Z alleged he was unsuccessful in his application to work because of his vision impairment despite being cleared by a medical professional to undertake required tasks and having successfully demonstrated his ability to do the job in previous employment.

W alleged disability discrimination because he was not offered a position after disclosing in a pre-employment psychometric test that he had taken medication for a psychological condition.

P alleged she was not offered employment because of a back injury he alleges would not prevent him from doing the required work.

K alleged that, after being initially told he was successful in securing a position, he was told he was not suitable after a medical assessment disclosed he had a spinal fusion. K alleged this action was discriminatory as his injury would not have prevented him from performing the job for which he was applying.

S alleged he was required to undergo psychometric testing as part of his application for a position. He indicated, through completing the test, he had, at one stage, had suicidal thoughts. He was later informed he had 'failed' the test and would not be considered suitable for employment. S alleged disclosure of past suicidal thoughts contributed to him not getting the job.
G alleged he participated in an induction program for a new position and was to also have a medical examination. The medical examination was cancelled and he was told he was no longer required because he has depression and was seen as a risk.

E alleged he applied for a position within a government agency. On the application form he advised he would require a workplace adjustment to enable him to complete the required tasks. The contact officer for the position asked him why he was even applying and told him he would not get the job.

It is clear from these and other experiences that greater effort is required to ensure that employers adopt more inclusive recruitment practices. This should include:

- review of job requirements to ensure they reflect the inherent requirements of the job
- review of recruitment processes, including communication, pre-recruitment and pre-employment testing to identify any potentially discriminatory barriers and ensure all potential restrictions on equality of opportunity are removed
- training of all selection panel members to ensure they understand the employer’s obligation to consider all applicants on their merit and not exclude a person based on conscious or unconscious beliefs or perceptions about disability, and they understand the process for considering adjustments both in the recruitment process and in the workplace
- separation of consideration of recruitment process adjustment and workplace adjustment from the selection panel’s consideration of candidate merit
- a clear EEO statement in all job advertisements
- provision of communication supports at interview where these are required
- inclusion of people with disability on selection panels
- use of inclusive interviewing techniques

The commitment made under the Diversity and Inclusion Framework 2017-2020 to produce a series of toolkits will assist in this regard. Such guides should cover all stages of the recruitment and selection processes.

Return to work from injury and illness
Maintaining attachment to the workforce is also critically important to those who are injured or ill whilst employed.

It is evident from complaints and enquiries received by Equal Opportunity Tasmania that the response to employees returning to work after injury or illness is in many cases negative and often results in a loss of employment.

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Case examples

G alleged discrimination on the basis of disability when she was treated less favourably after returning to work after absence while in receipt of worker’s compensation. This included a significant change to her roles and functions and ongoing bullying and harassment.

D alleged she was told by a prospective employer she was unsuccessful in her application for a job after a referee advised of a previous worker’s compensation claim.

J alleged he was told he was not successful in getting a job he applied for because he had previously made worker’s compensation claims.

In Tasmania, for example, a 2015 report by the Auditor-General into the cost and management of absenteeism in the Tasmanian State service related to personal leave (which includes both sick and carer’s leave) indicated that personal leave is inconsistently and under-managed across the service.22

Of critical concern to the Auditor-General was the approach taken by Agencies to the management of staff back to work following long-term absence.

Early support and contact is essential to assisting people return to work from significant injury. Where long-term absences are not actively managed, the employee’s engagement with the employing organisation is reduced and this may lead to longer absences or disconnection from the labour force entirely.

This should include regular contact with employees who have been injured or have taken extended sick leave, and structured return-to-work arrangements that enable their work to be managed to suit their particular situation.

Areas for Action for inclusion in the Disability Framework for Action 2018-2022 to assist in improving employment outcomes for people with disability:

1. Promote, resource and implement on a whole of government level the Tasmanian Government Diversity and Inclusion Framework 2017-2020, including:
   a. Support for more inclusive recruitment processes;
   b. The provision of support to build inclusive workplaces; and
   c. Action to promote awareness of Agency responsibilities to support the workforce participation of people with disability.


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2. Address the employment impacts of workplace accidents and injuries.
Passenger Transport Services

The provision of adequate, affordable and accessible public transport underpins social inclusion. It is how people get to work, get to and from community events, get to meetings, go on holidays, go shopping and keep up their contact with friends and family.

Importantly, it is often the primary source of mobility for people with disability and others in the community such as the elderly who for various reasons are unable to drive or cannot afford the cost or upkeep of a private vehicle.

Of people aged over 5 years of age with disability living within households, 40.2% used public transport (1.6 million people) and whilst many of these can use that transport with little or no difficulty, many rely on transport networks that are able to take account of their particular needs.\(^23\)

In Tasmania, the situation facing people with disability seeking to travel independently is affected by the lack of alternative modes of transport. Motorised urban travel is largely restricted to private vehicles, public buses or taxi and ride-sharing services. Unlike many other parts of Australia, there are no urban trains or trams and few ferry services. Additionally a high percentage of the population live outside of urban areas and our relatively small population means that people have to regularly travel between urban centres to access key services and participate in work and community activities.\(^24\)

This means that it is even more critical that mass public transport networks, such as those operated by Metro, are accessible and provide the type of integrated service that is capable of meeting the needs of the fullest range of consumers.

Unfortunately, fully accessible transport services remain far from reality. Not only is there a long way to go to ensure that the agreed national transport standards are achieved, there are significant gaps in providing the type of end to end services that would make our public transport system truly accessible to all.

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\(^{23}\) Australian Bureau of Statistics, *Disability, Ageing and Carers, Australia: Summary of Findings, 2015* (Cat. No. 4430.0 released 18 October 2016)

\(^{24}\) According to the Australian Bureau of Statistics, *Regional Population Growth, Australia, 2015-16* (Cat No. 3218.0) released 30 March 2017, Tasmania has a highly regionalised and dispersed population with around 57 per cent of our population living outside the capital city. In addition, over 60% of Tasmania’s population live in socially disadvantaged regional areas and approximately one third of Tasmania’s population is reliant on government pensions and allowances (Australian Bureau of Statistics, *Government Benefits, Taxes and Household Incomes* (Cat No. 6537.0)).
As at July 2016, Metro reported having a fleet of 219 buses, of which 113 (51.6%) are compliant with the Transport Standards requirement for accessible public transport.\textsuperscript{26} The company report that this enables them to provide 59% of their services with accessible buses in 2015-16.\textsuperscript{26}

In addition, Metro will receive funding of $4.5 million per annum over the 2016-17 budget and forward estimates to deliver an accelerated replacement bus fleet. This funding, together with the additional $13 million received in 2015-16 as an equity contribution will be used to fund Metro’s bus replacement program over the next 3-4 years.\textsuperscript{27}

Whilst the number of accessible buses available to service general access routes has continued to grow and the commitment to new funding is welcome, one of the clear messages from stakeholders is that they cannot yet rely on the public bus system as their preferred form of public transport. People requiring physical access report that even where there is an expectation that a service will be accessible, it is can be the case that the bus supplied for the service on that route is not accessible, forcing the user to cancel travel plans, wait for another service or rely on Wheelchair Accessible Taxi services.

\textbf{The level of concern expressed by stakeholders suggests that progress toward the provision of a truly accessible public transport system has not measured up to expectation.}

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\textbf{What we have heard from Tasmanian stakeholders}\textsuperscript{28}

'If 55% of buses on each route were accessible, it would mean that every second bus would be accessible. I have clients who go to work in wheelchairs and they find that even on the most commonly accessed bus routes not every second bus is accessible. So they can't rely on the public bus system to get to work on time unless they travel an hour or more earlier than they need to and that is not an option if they are reliant on a support worker to get to work on time. As a consequence they are forced into using WATs and this is unsustainable as the customers are often working on productivity based wage rather than even basic wages. They are very committed to getting to work, but the costs become prohibitive.'

'No predictable timetabling that allows people with disability to plan their travel.'

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\textsuperscript{25} Metro Tasmania, Annual Report 2015-16 p 8

\textsuperscript{26} Metro Tasmania, Annual Report 2015-16 p 8

\textsuperscript{27} Metro Tasmania, Annual Report 2015-16 p 18

\textsuperscript{28} Information contained in this and subsequent sections are derived from a series of forums in March 2013 in both southern and northern Tasmania by Equal Opportunity Tasmania which sought the views of people with disability and older Tasmanians and their advocates about accessing public transport services.

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'Three different styles of accessible buses, not sure if they are trying to make up their minds about which buses they like. Been told the buses can't take scooters. I used to catch buses all the time from Claremont to the city. I got pulled off the bus one day and told I had to meet the CEO and was told I couldn't take my scooter on the bus because of safety standards. I transfer off it and they say I can't leave the scooter in the aisle. The driver does have to come down and assist (sometimes they get grumpy). The main reason is they can't provide one standard bus type which can accommodate all users. Some of the ramps do not allow for heavier wheelchairs. Every time they purchase a new style of bus there seems to be a problem. So now I have to ring up and see what type of bus is being used to see if I can get on it.'

'I know a story of two teachers who decided to investigate riding on a bus last week and it was the most nerve wracking experience of their lives. They couldn't understand the timetable even though they had a lesson the day before, they had money but there was no information about how much you had to pay, then there were steps up to the seats and the bus took off before they could sit down... it was like an amusement ride without the amusement.'

In addition, there is a lack of accessible information about timetabling.

A critical component of ensuring accessibility is access to service information.

There are two ways in which the communication of service information is critical to public bus and coaches services offering equitable services for people with disability:

- the provision of information about services in accessible formats; and
- the provision of the information about services that are accessible for people with mobility disabilities.

The inability to plan around regular accessible services creates particular problems for people with disability that have work and other commitments

The compliance timetable for transport information states that 100 per cent of general transport information was required to be accessible to people with disability by 31 December 2007.

Material available by various bus and coach service providers indicates that compliance with this standard has yet to be achieved in any meaningful way.

The availability of reliable travel information in accessible formats is critical to enabling people with disability to make travel plans and ensure that they are aware of those services that meet their needs. The absence of mechanisms for conveying travel information in accessible formats means that people with vision impairments, for example, have to go to significant additional effort to ascertain what services are available and when.

While apps and others ways of relaying real time information digitally may be one solution to this issue, it is important to recognise that not all transport users will have access to these formats or

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be confident in their use. Alternative means of accessing reliable and up to date information to enable successful journey planning will also be required.

Information available to transport users should also include information the environment surrounding the public transport infrastructure itself.

What we have heard from Tasmanian stakeholders

'I can't access the timetable if it is in print form or PDF. Where service information is provided online, information on timetabling has to be in accessible format.'

Reliance on internet based timetables excludes older people who do not have internet access.

'Changes to timetables and services are not communicated particularly well. Use small text or complex information may make it difficult for some users to know what is happening.'

'Not enough opportunities for pro-active planning in relation to accessible buses. Better to just go to the bus stop and wait.'

As well as having access to service information in accessible formats, people with mobility disability have a particular need for up to date and reliable information about which services on a route will be physically accessible.

While some service providers indicate that all services on a particular route are wheelchair accessible, passengers with mobility disability are in many cases required or advised to call in advance of their travel to check.

As a consequence, people requiring accessible metropolitan bus services are required to ring the bus company every time they wish to travel. For some users, phone communication presents its own particular problems (where verbal communication is impaired for example).

The effect of these arrangements is that passengers requiring wheelchair accessible services are required, as a matter of course, to do more than a person not requiring such a service, in that they must call the service operator to determine whether or not the service they wish to travel on will be accessible.

Because of this, many people with disability report that it impossible to plan ahead or to rely on buses as a primary form of transport.
What we have heard from Tasmanian stakeholders

'I've caught buses for many years and the timetable says the bus will be wheelchair accessible and then the bus that turns up doesn't turn out to be accessible and you have to wait another hour.'

'Is there a subsidy for having to ring up the bus company every time to check that the bus is actually accessible? It is costly for me to do so.'

'Even if there is a wheelchair accessible bus identified on the timetable you can't call and talk to a person because they won't understand me because of my disability. There was a proposal to have a text service to enable me to check but this has fallen by the wayside. I have made a complaint to Metro, but it hasn't been fixed. I didn't have this problem last year because the information was on the timetables, but they have taken the information off the timetables.'

'Sometimes the timetables are too hard to read (too small or not in an accessible format).'

'Some people find it easier to understand stop numbers and would find it useful if that information was on the timetable.'

'Twitter service to note bus is delayed (although sometimes it is after the fact).'

The requirement to pre-book to ensure that a wheelchair accessible vehicle is being used is also a common requirement with regard to coach services and non-metropolitan general access services. A number of bus operators provide a timetable that indicates that a route will be operated using an accessible vehicle, but require those wishing to use the service to pre-book.

EoT has been advised that in some instances despite the timetable indicating that an accessible bus is being used, in fact the vehicle used is not accessible. This prevents those who use wheelchairs from identifying accessible services by using the timetable alone, and means that people who have mobility disability are required to check for each journey whether the bus is accessible and in many cases book their journey in advance.

It is clearly arguable that the situation whereby passengers who have disability are required to pre-book in advance of other passengers and/or check with operators about the accessibility of every service disadvantages people with disability more than other people and, as such, is likely to be discriminatory.
What we have heard from Tasmanian stakeholders

'At least one long-distance coach company says that people who use wheelchairs must book earlier than other travellers.'

A number of other issues have also been raised by stakeholders.

The identification of set-down points is a major problem for passengers with vision impairment. People with vision impairment using bus or coach services will often rely on the driver to inform them when they are at or approaching their stop. Equal Opportunity has received representations suggesting this system does not work consistently and that, on occasion, passengers with vision impairment have had to undertake a repeat circuit of the route because their stop was missed.

In situations where it is not the usual practice to provide regular information to passengers regarding where they are on a particular journey, such as is the case in relation to bus services that follow a set route, there is a need to identify and implement specific arrangements to assist people with vision impairment. The approach used to make these announcements must be reliable in all circumstances and training of staff should include instructions on how to provide assistance.

What we have heard from Tasmanian stakeholders

'Key issue for people who are blind or vision impaired is that when they get on the bus they have to ask the driver to inform them when they are at their stop. We hear stories from people who have had to rely on this process ending up having to do two or three circuits to get to their stop or get off the bus much further along the route. Audio announcement on trains is a problem across Australia. These issues need to be looked at for all forms of transport.'

'As someone who is vision-impaired, it is important that bus drivers announce all stops. This informs blind and vision impaired traveller where they are on the route. Otherwise I don't know how far along the route I am and how far I have to go to get to my stop.'

'Need to look at how technology can assist with ensuring that bus stop announcements are made, possibly via implanting technology into bus stop poles that are triggered when the bus approaches.'

Some people with disability have raised safety issues in relation to wheelchairs being transported by bus or coach.

The lack of seatbelt, locking device or passive restraint system heightens the risk that a wheelchair user may be thrown or tipped from the chair. Reports received by EoT suggest that

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people in wheelchairs are sometimes reluctant to travel on buses because of the risk of being thrown out of their wheelchair due to the failure to provide adequate restraining systems.

Wheelchair users are also reluctant to use public transport because the manoeuvring area provided is too tight, making it difficult for them to turn their wheelchair to get in and out of the allocated space and the vehicle.

What we have heard from Tasmanian stakeholders

‘People have reported to me that they are really reluctant to use Metro buses because even if the bus is an accessible bus, the manoeuvring space is too tight and it is really difficult to move the wheelchair around on board.’

Stakeholders have also reported problems with drivers taking off before they are able to get safely seated and, in some cases, a failure to provide assistance to enter or leave the bus. Reports of drivers who ‘act like it’s a hassle’ remain all too frequent.

What we have heard from Tasmanian stakeholders

‘Some drivers act like it is a hassle to get the ramp out for wheelchair access.’

‘Drivers take off too quickly before passengers have had a chance to be safe in their seats.’

‘Attributes of a good bus driver: friendly, kind, good manners, safe and a good driver.’

‘You can get on a bus and sometimes the bus driver will just be off—whoosh—and it might mean that you fall over because you haven’t got to your seat.’

‘Drivers on the Metro buses don’t help you. If you ask for help, the drivers just grumble.’

Alterations to services

Stakeholders also report that alterations to bus routes (particularly as a result of government or operator fiscal restraint) can result in the nearest bus stop being a large distance away from where the person with disability lives. In situations where movement is restricted, a change of routes can mean that either the option of bus travel is ruled out or it is necessary to use WAT services to provide transport to the nearest bus stop.

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What we have heard from Tasmanian stakeholders

'Bus routes have changed to remove back-street routes that were more available for people with disability. People have often made decisions about where they buy their home based on the closeness to a bus stop. The route changes and this means that a person has to walk a lot further or use a WAT to get to the bus stop and taxis won’t pick up short jobs, this means that people are excluded.'

Bus stops and surrounding infrastructure
Accessibility of transport infrastructure such as bus stops continues to be an issue raised by people with disability.

Whilst the Tasmanian Government has recently introduced a Rural Bus Stop Upgrade Program to improve bus stops in rural areas and have committed to ensuring that all bus stops along major transport corridors will be compliant with the requirements of the Transport Standards, the number of accessible bus stops remains low. It is hoped that this initiative will result in the introduction of increased number of accessible bus stops and a broader focus on the areas surrounding these stops.

What we have heard from Tasmanian stakeholders

'Bus stops near retirement and aged care homes are not sufficient. Often they will have a seat on one side of the street but not on the other. There is a need to ensure safe pedestrian access to bus stops.'

'Lots of clients have bus stops that are not accessible in any way and so even if there is an accessible bus, they can’t use it. In the Clarence area, for example, there are some accessible public housing units (fabulous new housing, nearly all residents are in wheelchairs). But the footpath from that facility to the nearest bus stop is blocked by two poles: one an Aurora power pole and the other a light pole. I have had discussions with Council. They say they can’t do anything about the power pole. Need to look at where the bus stops are. Consider the whole of the built environment, not just the immediate infrastructure. Public authorities need to cooperate to ensure that services are fully accessible.'

'There needs to be information at bus stops that indicate whether the bus stop is for all people (including in accessible formats).'</n
'As far as I know there is only one accessible bus stop in Invermay. There is also one in John Street. Who is responsible for making sure the bus stop is accessible: in some places it is the

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local Council, some places it is the State government and in other places it is the transport service operator."

Areas for Action for inclusion in the Disability Framework for Action 2018-2022 to promote improved passenger transport services

1. Increase and improve accessible and affordable passenger transport services in urban and regional areas.

2. Meet the requirements of the Disability Standards for Accessible Public Transport 2002

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Whole of Journey Approach to Transport Planning

In addition to meet outstanding commitments under the *Disability Standards for Accessible Public Transport 2002* (Transport Standards), there is also a need to look at the way in which the transport system as a whole meets the needs of clients, including those with disability or other impairment.

To assist in this process the federal Department of Infrastructure and Regional Development has developed a draft *Whole of Journey Guide: A Guide for Thinking Beyond Compliance to Create Accessible Public Transport Journeys*. 29

The intention is that the Guide be adopted as a planning tool as a means of encouraging planners, designers and policy makers to think beyond compliance with the Transport Standards and focus on people's accessibility across their whole journey.

Jurisdictions such as Victoria have moved to incorporate whole of journey accessibility guidelines into their public transport action plans.

Victoria's *Accessible Public Transport in Victoria Action Plan 2013-2017* incorporates a whole of journey approach. Importantly, the Action Plan prioritises access outcomes and an integrated approach to service delivery. 30 Actions identified in the Plan are combined with the Government's commitment to compliance with the *Transport Standards*. These actions are embedded in the function of Victoria's transport agency and provision is made for progress toward implementation to be regularly reviewed and reported on publicly.

A plan of action that takes into account the sort of planning and adjustment required to implement a whole of journey approach is also required in Tasmania. Unless commitments of this nature are made it is unlikely that whole of journey approaches will be adopted or the relevant adjustments required to make journeys fully accessible put in place.

Agreed and enforceable commitments under a whole of journey approach developed with the involvement of all relevant stakeholders would assist in clearly establishing responsibility for funding and future maintenance, particularly of those aspects of the journey that are not strictly related to the responsibility of transport operators.

Some small steps have been taken toward a more integrated approach to transport planning in Tasmania.

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In June 2016, the Tasmanian Department of State Growth released a draft *Transport Access Strategy* for public consultation. The aim of the Strategy is to better integrate planning and transport services, particularly for disadvantaged Tasmanians who find it difficult to access transport to work, education, or services. The draft Strategy acknowledges that whilst regular bus services form the ‘spine’ of transport services in Tasmania, the bus network alone cannot effectively meet the needs of all Tasmanians. In doing so, however, the Strategy focuses on filling transport gaps particularly in rural and regional areas rather than making existing services fully accessible.

The Transport Access Strategy is also linked to two major transport corridor plans. The draft Main Road Transit Corridor Plan and the draft Greater Launceston Metropolitan Passenger Transport Plan include more focussed attention on ensuring that major transport routes are more accessible.

These plans include commitments to improve bus stop infrastructure; address issues associated with pedestrian connections to major some major bus stops; and improve passenger service information.

As outlined in Metro Tasmania’s submission on the 2012 Review of the Transport Standards, one of the main impediments to meeting the targets set out in the Transport Standards for bus stops is uncertainty about which entity has ultimate responsibility for funding upgrades. At the same time Metro raised concern that many of the bus stops lack suitable access paths, appropriate kerb and guttering and suitable waiting areas. A whole of journey approach would represent a significant adjunct to the investment transport service providers have made in the provision of accessible vehicles. After all there is little point in investing in accessible vehicles if gaps are evident in the system as a result of inaccessible infrastructure which may require the driver, for example, to help people with disability get on and off the bus.

Clearly there remains a need to integrate the needs of people with disability into public transport planning in a holistic way and at a whole-of-State level starting with a comprehensive audit to determine where there is a need for improvements to achieve an accessible journey. This must of necessity involve seeking the views of people with accessibility needs who wish to use the system.

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31 Tasmanian Government, Draft Transport Access Strategy (Department of State Growth, 2015)

32 Tasmanian Government, Transit Corridor Plan: Main Road from Glenorchy to the Hobart CBD: Draft for public consultation (Department of Infrastructure, Energy and Resources, June 2013)

33 Tasmanian Government, Public Consultation: Greater Launceston Metropolitan Passenger Transport Plan (Department of State Growth)

34 Metro Tasmania, Submission to the 2012 Review of the Disability Standards for Accessible Public Transport 2002 (Submission No. 15 of 8 April 2013)

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Areas for Action for inclusion in the Disability Framework for Action 2018-2022 to promote improved passenger transport services

1. Adopt and apply whole of journey approaches to improve the accessibility of transport services for people with disability across their whole journey.
Taxis and Ride-sharing Services

The provision of accessible taxi services is of critical importance to people with disability, both those with physical disability who use wheelchairs that cannot be safely transported in a conventional taxi vehicle and people with disability who have particular needs when accessing conventional taxi services.

EoT has worked over a considerable period of time with the taxi industry to ensure that the needs of vulnerable consumers are met. This includes convening a Taxi Access Working Group to identify issues related to taxi use by people with disability and propose improvements to ensure improved access and amenity.

Nevertheless access to taxi services continues to be an area of significant concern to people with disability.

What we have heard from Tasmanian stakeholders

There are a lot of hidden disabilities and people who have hidden disabilities are the users of non-maxi taxis on the whole. It is very difficult to get drivers of conventional taxis to assist. Unless you said when booking you are a person with disability, you can’t expect to get assistance. They treat you like everyone else in the community, when you may need assistance. This includes, for example, people with physical disability who can transfer from their wheelchair to a standard seat in a conventional taxi.

I have been refused service by the driver of a conventional cab on the basis that ‘we don’t take wheelchairs in these cars’. This is a particular problem for people who can transfer from their wheelchair to a standard seat.

Driver training: people with guide dogs – we quite often get reports that the person will book the taxi and then wait outside for the taxi and the taxi drives up, sees the guide dog and drives off.

Taxis don’t all have the tactile number identification tags. Generally that is only in braille where it does occur. Not in every taxi and not across Tasmania. Tasmania unique in terms of braille literacy as there is no braille training for people who lose their vision after they finish their schooling.

I went in a taxi once and I have taxi vouchers and I said ‘I can use these can’t I’ and the driver said no you can’t. I said ‘what are you talking about, I am sure that you can use them’.

Interstate travel is a minefield. If you are travelling with interstate vouchers, they are more likely to refuse (say 50% of the time and they often also refuse to call back to base).

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EOt's primary concern is to ensure that those providing taxi or hire vehicle services take into account obligations under discrimination law. The complex nature of the taxi industry in Tasmania, however, means that responsibility for meeting these standards is not always clear.

The industry involves multiple entity types including vehicle owners, accredited operators, licensed drivers, networks and licence plate owners. This means that it is difficult to ascertain in some circumstances which entities have what obligations. The inter-relationships between these entities are complex and not consistent and impact significantly on the ability to monitor compliance with discrimination law obligations.

Complexity is increased with the recent introduction of ride-sharing services.

The lack of standardised regulatory arrangements leads, in part, to a reliance on complaints under discrimination law to gauge the extent to which obligations under discrimination law are being met. For taxis, as for other transport modes, reliance on complaint data is not necessarily a good indicator of compliance as it relies on knowledge of and capacity and willingness to go through formal complaint processes. It is also affected, rightly or wrongly, by genuine fear by people with disability that services will be withdrawn or withheld from them if they complain.

Regulations governing the industry must ensure access and equity principles are met to ensure that services are available to all, including minimum accessibility service levels, whole of industry training requirements and obligations in relation to the carrying of assistance animals.

The following table sets out the minimum regulatory requirements EOt considers should be in place for all taxis and hire vehicle services.

The regulatory requirement is linked to the current obligations under either the Disability Standards for Accessible Public Transport 2002 or the Taxi Industry Regulations 2008 (Tas). Where no existing regulatory provisions are identified we consider this to be a gap in regulation that should be rectified.

<table>
<thead>
<tr>
<th>Regulatory Requirement</th>
<th>Existing Regulatory provision</th>
<th>Objective</th>
<th>Recommended approach</th>
</tr>
</thead>
<tbody>
<tr>
<td>Require the carriage of assistance animals</td>
<td>Taxi Industry Regulations 2008 (Tas) s57(5)(h)</td>
<td>Ensures that people with disability who are vision impaired or otherwise require the services of an assistance animal are able to travel with their animal</td>
<td>Retain</td>
</tr>
<tr>
<td>Obligation to pick up and set down as close as practicable to destination</td>
<td>No current provision</td>
<td>Meets appropriate standards of service quality for passengers who may have mobility issues.</td>
<td>Include requirement to pick up and set down as close as practicable to destination.</td>
</tr>
<tr>
<td>Provide reasonable assistance to passengers to enter and alight from</td>
<td>No current provision</td>
<td>A person with disability or mobility impairment due to age may require</td>
<td>Include requirement to provide reasonable assistance to passengers</td>
</tr>
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</table>

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<table>
<thead>
<tr>
<th>Service</th>
<th>Current Provision</th>
<th>Proposed Provision</th>
<th>Action</th>
</tr>
</thead>
<tbody>
<tr>
<td>vehicle, including assistance with mobility aids</td>
<td>assistance to make sure their aid is stowed in the vehicle and is made available once the destination is reached</td>
<td>entering and alighting vehicle.</td>
<td>Provide assistance to passengers with disability transferring luggage into and out of the vehicle and to a point where the person can obtain other assistance</td>
</tr>
<tr>
<td>Passengers to the delivered to destination following the most direct practicable route</td>
<td>No current provision</td>
<td>Provide assistance to passengers with disability transferring luggage into and out of the vehicle and to a point where the person can obtain other assistance</td>
<td>Include requirement to provide reasonable assistance with luggage.</td>
</tr>
<tr>
<td>Prohibit refusal to hire vehicle to passengers unless authorized by regulation</td>
<td>Taxi Industry Regulations 2008 (Tas) s57(2)</td>
<td>Protects passengers that may be vulnerable to exploitation because of lack of knowledge of most appropriate route</td>
<td>Retain</td>
</tr>
<tr>
<td>Operator to display tactile registration number on the exterior of the passenger door</td>
<td>Taxi Industry Regulations 2008 (Tas) s57(5)(a)</td>
<td>Prohibits services refusing to take passengers for discriminatory reasons</td>
<td>Retain</td>
</tr>
<tr>
<td>Non-discriminatory fare structure</td>
<td>Disability Standards for Accessible Public Transport 2002 Part 17, cl 17.7</td>
<td>Enables those who have vision impairment to identify the vehicle</td>
<td>Include requirement for tactile registration number to be fixed on the exterior passenger door of the vehicle to enable those who have a vision impairment to identify the taxi or hire vehicle.</td>
</tr>
</tbody>
</table>

Ensure no financial disadvantage on the basis of irrelevant attributes or characteristics. No additional charges. No differential fare calculation other than as permitted by Regulation.
<table>
<thead>
<tr>
<th>Category</th>
<th>Description</th>
<th>Recommendation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Transparency</td>
<td>Taxi Industry Regulations 2008 (Tas) s18(b)</td>
<td>Information about charges and fare structure to be made available</td>
</tr>
<tr>
<td>Accessible payment options</td>
<td>No current provision</td>
<td>Include requirements around the provision of payment accessibility</td>
</tr>
<tr>
<td>All drivers to have completed training in the provision of services to persons in wheelchairs</td>
<td>Partial: s58(1) refers to WAT drivers only</td>
<td>Safety of passengers that are mobility impaired and in need of special assistance to enter or depart vehicle</td>
</tr>
<tr>
<td>Complaints</td>
<td>No relevant provisions exist in regulations. However we understand that as part of the accreditation of operators of taxis in Tasmania, the responsible operator is to have a mechanism for customers to complain and keep a log of complaints</td>
<td>Requires operators to have an appropriate complaint system in place. Particular requirements to be placed on sole owner-operators</td>
</tr>
<tr>
<td>Penalties</td>
<td>No relevant provisions.</td>
<td>There is a need for appropriate penalties for instances where operators or their drivers fail to provide non-discriminatory services</td>
</tr>
</tbody>
</table>

Wheelchair Accessible Taxis
A number of representations have been made to EoT about the availability of wheelchair accessible taxis (WAT).

www.equalopportunity.tas.gov.au
In 2015-16, 83 WAT licences were on issue in Tasmania.\(^{35}\) Nevertheless there remain many areas in the State where limited or no WAT services are available, particularly in outlying areas. It has been the subject of media coverage from time to time in the last few years, including in May 2013.\(^{36}\)

Those requiring the services of a WAT indicate that there is effectively always a need to pre-book and, even when this is done, operators may be unable to make a WAT available at the required time. This suggests that the number and/or availability of WATs in Tasmania is insufficient to cater for demand.

What we have heard from Tasmanian stakeholders

Maxi taxi access: can’t get them in anywhere near the same response time as an ordinary taxi. Most people who use maxi taxis know that they need to book sometimes days or even weeks in advance. They know they will have to plan to travel and hour or even two to get to the event/meeting on time. There are not enough maxi taxis to meet the needs of the community. They might contact more than one provider and get knocked back for the booking because there are simply none available.

In some regions there is a lack of transport and no wheelchair accessible taxis (North West coast) and it is not because there isn’t the need or the people to use them.

Timeliness: taxis operators seem to feel that it is okay to turn up 10, 15 or 30 minutes late and, as a result, the person with disability misses an important appointment. This is even when the taxi has been booked well in advance.

Price difference between a standard taxi and a WAT in terms of fares.

The provision of free WAT licences does not, in and of itself, provide an incentive that is directly linked to increased transport provision for wheelchair users.\(^{37}\) Up to a point, the fact that there

\(^{35}\) Department of State Growth, Annual Report 2015-16 p33.


\(^{37}\) In Tasmania, there is an incentive to WAT drivers to pick up passengers reliant on WATs in the form of higher tariffs. The additional journey cost is currently offset for the passenger (up to a capped amount) for passengers who are members of the Transport Assistance Scheme. For more about this scheme and current work being undertaken to consider how to eliminate the potentially discriminatory effect of the higher tariffs for longer journeys, see Department of Infrastructure, Energy and Resources, Wheelchair Accessible Taxis: Review of Wheelchair Accessible Taxi (WAT) Fares and Subsidies, www.equalopportunity.tas.gov.au
are more WATs on the road does not necessarily equate to more availability for wheelchair users if there are other customers that drivers consider equally or more commercially attractive.

WATs are not restricted to providing services to customers with disability. WATs are taxis and they are permitted to provide taxi services to any passengers who wish to hire them. WATs can provide a wider range of services than standard taxis as they can transport larger groups of people and passengers with luggage that cannot safely be transported in a standard taxi. This can mean that there are particular routes, for example, airport transfers, that are equally if not more attractive to WAT drivers than bookings for passengers requiring a wheelchair accessible taxi.

In response to the Department of Infrastructure, Energy and Resources’ review of the WAT tariff arrangements EoT recommended that consideration be given to introducing for WAT licence holders a requirement to meet a minimum a specified service level of trips for wheelchair users. This could go some way to assisting in the achievement of compliance with the Transport Standards in respect of performance. An alternative would be a requirement that drivers give priority to bookings for wheelchair users, as is currently the case in NSW.

Regulation of prices

Independent mobility for people with disability often comes at significant cost, both to the individual (because of the reliance on taxis as a primary source of travel) and to Government (through the provision of transport subsidies).

Whilst changes to arrangements for the provision of taxi subsidies are likely to occur as a result of the introduction of the National Disability Insurance Scheme (NDIS), under current Transport Access Scheme (TAS) arrangements people with disability are eligible for a discount of 50% up to $25.00 for a non-wheelchair dependent person and 60% up to $30.00 for a wheelchair dependent person.

People with disability have, however, raised a number of concerns about the current arrangements:

- Differential fare structure: fares paid by people travelling in WATs in their wheelchairs (Tariffs 3 & 4) are higher than the fares charged by standard taxis (Tariffs 1 & 2)
- The imposition of a cap per trip on the subsidy which means that if a person reliant on a wheelchair undertake longer journeys the subsidy is no longer sufficient to offset the higher tariff

<http://www.transport.tas.gov.au/miscellaneous/wheelchair_accessible_taxis>. There is also a trip subsidy paid to the operator of a WAT service for every trip involving carriage of a wheelchair user.


www.equalopportunity.tas.gov.au
Pick up subsidies are paid to the owner/operator of the taxi licence and not the driver and may therefore reduce the incentive for drivers to pick up wheelchair-reliant travellers.

Of particular concern is the differential fare structure which raises the potential of discrimination. Tasmania is the only Australian jurisdiction where fares paid by people travelling in WATs are higher than the fares charged by standard taxis. However the detriment arising from the differential fare structure is, up to the level of the per-trip cap, mitigated by the provision of the taxi fare concession (subsidy) provided under the TAS.

Less prescriptive approaches to regulating fares may, however, risk the imposition of a differential fare structure for people with disability in circumstances where the service provider either does not want to take the fare or where they factor in additional timeframes for servicing the customer. Either of these outcomes would be inconsistent with discrimination law.

Market based mechanisms have the capacity to increase (in circumstances where services are scarce) or decrease (due to increased competitiveness) prices. It is not a foregone conclusion that price mechanisms for lead to better outcomes for consumers, particularly in circumstances where the customer requires specialised assistance.

Ride-sharing services
Uber, Lyft and other ridesharing services are not exempt from discrimination law. The definition of services under both national and State discrimination law is broad and the provision of booking services and the delivery of transport services would both be captured by the obligations under discrimination law. Section 104 of the ADA places obligations on organisations to take reasonable steps to ensure that its members, officers, employees or agents do not engage in discrimination or prohibited conduct.

Whilst Equal Opportunity Tasmania has no particular view on the issue of the liberalisation of the taxi market, we are concerned to ensure that any decision by Government to phase out taxi licensing regimes does not impact on the number and/or availability of WAT services.

The cost and availability of acquiring a standard taxi licence currently poses a major barrier to the entrance of new service providers. The existence of this barrier has been used as a basis for providing incentives to the provision of WAT services. Under current licencing arrangements, the number of WAT licences issued is uncapped and issued at the cost of processing and administration (around $150.00). The decision to uncap the number of WAT licences made available and provide the licence at minimal cost aims to provide an incentive for the increased provision of WAT services.

Our concern, therefore, is to ensure that incentives to the take-up of WAT licences continues and that the introduction of new service arrangements does not result in diminution of services to those who require specialised vehicles.
Accessibility
Model regulations made available by Uber include provisions requiring non-discrimination on the basis of disability.\textsuperscript{39} All drivers are to comply with this policy and are also required to comply with application laws relating to the accommodation of service animals. No additional charges are imposed for providing services to people with physical disabilities because of those disabilities. Passengers are also to be provided with an opportunity to indicate whether they require a wheelchair-accessible vehicle.

Notwithstanding this approach, in some markets where Uber has commenced operation it has also launched an app called UberASSIST which allows riders to request the provision of a vehicle that can accommodate folding wheelchairs, walkers and collapsible scooters.\textsuperscript{40} In circumstances where this service is offered drivers are required to undertake specifically designed training. UberASSIST rides are the same price as standard UberX rides.

UberASSIST vehicles do not have accessible ramps or lifts and therefore do not provide services to individuals who are unable to safely transfer out of a wheelchair into a conventional vehicle (ie, services currently provided by wheelchair accessible taxis).

From the description provided by Uber Australia, UberASSIST will be specifically targeted at passengers with folding wheelchairs, walkers and collapsible scooters: services currently provided by conventional taxi vehicles.

Our concern with this approach is that it risks further segmenting the conventional taxi market and potentially creates a separate category of service users with disability or impairments arising from their age.

Under current arrangements conventional taxis are required to accommodate folding wheelchairs, walkers and mobility aids other than those that require a specialist vehicle or service. It would be expected that Uber services would also do the same.

As indicated earlier, some people who are reliant on manual wheelchairs or walkers who are capable of transferring into a conventional vehicle have reported a lack of assistance and, in some cases, have been refused a fare on the basis that they should request a specialist WAT vehicle. This is contrary to discrimination law.

The use of a standard or conventional vehicle does not diminish responsibility for making appropriate adjustments to existing methods of service delivery where required.

\textsuperscript{39} Uber Australia, Submission to the Australian Capital Territory Taxi Innovation Review (June 2016)

\textsuperscript{40} Uber Australia, Submission to the Australian Capital Territory Taxi Innovation Review (June 2016)

www.equalopportunity.tas.gov.au
Areas for Action for inclusion in the Disability Framework for Action 2018-2022 to promote improved taxi and hire vehicle services

1. Increase and improve accessible and affordable taxi and hire vehicle services in urban and regional areas.

2. Ensure that taxi and hire vehicle services meet accessibility requirements under the *Disability Standards for Accessible Public Transport 2002* and broader discrimination law.
Education

Children with disability in Tasmania face barriers to engaging in mainstream education and training environments. These barriers have impeded their ability to gain the skills required to participate in the broader social and economic life of our community.

In August 2015, the Tasmanian Government released the final report and recommendations of the Ministerial Taskforce on Inclusive Education for Students with Disability.\(^{41}\) Whilst the Taskforce acknowledged significant progress in meeting the needs of students with disability, it emphasised the need to make inclusive education a priority in all Tasmanian schools.

The report made a series of recommendations aimed at achieving inclusion for all students with disability. Key themes included:

1. Ensuring that all Tasmanian schools are disability ready and responsive in relation to inclusion of students with disability. This includes:
   a. Auditing current approaches and practices to identify and remove barriers to students with disability;
   b. Identifying and maintaining relevant skills and resources (and links to professional supports) needed to ensure inclusive education can be delivered;
   c. Developing procedures for identifying and assessing the needs of current and prospective students with disability and for working with students and their parents/guardians to respond to those needs; and
   d. Ensuring all relevant staff members understand those procedures and implement them in a timely, consistent and appropriate way to ensure equality of educational opportunity is the paramount consideration and goal.

2. Promoting quality teaching and learning in the Tasmanian school system, including greater clarity about various professional and para-professional roles that support inclusive education and the delivery of accredited professional learning programs.

3. Developing effective partnerships between schools and families to enable knowledge and expertise to be shared leading to improved educational outcomes for students.

4. Aligning funding and other resources to inclusive educational practice.

5. Improved monitoring and reporting to enable the educational needs of students to be better identified and outcomes measured.

To assist in implementing these recommendations, the Minister for Education has re-formed the Department of Education’s Inclusion Working Group.

Access to education and participating in life-long learning are a key area of priority in both the existing Disability Framework for Action 2013-2017 and the National Disability Strategy. It is

\(^{41}\) Ministerial Taskforce, *Improved Support for Students with Disability: Ministerial Taskforce Report* (Minister for Education and Training, August 2015)

appropriate that this important work continue to be reflected in the new Framework and is reflected in Agency Disability Action Plans.

**Areas for Action for inclusion in the Disability Framework for Action 2018-2022 to promote improved learning and skills**

1. Ensure that all educational service providers are disability ready and responsive.

2. Strengthen the capability of all education providers to delivery inclusive and high quality educational programs for people with disability.

3. Improve monitoring and reporting of outcomes for students with disability.

4. Develop effective partnerships between schools, families and communities to identify the needs of students with disability and reflect those in educational service responses.
Justice Services

People with disability are highly vulnerable to a wide range of legal problems. They are often significantly over-represented in the criminal justice system both as offenders and victims.\(^{42}\)

A key action contained in the Department of Justice’s Disability Action Plan 2014-2017 was the development of a Disability Justice Strategy. This work was to be led by the Anti-Discrimination Commissioner in conjunction with the Agency Executive and other relevant Agencies.

The purpose of the DJPT is to ensure that Tasmania’s justice system is as inclusive as possible and recognises the particular needs of people with disability. The objective is to develop a justice system in Tasmania that is responsive to the needs of people with disability and provides equality before the law and equal access to justice.

During 2016, Equal Opportunity Tasmania convened a whole of Government Steering Committee and Community Reference Group to progress this work.

A draft Disability Justice Plan for Tasmania (DJPT) was presented to the, then, Attorney-General, Vanessa Goodwin in January 2017.

Priority actions are currently being identified by Agencies and it is intended that these will be incorporated into Agency Disability Action Plans for the forthcoming period and that the Premier’s Disability Advisory Council monitor progress in implementing them.

The following outlines areas we envisage will be covered by the DJPT.

Ensuring that services are disability ready and responsive

People with disability are highly vulnerable to a wide range of legal problems. They are often significantly over-represented in the criminal justice system both as offenders and victims.\(^{43}\)

Success in service-delivery responses is built on the provision of integrated, cross-sector support services that meet multiple, complex, whole-of-person needs. This means services need to promote seamless inter-sectoral transitions, such as the transitions between health, social and justice services. Clients should not have to repeat their history and circumstances to each new service they have contact with or within services, and there should not be gaps in the continuum of care.

Actions suggested as part of the draft DJPT are aimed at:

\(^{42}\) In addition to the statistics outlined in the Introduction to this document, see also chapter 2 of the Australian Human Rights Commission, Equal Before the Law: Towards Disability Justice Strategies (February 2014).


www.equalopportunity.tas.gov.au
Improving the capacity of the justice system to recognise an individual's disability at the earliest opportunity and respond to individual needs

Improving the collection of information about the disability status of people within the justice system and increasing information sharing between service providers where complex responses are required.

Improving the provision of information to people with disability about services available to them in the justice system.

Preventing and responding to violence, abuse and neglect

People with disability disproportionately experience violence, abuse and neglect across a range of settings, including in institutional and residential environments. In many cases the circumstances are such that the behaviour they experience would be criminally unlawful in any other context. Particular attention is therefore required to ensure that legal and other frameworks are in place to provide protection and to ensure that where incidents occur the rights of the affected person are upheld.

Actions suggested as part of the draft DJPT are aimed at:

- Establishing, maintaining and implementing robust rights-based procedures and related mechanisms to prevent and address violence, abuse and neglect of people with disability
- Increasing awareness by people with disability of their legal rights
- Introducing enhanced screening procedures for people working or volunteering with people with disability
- Providing support to victims and witnesses with disability to give evidence in court and to deal with the personal and practical impacts of crime

Responding to the needs of people with disability who are at risk of experiencing family violence

Research indicates that people with disability are almost twice as likely to experience family violence, they are also likely to face a number of barriers to having that violence dealt with appropriately.

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44 Senate Community Affairs References Committee, Parliament of Australia, Violence, abuse and neglect against people with disability in institutional and residential settings, including the gender and age related dimensions, and the particular situation of Aboriginal and Torres Strait Islander people with disability, and culturally and linguistically diverse people with disability (November 2015).

Under the auspices of the *National Action Plan to Reduce Violence against Women and their Children 2010–2022*, Commonwealth and State and Territory jurisdictions have developed a coordinated framework for reducing and responding to violence against women and their children.

The *Third National Action Plan 2016–2019* released in November 2016 identifies a range of national priority areas for action, including strategies to improve access to support and justice services for women with disabilities.\(^{46}\)

Actions suggested as part of the draft DJPT are aimed at:

- Improving support to people with disability who experience or are at risk of family violence

**Safeguarding the rights of people with disability to make decisions that affect their lives**

Under the law, professionals (including those providing legal services) must presume that every adult has capacity unless specific assessment processes demonstrate otherwise.

Actions suggested as part of the draft DJPT are aimed at:

- Supporting people with disability to make decisions that affect their lives

**Providing access to advocacy support**

It is critical that people with any form of disability, including intellectual disability, have access to independent advocacy and communication support to ensure they are able to communicate their views and needs and that their human and legal rights are upheld.

In 2016, the Tasmanian Law Reform Institute (TLRI) began a review of the feasibility of instituting a communication assistant/intermediary scheme in Tasmania for people with complex communication needs.\(^{47}\)

The outcomes of the TLRI review will be critical to the way in which justice services are made available to many people with disability who have communication difficulty.

Actions suggested as part of the draft DJPT are aimed at:

- Ensuring access to advocacy and communication support for people with disability in the justice system

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Developing disability responsive legal services
Many people with disability who come into contact with the legal system rely on income support or are otherwise financially disadvantaged. They cannot afford commercial legal services and are reliant on the availability of public legal services to meet their needs, including Legal Aid, pro bono services and community legal centres.

The provision of legal information, advice and community education services is also an important strategy to enable people with disability to improve their access to justice and increase their understanding of legal responsibilities.

Actions suggested as part of the draft DJPT are aimed at:

- Ensuring that legal aid and legal assistance services are responsive to the needs of people with disability
- Improving the availability of legal information and advice services for people with disability

Promoting disability responsive police practices
Police play a pivotal role in interacting with people with disability, particularly at first contact with the justice system. This includes intervening to protect people with disability who may be at risk of harm or the victim of violence or abuse. Police are also often called as first responders in situations where a person with disability may be engaging in unpredictable or inappropriate behaviour. As such, police have a significant influence on how people with disability interact with the justice system.

Equipping police to recognise the possible presence of disability at first point of contact and understanding what effect the disability may have as well as the adjustments to procedures that may be needed has the capacity to significantly improve the way people with disability experience the justice system.

Actions suggested as part of the draft DJPT are aimed at:

- Enhancing the capacity of police to recognise, understand and respond appropriately to people with disability
- Training to equip police to recognise and respond to people with disability

Implementing disability responsive prosecution services
The provision of information to prosecution services about an alleged offender’s disability at either the charging stage or on receipt of the file in police-charged cases will enable this information to be taken into account at a crucial stage in the criminal justice process.

Actions suggested as part of the draft DJPT are aimed at:

- Ensuring prosecution services are aware of the disability status of alleged offenders
- Developing policy on the use of video-recorded witness statements for use in evidence

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Adopting disability responsive court processes
The accessibility of courts and court processes is highly relevant to ensuring access to justice for people with a disability as victims and/or defendants.

Court procedures need to be as flexible as possible to meet the individual needs of a person with disability. This includes ensuring that adjustments are made where needed to things like the timing of the case listing, the amount of breaks allowed or provided, the accessibility of the venue, and the ability to access and use communication devices and other relevant supports.

Actions suggested as part of the draft DJPT are aimed at:

- Enabling adjustments to court procedures to accommodate people with disability as victims, witnesses or offenders
- Providing communication assistance for people with disability when it is required

Implementing disability responsive youth justice services
All children who come into contact with the youth justice system are vulnerable by virtue of their age and developmental immaturity. Many, however, have additional vulnerabilities, including as a result of having impairments. It is well established that children who offend have more complex health and support needs than other children of their age. The health and wellbeing needs of these children tend to be particularly severe by the time they are at risk of receiving a community sentence, and even more so when they receive a custodial sentence.

Actions suggested as part of the draft DJPT are aimed at:

- Identifying and addressing the needs of young offenders with disability through the development and use of a common vulnerability assessment tool

Promoting the rehabilitation and reintegration of offenders with disability
Interventions that focus on rehabilitation and addressing the underlying causes of offending behaviour are effective in a number of ways and are critical to addressing the needs of people with disability in the justice system.

Actions suggested as part of the draft DJPT are aimed at:

- Improving the capacity to identify disability through use of a screening tool and provision of enhanced rehabilitation and reintegration options for offenders on community corrections orders through the case management model
- Additional training for community corrections staff to recognise and better respond to offenders with disability
- Including a focus on disability in quality assurance models developed and implemented in community corrections

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Providing disability ready and responsive prison services

The development of a more comprehensive approach to the screening and identification of prisoners with disability, including information about their type of disability, is the first step in developing a system that will better address issues associated with their condition and how they may be managed during their period of incarceration.

Actions suggested as part of the draft DJPT are aimed at:

- Improving the screening and assessment of prisoners to identify the presence of disability
- Making reasonable adjustments to enable prisoners with disability to engage with prison services
- Developing specialist services and interventions to address the needs of prisoners with disability
- Developing effective partnerships between corrections, health, disability and mental health services to address the particular needs of prisoners with disability
- Introducing screening for acquired brain injury and address the specific needs of prisoners with acquired brain injury
- Ensuring that reintegration and release planning take account of particular needs arising from a prisoner's disability
- Addressing the needs of people with disability on remand
- Establishing streamlined service delivery arrangements for prisoners who were in receipt of a National Disability Insurance Scheme package prior to incarceration or who are eligible for a National Disability Insurance Scheme package on release

Safeguarding the rights of forensic mental health patients

Under current laws and practices in Australia, people with cognitive and/or psychiatric impairment who are charged with a crime, but found not guilty or 'unfit to stand trial' because of impairment, may be detained for indefinite and prolonged periods.

In practical terms, this has meant detention for longer than if they had been convicted.

The Australian Law Reform Commission and others have recommended reform of the current legal test for unfitness to stand trial to avoid unfairness and to maintain the integrity of criminal trials.

Work is also being done by all state, territory and federal Attorneys General as part of the Law, Crime and Community Safety Council on the treatment of people unfit to plead or found not guilty by reason of mental impairment. It is proposed to develop a national statement of principles in relation to this issue.
Actions suggested as part of the draft DJPT are aimed at:

- Ensuring patients subject to forensic orders have access to advocacy support and legal assistance services

Areas for Action for inclusion in the Disability Framework for Action 2018-2022 to assist in ensuring that the justice system meets the needs of people with disability:

1. Ensure that justice services, including those delivered by police, courts, youth justice services, community corrections and prison services are able to recognise an individual’s disability at the earliest opportunity and provide disability ready and responsive services