

INQUIRY INTO NSW TAXI INDUSTRY

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**Taxis for all: submission to the NSW Legislative
Council's Select Committee on the NSW Taxi
Industry**

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1. Introduction

1.1 The Public Interest Advocacy Centre

The Public Interest Advocacy Centre (PIAC) is an independent, non-profit law and policy organisation that works for a fair, just and democratic society, empowering citizens, consumers and communities by taking strategic action on public interest issues.

PIAC identifies public interest issues and, where possible and appropriate, works co-operatively with other organisations to advocate for individuals and groups affected. PIAC seeks to:

- expose and redress unjust or unsafe practices, deficient laws or policies;
- promote accountable, transparent and responsive government;
- encourage, influence and inform public debate on issues affecting legal and democratic rights;
- promote the development of law that reflects the public interest;
- develop and assist community organisations with a public interest focus to pursue the interests of the communities they represent;
- develop models to respond to unmet legal need; and
- maintain an effective and sustainable organisation.

Established in July 1982 as an initiative of the (then) Law Foundation of New South Wales, with support from the (then) NSW Legal Aid Commission, PIAC was the first, and remains the only broadly based public interest legal centre in Australia. Financial support for PIAC comes primarily from the NSW Public Purpose Fund and the Commonwealth and State Community Legal Services Program. PIAC also receives funding from Industry and Investment NSW for its work on utilities, and from Allens Arthur Robinson for its Indigenous Justice Program. PIAC also generates income from project and case grants, seminars, consultancy fees, donations and recovery of costs in legal actions.

1.2 PIAC's work on discrimination law and accessible public transport issues

PIAC has a long history of involvement in discrimination law and promotion of equality in Australia. It has represented litigants in a number of significant discrimination cases in Australia including cases involving disability access to premises and public transport.¹ PIAC has also been involved in a broad range of public

¹ For general discrimination cases, see, for example, *Australian Iron & Steel Pty Ltd v Banovic* (1989) 168 CLR 165, involving indirect discrimination in employment against women; *Human Rights and Equal Opportunity Commission v Mt Isa Mines Limited*; *Lou Marks*; *Edward Emmett*; *Jennifer George and Others and National Occupational Health and Safety Commission* [1993] FCA 535 (9 November 1993), involving the imposition of a standard in the mining industry that disproportionately affected women; *Ferneley v The Boxing Authority of New South Wales* [2001] FCA 1740 (10 December 2001), alleging unlawful sex discrimination in regulation of sport. For disability access cases, see, for example, *Hills Grammar School v Human Rights & Equal Opportunity Commission* [2000] FCA 658 (18 May 2000), involving discrimination in education; *Maguire v Sydney Organising Committee for the Olympic Games* [2000] FCA 1112 (3 August 2000), involving discrimination in the provision of information and services; *Grosvenor v Eldridge* [2000] FCA 1574 (19 October 2000), involving disability discrimination in access to retail premises; *Travers v New South Wales* [2000] FCA 1565 (3 November 2000); and *Access For All Alliance (Hervey Bay) Inc v Hervey Bay City Council* [2007] FCA 615 (2 May 2007), involving alleged failure to comply with the *Disability Standards for Accessible Public Transport 2002* (Cth) in relation to the

policy development and review processes in relation to discrimination law and the promotion of equality.² Much of this work considers discrimination against and the achievement of equality for people with disability.

Of particular relevance is PIAC's recent work around the five-year review of the *Disability Standards for Accessible Public Transport 2002* (Cth) (the Public Transport Standards). PIAC worked closely with the NSW Disability Discrimination Legal Centre on a national project to record the experiences of people with disability in relation to airline travel and to then consider those experiences in light of the Public Transport Standards. That project resulted in a report, *Flight closed: the experiences of people with disabilities in domestic airline travel in Australia*³, that was submitted to the five-year review, and a subsequent submission on the draft Review Report, *Flight still closed?*⁴

PIAC is also currently representing a client who has made a disability discrimination complaint to the Australian Human Rights Commission (the Commission) against the NSW Department of Transport and Infrastructure (the NSW Transport Department) about Wheelchair Accessible Taxis (WATs) in NSW. This complaint raises broad questions about the proper interpretation of the Public Transport Standards and the implementation of those Standards by the NSW Transport Department in respect of the licensing of WATs.

1.3 The current inquiry

PIAC welcomes the opportunity to make a submission to the NSW Legislative Council's Select Committee on the NSW Taxi Industry, which has been established in order to consider a broad range of issues about the NSW Taxi Industry.

In this submission, PIAC has limited its comments to the following issues:

- (a) the adequacy of government reporting standards and regulation of the industry and the impact of this on the provision of this on quality taxi services for commuters, including for people using wheelchairs,
- ...
- (e) the performance of the wheelchair-accessible taxi fleet, with special regard to Federal disability discrimination laws and their compliance with the 2002 Disability Standards for Accessible Public Transport...⁵

PIAC recognises the important contribution the NSW Transport Department is making to assist the taxi industry in NSW to meet its responsibilities under the Public Transport Standards. This has taken the form of

provision of bus stop infrastructure; *Corcoran v Virgin Blue Airlines Pty Ltd* [2008] FCA 864 (17 June 2008), a case involving allegations of disability discrimination in the provision of airline travel.

² See, for example, Alexis Goodstone and Dr Patricia Ranauld, *'Discrimination ... have you got all day?' Indigenous women, discrimination and complaints processes in NSW* (2001); Public Interest Advocacy Centre, *Submission on the Australian Human Rights Commission Legislation Bill 2003: Submission to the Senate Legal and Constitutional Committee on the Australian Human Rights Commission Legislation Bill* (2003); Robin Banks, *Implementing the Productivity Commission review of the Disability Discrimination Act: submission to the Senate Legal and Constitutional Affairs Committee Inquiry into the Disability Discrimination and Other Human Rights Legislation Amendment Bill* (2009). These and most PIAC publications, including submissions, are available on the Centre's website: <<http://www.piac.asn.au/publications/pubs/dateindex.html>>.

³ Brenda Bailey, *Flight closed: the experiences of people with disabilities in domestic airline travel in Australia* (2007).

⁴ Brenda Bailey, *Flight still closed? Response to the Allen Consulting Group on Review of the Disability Standards for Accessible Public Transport Draft Report* (2008).

⁵ *Legislative Council Select Committee on the NSW Taxi Industry* (2009) Parliament of NSW <<http://www.parliament.nsw.gov.au/nswtaxiindustry>> at 20 January 2010.

providing approval for certain types of vehicle modification to be operated as WATs and issuing licences to assist networks and co-operatives to acquire enough WATs to meet the compliance requirements of equivalent response times. However, in approving certain modifications that PIAC believes do not comply with the Public Transport Standards, the NSW Transport Department has permitted networks and co-operatives to operate in a way that is not compliant with the Public Transport Standards, resulting in a number of specially licensed taxis being inaccessible to many people with physical disability.

Moreover, in PIAC's dealings with the NSW Transport Department about this issue, PIAC has identified a number of significant problems with the way the Public Transport Standards are reported and monitored in NSW. In this submission, PIAC not only highlights the systemic problems with the reporting and enforcement of compliance with the Public Transport Standards by the WAT sector of the NSW taxi industry but makes a number of recommendations about how these issues could be resolved to achieve systemic and practice reforms of the WAT industry in NSW. This reflects problems with monitoring and compliance identified by the Allen Consulting Group in its *Review of the Disability Standards for Accessible Public Transport: Draft Report* (the Draft Standards Review Report).⁶

⁶ Allen Consulting Group, *Review of the Disability Standards for Accessible Public Transport: Draft Report* (2008) 42.

2. The adequacy of NSW Government's reporting standards and regulation of the Wheelchair Accessible Taxi industry

PIAC is of the view that in NSW there are significant problems with the way that compliance with the Public Transport Standards is monitored and enforced. Some of these problems are inherent in the way the Public Transport Standards are drafted, whereas other problems relate specifically to the way the NSW Transport Department monitors performance against the Public Transport Standards. In this section of the submission, PIAC not only seeks to highlight these difficulties, but also to offer practical and proactive solutions that could be adopted by the NSW Transport Department to ensure that the benefits of the Public Transport Standards are fully realised.

2.1 Inherent problems in monitoring compliance with the Public Transport Standards

There are a number of aspects of the Public Transport Standards that have resulted in ineffective oversight and monitoring of those standards and a lack of action to enforce compliance. These include:

- the lack of a link between the Public Transport Standards and transport regulation more broadly;
- the lack of resourcing for oversight of the Public Transport Standards;
- the lack of obligation to report on action and compliance under the Public Transport Standards and resulting lack of data for measuring compliance;
- the onus on individual people with disability to enforce compliance through individual complaints under the *Disability Discrimination Act 1992* (Cth) (DDA).

All of these need to be remedied to ensure that the Public Transport Standards achieve their potential to bring about systemic and lasting change in the form of improved and equitable access to public transport services for people with disability in Australia, including to taxi services.

While these problems with the Transport Standards need to be addressed by the Commonwealth Government there is nothing preventing the NSW Government from adopting approaches to taxi industry regulation that are more proactive in achieving systemic compliance with the Public Transport Standards. This includes ensuring that it requires:

- all public transport licensing to be linked to compliance with the Public Transport Standards; and
- all public transport operators and providers to submit regular reports, including data, on compliance.

In order for this to be effective, the public transport regulators, including the NSW Transport Department, need to work closely with people with disability, their advocacy groups and the Australian Human Rights Commission to ensure that any interpretation of the Public Transport Standards used in public transport regulation in NSW is consistent with the purpose and technical requirements of the Public Transport Standards and the objectives of the DDA, as stated in the Public Transport Standards:

- (1) The *Disability Discrimination Act 1992* seeks to eliminate discrimination, 'as far as possible', against people with disabilities. Public transport is a service covered by the *Disability Discrimination Act 1992*.

- (2) The purpose of these Standards is to enable public transport operators and providers to remove discrimination from public transport services.⁷

2.1.1 Lack of link between Public Transport Standards and transport regulation

In PIAC's view, the lack of linkage of the Public Transport Standards to transport regulation and licensing has proven to be a significant detriment to the effective implementation of, and monitoring of compliance with the Public Transport Standards.

While the Minister responsible for the review of the Public Transport Standards is the Federal 'Minister for Transport and Regional Services in consultation with the Attorney-General'⁸, that Minister has no responsibility for monitoring compliance with the Public Transport Standards, nor is responsibility for such monitoring vested in the state and territory Ministers responsible for public transport.

Public transport providers, including taxi operators are much more familiar with their obligations under the regulatory framework in place for public transport generally than they are with their obligations under anti-discrimination law, including the Public Transport Standards.

At the same time, the failure to link the Public Transport Standards to existing public transport regulatory frameworks has meant that public transport regulators have not had to work closely with the Australian Human Rights Commission and disability consumer groups to develop expertise in achieving equality in public transport provision.

The Canadian Government, in contrast, has empowered its federal public transport regulator to deal with failures to provide accessible service.⁹

2.1.2 Lack of resourcing for oversight of the Public Transport Standards

The Public Transport Standards are delegated legislation made under section 31(1) of the DDA, with the Minister—being the Federal Attorney-General—having the power to 'formulate standards, to be known as disability standards'.

Under section 67(1) of the DDA, the Australian Human Rights Commission is conferred with the function 'to monitor the operation of such [disability] standards and report to the Minister the results of such monitoring'.¹⁰

Despite the Commission having this function, it was not provided with any additional resources at the time the Public Transport Standards were promulgated to monitor compliance or with any power to require public transport providers to provide regular reports on compliance or outcomes. Similarly, to PIAC's knowledge the Federal Department of Transport has had no resources allocated to monitoring the implementation of the standards.

2.1.3 Lack of obligation to report on action and compliance under the Public Transport Standards and resulting lack of data for measuring compliance

The impact of the lack of obligation on public transport operators and providers to report on action and compliance was particularly highlighted in the process of the five-year review of the Public Transport Standards. The consultants identified a lack of data available for review that could indicate whether or not

⁷ *Disability Standards for Accessible Public Transport 2002* (Cth) cl 1.2.

⁸ *Disability Standards for Accessible Public Transport 2002* (Cth) cl 34.1.

⁹ Canadian Transportation Agency (2009) <<http://www.otc-cta.gc.ca/index.php?lang=eng>> at 21 January 2010.

¹⁰ *Disability Discrimination Act 1992* (Cth) s 67(1)(e).

there had been any significant improvements or otherwise in access to public transport over the five-year period as a significant problem:

There was no base-line data from 2002 to make a quantitative assessment of the impact of the Transport Standards.¹¹

...

There are several problems associated with the compliance data currently reported, including:

- an absence of baseline data on accessibility against which progress since the introduction of the Transport Standards can be assessed;
- a lack of consistency in the data reported across different regions of Australia;
- limitations in the quantity and quality of data provided by the private sector; and
- variations in the quality of data reported by different levels of government.¹²

In the Draft Standards Review Report, the consultants pointed out that there is:

... no standard mechanism for reporting compliance with the Transport Standards, nor any body that monitors compliance in a systematic way. Transport operators and providers may choose to report their compliance with the Transport Standards, and their plans for upgrading conveyances and infrastructure in the future, such as through Action Plans.¹³

This lack of a mechanism for monitoring and lack of information for assessing compliance is a fundamental problem with the Public Transport Standards. PIAC is concerned that this reflects the disconnect between government responsibilities for transport regulation and licensing, and government responsibilities for anti-discrimination laws dealing with public transport access.

2.1.4 Onus on individual people with disability to enforce compliance

Another inherent difficulty with the Public Transport Standards is that the only compliance enforcement mechanism is through individual people with disability making formal complaints to the Australian Human Rights Commission, seeking resolution of such complaints either through conciliation at the Commission or through a subsequent court process in the federal court system.

Unfortunately, there are a number of significant factors that often deter individuals from pursuing individual complaints including the risk of an adverse costs order¹⁴ if unsuccessful or only successful in part in any court proceedings; other priorities in one's day to day life; the cost of bringing proceedings including the

¹¹ Ibid 72.

¹² Ibid 80. There are repeated references throughout the Draft Review Report to the absence of data in respect of all of the different modes of public transport.

¹³ Ibid 8.

¹⁴ Under the ordinary costs rule, the unsuccessful party to litigation is ordered to pay the legal costs of the successful party. In the case under the Public Transport Standards, *Access For All Alliance (Hervey Bay) Inc v Hervey Bay City Council* [2007] FCA 615 (2 May 2007) (the *Access For All Alliance Bus Stops Case*), the non-profit incorporated association that was the complainant was ordered to pay the costs of the respondent council. This is set out in the separate decision: *Access For All Alliance (Hervey Bay) Inc v Hervey Bay City Council* [2007] FCA 974 (29 June 2007). In that decision, the court held that the proceedings were not of 'public interest' such as to justify departure from the ordinary rule as to costs. This was despite the case being (a) the first test of the Public Transport Standards to reach a court hearing, (b) brought purely to achieve compliance by a local government authority with its obligations as a public transport provider under the Public Transport Standards, and (c) the complainant seeking no financial compensation for the failure to comply.

costs of representation by solicitors and barristers and the cost of experts able to give evidence on questions of a technical nature. In addition, in order to be sufficiently confident to pursue a complaint, an individual with a disability would require a high level of expertise in the Public Transport Standards, and access to all of the relevant documentation.

Other than the *Access For All Alliance Bus Stops Case*¹⁵, there have been no cases that have been finalised that involve allegations of failure to comply with the Public Transport Standards. PIAC's experience in representing the complainant in that case indicates that the level of resources and expertise required to mount such a case is significant and is well beyond the resources of the vast majority of individuals with disability.

Thus, PIAC believes that any system that relies for its effectiveness on individual complaints is likely to fail and consideration needs to be urgently given to adopting a more pro-active monitoring and compliance system in NSW with the Public Transport Standards.

Recommendations

1. *That the NSW Government require the NSW Department of Transport and Infrastructure to build compliance with the Disability Standards for Accessible Public Transport 2002 (Cth) into the licensing and review mechanisms for the taxi industry and for other modes of public transport in NSW.*

2.2 Options for improving monitoring and regulation of the Public Transport Standards

PIAC believes there is a range of possible mechanisms that could be created or amended to enable effective monitoring of the implementation of the Public Transport Standards by the NSW Transport Department.

Firstly, PIAC recommends that the NSW Transport Department ensure that monitoring of compliance with the Public Transport Standards is integrated into the regulatory framework for the taxi industry (and other forms of public transport in NSW). Furthermore, consideration should be given to creating an independent complaints-handling and audit mechanism body in NSW that could ensure compliance with the Public Transport Standards.

For example, the NSW Auditor General could be given power and resources to enable an annual audit of a sample of WATs. The advantage of giving the Auditor-General this role is that it would ensure regular oversight independent from the Roads and Traffic Authority of NSW (RTA) and NSW Transport Department which are directly involved in the processes of licensing WATs. In order for it to be effective, it would require appropriate resources to be made available to the Auditor General, including financial resources to administer the audit and to engage people with appropriate technical expertise in the area of disability access and the Public Transport Standards.

Alternatively, the RTA could be given the power to pro-actively monitor and enforce compliance. For example, the RTA could ensure that annual audit was carried out on WATs to ensure compliance with Public Transport Standards. It should also be given sufficient powers and resources to ensure that it could follow up any findings that arise out of these regular audits.

Second, PIAC recommends the creation of a NSW Public Transport Standards Access Panel to make recommendations and give advice in relation to questions of the implementation of the Public Transport Standards in NSW. This proposal is based on a similar proposal that has been made with respect to the

¹⁵ *Access For All Alliance (Hervey Bay) Inc v Hervey Bay City Council* [2007] FCA 615 (2 May 2007).

Draft Disability Standards on Access to Premises (the Draft Access to Premises Standards) and corresponding changes to the Building Code of Australia (BCA). In respect of the Draft Access to Premises Standards and the BCA, it has been recognised that there will be ongoing questions about how to interpret and apply the new requirements. In order to assist in resolving these issues it has been suggested that each state and territory building control administration establish Access Panels, composed of people with relevant expertise to provide recommendations in relation to questions of appropriate Alternative Solutions to compliance with those Standards.¹⁶ This proposal had been made, in part, because of the recognition that leaving enforcement to an individual complaint mechanism is inadequate.

In relation to the Public Transport Standards, the NSW Transport Department could have a separate Public Transport Access Panel to give advice and make recommendations on the application of the Public Transport Standards to each of the key modes of public transport that are state regulated: taxis, buses, trains, and ferries. Such Panels should include not only public transport experts, but also human rights / anti-discrimination experts and disability experts. The Panels should be supported by a secretariat with sufficient staff and resources to conduct research into public transport access implementation in other states and territories in Australia as well as overseas.

Such a development would be consistent with the leadership shown by NSW in the development of the Public Transport Standards.

Third, it is essential that the NSW Government properly resource the disability sector to participate in compliance monitoring. There are many people within the sector who have developed expertise in accessible public transport issues. Furthermore, people with disability and their representative and advocacy organisations are the key stakeholder in ensuring the effective implementation of the Public Transport Standards. However, most disability sector organisations have extremely limited resources and are dealing with a wide range of barriers facing their constituency. For them to be effective in providing input to compliance monitoring, targeted resourcing will be required. Such resourcing would have the benefit of ensuring problems with compliance are identified early and consequently do not result in expensive legal processes and/or retrofitting requirements. It would also add to the empowerment of people with disability as central to the process of achieving improved access to public transport.

In particular, the disability sector should have better access to the Australian Standards that are referenced in the Public Transport Standards, and to expertise on disability access and design of public transport. Under the current arrangements, there is a significant cost involved in obtaining a copy of each Australian Standard. Furthermore, in order to effectively review and (if necessary) challenge the implementation of the Public Transport Standards, people with disability and their advocates will also need to be able to access people with relevant expertise such as independent engineers. Without this, people with disability will be at a distinct disadvantage. The NSW Transport Department should ensure that there are adequate funds available to disability sector organisations to enable their involvement in both monitoring, regulation and enforcements of the Public Transport Standards.

Recommendations

- 2. That urgent action be taken to establish a mechanism for monitoring implementation of and compliance with the Disability Standards for Accessible Public Transport 2002 (Cth) in NSW.***

¹⁶ Australian Building Codes Board, *A Model Process to Administer Building Access for People with a Disability: The Protocol* (2008).

3. *That the NSW Department of Transport and Infrastructure establish a Public Transport Standards Access Panel to provide advice on the interpretation and application of the Disability Standards for Accessible Public Transport 2002 (Cth) to taxis in NSW and similar Panels for other modes of transport regulated by the NSW Government.*
4. *That the NSW Department of Transport and Infrastructure develop and, if necessary, fund a mechanism to enable free on-line access for disability peak and advocacy groups in NSW to all Australian Standards referenced in the Disability Standards for Accessible Public Transport 2002 (Cth) in accessible formats.*
5. *That a funding program be established to provide grants of funds to disability sector organisations and people with disability to pay for the services of experts such as independent engineers, disability access experts and/or lawyers to assist in reviewing compliance with the Disability Standards for Accessible Public Transport 2002 (Cth).*

2.3 Specific problems in monitoring compliance with the Public Transport Standards in NSW

As discussed above, one of the inherent problems with the Public Transport Standards is the lack of available data about the extent to which the accessibility of public transport in Australia is improving through compliance with the Public Transport Standards.

In PIAC's view this is particularly problematic in the case of New South Wales because of the way the NSW Government monitors performance with the Public Transport Standards. It is PIAC's understanding that the Public Transport Standards are monitored by the NSW Transport Department through its key performance indicators.

In April 2009, PIAC made a request pursuant to the *Freedom of Information Act 1989* (NSW) (the FOI Act) for a copy of the key performance indicators (KPIs) for the WAT industry and figures for performance against those KPIs from July 2008 and March 2009. An extract of the information received as a result of the request for details of the KPIs can be found at Appendix A to this submission, and an extract of the information received in relation to the request for figures for performance against those KPIs is found at Appendix B to this submission (the FOI documents).

PIAC has also reviewed the information provided in light of the NSW Transport Department's *Accessible Transport Action Plan for NSW Transport Roads and Maritime Agencies: December 2007 update* (the 2007 Transport Action Plan Update), which provides the following summary report on taxi services:

Although taxi services did not meet the requirement in the Transport Standards for Wheelchair Accessible Taxi (WAT) response times to be the same as for Standards Taxis by 31 December 2007, statistics show that response times are improving over time. It should be noted that response time statistics are only available for the Sydney Metropolitan Area.

Average Taxi Response Times (Sydney Metropolitan Area)

Taxi Type	2006/07	2007/08
Standard Taxi	7.58 minutes	8.35 minutes
WAT	11.31 minutes	9.97 minutes

This represents a 12.6% improvement in WAT response times from 2006/07 yo [sic] 2007/08.¹⁷

Based on a review of the material PIAC received, PIAC makes the following observations regarding the quality of the existing reporting of compliance with the Public Transport Standards and the assertion contained in the 2007 Transport Action Plan Update that there has been an improvement in WAT response times.

Firstly, it is clear from the data that the WAT industry is not complying with the performance requirements of the Public Transport Standards (and this was confirmed in the 2007 Transport Action Plan Update). Namely, the waiting times for a WAT taxi is not the same as the waiting time for Standard taxis. Under the target dates for compliance set out in Schedule 1 to the Public Transport Standard, response times for accessible taxis were to be the same as for other taxis by 31 December 2007.¹⁸

Furthermore, there appear to be discrepancies in the information itself. For example, if one compares the average pick up times recorded on page 187 of the FOI request with the average pick up times recorded for the same period on page 189, there are significant variations between those pick up times. The explanation for this discrepancy appears to be the addition of data from an additional company since July 2008. However, this discrepancy begs the question what exactly are the average pick up times for WAT and Standard taxis in NSW.

It is also apparent that any 'improvement' in response times recorded in 2007/08—if indeed it was one—has not been sustained. The following table adds the data from pages 187 and 189 of the documents (see Appendix B) both separately and averaged.

Taxi Type	2006/07	2007/08	2008/09
Standard Taxi	7.58 minutes	8.35 minutes	8.17 minutes
WAT	11.31 minutes	9.97 minutes	12.49 minutes
WAT per p 187			9.97 minutes
WAT per p 189			15.01 minutes

The average for 2008/09 represents an increase in WAT response times of approximately 25% from 2007/08 completely wiping out any improvement in the previous twelve-month period against the 2006/07 average. The worst case scenario average (based on the figures provided in page 189 of the FOI documents) represents an increase in WAT response times of approximately 50% from 2007/08. Even the best case scenario (based on the figures provided in page 187 of the FOI documents) represents no further improvement in response times on the 2007/08 improvement.

Further, the figures provided indicate that the response times for WATs was 50% longer than for Standard Taxis in 2006/07, were still 20% longer than for Standard Taxis in 2007/08 and were either 22% longer or up to 84% longer in 2008/09 based on the figures provided in page 189 of the FOI documents.

Second, PIAC submits that a number of the KPIs are not sufficiently nuanced and therefore fail to accurately reflect the experience that many people have when using WATs. For example, KPI 1 (number of booking requests) includes all booking requests even if a booking is cancelled, or offloaded or otherwise not completed. This lack of information in turn affects KPI 6 (average pick up time).

¹⁷ NSW Government, *Accessible Transport Action Plan for NSW Transport, Roads and Maritime Agencies: December 2007 update* (2007) [10–11] <<http://www.transport.nsw.gov.au/abouttrans/access-trans-action-plan.html>> at 21 January 2010.

¹⁸ *Disability Standards for Accessible Public Transport 2002* (Cth) Sch 1, cl 1.2.

So, for example if a person with disability called a WAT but discovered that they could not fit into the taxi for the reasons discussed below in section 3, sent that taxi away and called another WAT and had to wait for the second WAT to arrive this would count as two bookings under the current KPIs. It would also mean that the pick up time would be recorded for each of the bookings individually rather than as the cumulative period that the person had to wait to have a taxi arrive that they were able to access. There is no record of the overall pick up time experienced by the passenger. This means that in reality there is a distinct possibility that the average pick up times are significantly worse than suggested by the current reports against KPIs. It also means that the current KPIs fail to properly record and reflect passenger's experience with WATs and Standard taxis.

Moreover, KPI 6 (average pick up time) does not specify whether this only relates to the time taken between when a person books a taxi and the taxi collects the passenger or whether it also includes jobs that are booked for a particular time of day, for example 4:00 pm. If it includes the latter, PIAC again suggests that the lack of compliance is even more serious than is initially suggested by the KPIs as it means that even when people with disability book a taxi in advance—including through a standard booking—they are still waiting significantly longer for booked taxis to arrive than people without disability.

More generally, the KPIs raise more questions than answers about the adequacy of reporting and ensuring compliance of the WAT industry with the Public Transport Standards in NSW.

For example, it is unclear from this material whether the self-reporting by taxi owner/operators is monitored, audited or in any way regulated by the NSW Transport Department. Does the NSW Transport Department ever do spot check or any audits on the KPIs that it is given by taxi owner/operators?

Similarly, there is no indication from the NSW Transport Department as to whether it ever responds to this data. For example, if a company provides WAT KPIs to the NSW Transport Department that show that the company is not complying with the performance requirements of the Public Transport Standards, does the NSW Transport Department take any follow up action? If so, what does the follow-up action entail?

Furthermore, PIAC contends that these issues about monitoring and regulation of the WAT industry in respect of its compliance with the Public Transport Standards should also be recorded and made publicly available so that people are aware the true extent to which the Public Transport Standards are being implemented and complied with in NSW.

Recommendation:

6. *That the NSW Department of Transport and Infrastructure urgently review and amend its Key Performance Indicators to ensure that they more accurately reflect the experience of passengers using Wheelchair Accessible Taxis and interpret response times in a practical way so as to ensure that, for example, response time for immediate pick-up calls is measured from the time of the call for the immediate pick up to the time of actual pick up.*

3. Compliance of the NSW Wheelchair Accessible Taxi fleet with the Public Transport Standards

PIAC acts for a disability advocate, GK, who has made a complaint against the NSW Transport Department (and others) in respect of a significant number of taxis licensed and operating as Wheelchair Accessible Taxis in NSW. GK alleges that this significant number of WATs do not comply with the Public Transport Standards. Under section 32 of the DDA it is unlawful to contravene a disability standard, including the Public Transport Standards.

Based on its involvement in this disability discrimination complaint, PIAC wishes to draw the Committee's attention to a particular problem with the performance of some parts of the WAT fleet in NSW, namely its non-compliance with the technical and performance requirements of the Public Transport Standards.

This non-compliance arises from the way that a significant number of Toyota Taragos have been modified in order to make them wheelchair accessible. There are two modifications that are of concern.

The first modification creates a 'ramp problem' (see Appendix C, Figure 1). The difficulty with this modification is that the rear access ramp folds inside the vehicle into the space, or accessible envelope, where the passenger is meant to sit, preventing the backdoor from closing and/or causing the ramp to be dangerously close to the passenger.

The second modification creates a 'door problem' (see Appendix C, Figure 2). The internal space provided through this modification is too small, and as a result, when the backdoor of these vehicles is closed, the door impinges into the envelope. A person using a wheelchair cannot fit in the space provided, with the rear door coming in contact with the back of their wheelchair making it impossible to close the backdoor. PIAC has received reports from a number of people who have experienced this problem, which results in taxis with this particular modification being inaccessible to them. PIAC has also been told of people riding in these taxis with the door slightly ajar so they can fit.

PIAC notes that not all Toyota Taragos modified as wheelchair accessible taxis suffer from these problems and that there is a third modification that appears to comply with the Public Transport Standards on the basis that it provides the requisite clear space or accessible envelope.

The proposed Transport Standards Access Panels could have addressed this issue.

3.1 Technical requirements of the Public Transport Standards

The central issue is whether the problem modifications outlined above, comply with clauses 9.1 and 9.3 of the Public Transport Standards.

Clause 9.1 provides:

The minimum allocated space for a single wheelchair or similar mobility aid is 800 mm by 1300 mm [AS 1428.2 Clause 6.1, Clear floor or ground space for a stationary wheelchair].

Clause 9.3 provides:

- (1) The minimum head room in an allocated space is 1410 mm.

- (2) For a conveyance entering service on or after 1 January 2013, the minimum head room is 1500 mm.

The phrase 'allocated space' is defined in clause 1.11 of the Public Transport Standards as:

An **allocated space** is a three dimensional space that can accommodate a wheelchair or similar mobility aid.

PIAC is of the view that the dimensions of the allocated space therefore need to be conceptualised as a rectangular prism, rather than as two, two-dimensional measurements of clear floor space (or footprint) and headroom (see Appendix D, Figure 1). This means that in order to meet the technical requirements of the Public Transport Standards the space or three-dimensional envelope within the taxi must be 1410 mm high throughout the ground floor space of 1300 mm x 800 mm.¹⁹ Appendix D, Figure 1 indicates the envelope that PIAC considers is required under the Public Transport Standards.

This interpretation is consistent with the purpose of the Public Transport Standards as it maximises the number of people who are able to use WATs.

Another reason for adopting this particular interpretation of the 'allocated space' requirements is that different wheelchair users are different heights and sit differently in their wheelchairs. This results in significant variation in the location of top of their head (being the highest point for most passengers) within the vertical extension of the footprint space. That is, some people will have their head closer to the back of the space than others depending on the design of their wheelchair and other factors.

Furthermore, this interpretation is consistent with the common interpretation of the definition of an accessible path of travel found in Australian Standards, which are the technical specifications referenced in the Public Transport Standards. In AS 1428.1 a 'Continuous accessible path of travel' is defined as being an envelope with a certain width and a certain height. Anything impinging on that envelope means the path is no longer accessible.

3.2 The NSW Transport Department's interpretation of the requirement

The NSW Transport Department's current interpretation of the 'allocated space' requirements is set out in the WAT Measurement Protocol, published by the NSW Transport Department in November 2008. It states:

2.5.2 The clear space around each wheelchair shall be determined in accordance with Clause 4.2 of AS.2942-1994. The minimum floor space allocated for each wheelchair shall be at least 1300mm by 800mm.

2.5.3 The minimum internal headroom must be at least 1410mm. *Note: The minimum headroom requirement will increase to 1500mm for vehicles entering service after 1 January 2013.*

2.5.4 The headroom is defined as the perpendicular distance from the floor surface to the underside of the vehicle's headlining **at any point above where the wheelchair occupant's head would be located.** [emphasis added, italics in original]²⁰

This interpretation effectively means that the space is conceptualised as a floor space and only requires that the headroom of 1410 mm be complied with at an unknown point within the footprint. This means an

¹⁹ While it may be possible to reduce the height over the knee and foot area without affecting the accessibility of the space the clearance of a minimum of 1410 mm for the whole area of the main part of the body and head is vital to ensure access.

²⁰ *Wheelchair Accessible Taxis: Wheelchair accessible taxi measurement protocol* (2008) NSW Government Transport and Infrastructure [5] <<http://www.transport.nsw.gov.au/taxi/wheelchair.html>> at 21 January 2010.

arbitrary point in the envelope is being selected as the notional point where a wheelchair user's head is likely to be located within the taxi. This interpretation is patently inconsistent with both the letter and the intention of the law. It requires us to believe that those involved in developing the Public Transport Standards were oblivious to the ranges of sizes and configurations of wheelchairs and the fact that people with disability sit differently in those wheelchairs.

Further, the NSW Transport Department's WAT Measurement Protocol could result in a vehicle being licensed that had an allocated space that was a pyramid with the apex of the pyramid being 1400 mm above the base. It also permits encroachment of solid objects into the space above the rectangular floor space at any point and at any height.

Allowing objects to encroach into the rectangular prism similarly assumes that all wheelchair users will have chairs and body shapes that can be safely accommodated around such objects. This, again, is not predictable nor is it consistent with the Public Transport Standards.

3.3 Impact of the NSW Transport Department's current interpretation of the Public Transport Standards

PIAC's client, GK, fits within a rectangular prism with a height of 1410 mm, a width of 800 mm and a length of 1300 mm. Despite this, he is unable to fit within the allocated space in the vehicles modified in the ways described above. As for GK, there are two impacts on many other people who need wheelchair accessible taxis of the NSW Transport Department's interpretation of the Public Transport Standards.

Firstly, they face physical injury as a result of the encroachment into the allocated space of the vehicle door or stowed ramp. This is both directly from those objects and also from being forced up against the barrier of the seating in front, causing damage to feet. The risk of physical injury ranges from risk of damage to feet—such as bruising to or broken toes—through to fatal injuries in the event of even a minor rear-end collision forcing the ramp that already encroaches on the space in one of the modifications to come in contact with the head or neck of the passenger.

Second, they may be completely excluded from using these vehicles thus reducing significantly the fleet of taxis that they are able to use and causing delays that others do not experience when using taxi services.

3.4 Performance requirements of the Public Transport Standards

In addition to the technical requirements of the Public Transport Standards set out above, WAT fleets across Australia must also meet the performance requirements established by Schedule 1 of the Public Transport Standards.

Schedule 1 Target dates for compliance provides that by 31 December 2007:

1.2 Responsibility

Radio networks

Co-operatives

Requirement

Response times for accessible vehicles are to be the same as for other taxis.

Application

Conveyances

Taxi

Dial-a-ride services²¹

If, as a result of the inaccessibility of a number of taxis in the so-called 'accessible' fleet, WATs are being turned away by people with disability, then the waiting times experienced by WAT users is likely to be even higher than that suggested by the NSW Transport Department's current reporting of waiting times. The NSW Transport Department itself has acknowledged that its interpretation of the Public Transport Standards may result in delays to people with 'longer mobility aids'.²² Thus, PIAC contends that the taxi networks are also be acting in breach of the performance requirements of the Public Transport Standards as a consequence of the NSW Transport Department's current interpretation of the 'allocated space' requirements.

3.5 Ensuring compliance with the Public Transport Standards

The NSW Transport Department was alerted to the problem with the WAT fleet's compliance with the Public Transport Standards outlined above, as early as 2006. However, the Department has refused to deal with the issue in a constructive way. Accordingly, PIAC contends that the NSW Transport Department is at least partially responsible for the compliance problem and it should take the lead in resolving the problem.

Firstly, PIAC recommends that the NSW Transport Department should verify concerns about the modifications of existing WAT taxis by conducting an audit of all Toyota Taragos that are currently licensed as WATs in NSW.

Second, PIAC contends that the NSW Transport Department should subsidise, or otherwise assist in modifying all non-compliant WATs so that they meet the technical requirements of the Public Transport Standards.

Alternatively, if it is not possible to modify existing WATs then consideration should be given to issuing additional WAT licences, as a matter of urgency to new WATs that meet the correct interpretation of the Public Transport Standards. By expanding the WAT fleet in this manner, the NSW Transport Department would at least ensure that there was enough compliant WATs that could accommodate people with disability so that at the very least the performance requirements would be met.

Additionally, the current WATs that are not compliant should be tagged as non-compliant so that users are aware of the problems of these particular WATs. Networks and co-operatives should also be instructed to ask specific questions of those booking the service to ensure that a caller is provided with a WAT that is accessible to the caller.

Recommendations:

7. *That the NSW Department of Transport and Infrastructure conduct an audit of all Toyota Taragos that are currently licensed as Wheelchair Accessible Taxis in NSW and depending on the outcomes of this audit, the Ministry subsidise, or otherwise assist in modifying all non-compliant Wheelchair Accessible Taxis so that they meet the technical requirements of the Disability Standards for Accessible Public Transport 2002 (Cth).*

Alternatively, if it is not possible to modify existing Wheelchair Accessible Taxis, the NSW Department

²¹ *Disability Standards for Accessible Public Transport 2002 (Cth)* Sch 1, cl 1.2.

²² NSW Ombudsman, *Investigation into the Ministry of Transport regarding compliance of Wheelchair Accessible Taxis with the Commonwealth Disability Standards for Accessible Public Transport*, report under section 26 of the Ombudsman Act 1974 (NSW) (2008) 13-14.

of Transport and Infrastructure issue additional Wheelchair Accessible Taxi licences as a matter of urgency, to new Wheelchair Accessible Taxis that meet the correct interpretation of the Disability Standards for Accessible Public Transport 2002 (Cth).

8. *Additionally, that the current Wheelchair Accessible Taxis that are not compliant be tagged by the NSW Transport Department and taxi booking services as non-compliant so that users are aware of the problems of these particular Wheelchair Accessible Taxis and networks and co-operatives be instructed to ask specific questions of those booking the service to ensure that a caller is provided with a Wheelchair Accessible Taxi that is accessible to the caller.*

4. Summary of Recommendations

1. That the NSW Government require the NSW Department of Transport and Infrastructure to build compliance with the *Disability Standards for Accessible Public Transport 2002* (Cth) into the licensing and review mechanisms for the taxi industry and for other modes of public transport in NSW.
2. That urgent action be taken to establish a mechanism for monitoring implementation of and compliance with the *Disability Standards for Accessible Public Transport 2002* (Cth) in NSW.
3. That the NSW Department of Transport and Infrastructure establish a Public Transport Standards Access Panel to provide advice on the interpretation and application of the *Disability Standards for Accessible Public Transport 2002* (Cth) to taxis in NSW and similar Panels for other modes of transport regulated by the NSW Government.
4. That the NSW Department of Transport and Infrastructure develop and, if necessary, fund a mechanism to enable free on-line access for disability peak and advocacy groups in NSW to all Australian Standards referenced in the *Disability Standards for Accessible Public Transport 2002* (Cth) in accessible formats.
5. That a funding program be established to provide grants of funds to disability sector organisations and people with disability to pay for the services of experts such as independent engineers, disability access experts and/or lawyers to assist in reviewing compliance with the *Disability Standards for Accessible Public Transport 2002* (Cth).
6. That the NSW Department of Transport and Infrastructure urgently review and amend its Key Performance Indicators to ensure that they more accurately reflect the experience of passengers using Wheelchair Accessible Taxis and interpret response times in a practical way so as to ensure that, for example, response time for immediate pick-up calls is measured from the time of the call for the immediate pick up to the time of actual pick up.
7. That the NSW Department of Transport and Infrastructure conduct an audit of all Toyota Taragos that are currently licensed as Wheelchair Accessible Taxis in NSW and depending on the outcomes of this audit, the Ministry subsidise, or otherwise assist in modifying all non-compliant Wheelchair Accessible Taxis so that they meet the technical requirements of the *Disability Standards for Accessible Public Transport 2002* (Cth).

Alternatively, if it is not possible to modify existing Wheelchair Accessible Taxis, the NSW Department of Transport and Infrastructure issue additional Wheelchair Accessible Taxi licences as a matter of urgency, to new Wheelchair Accessible Taxis that meet the correct interpretation of the *Disability Standards for Accessible Public Transport 2002* (Cth).

8. Additionally, that the current Wheelchair Accessible Taxis that are not compliant be tagged by the NSW Transport Department and taxi booking services as non-compliant so that users are aware of the problems of these particular Wheelchair Accessible Taxis and networks and co-operatives be instructed to ask specific questions of those booking the service to ensure that a caller is provided with a Wheelchair Accessible Taxi that is accessible to the caller.

Appendix A: Wheelchair Accessible Taxi Key Performance Indicators



WHEELCHAIR ACCESSIBLE TAXI KEY PERFORMANCE INDICATOR (KPI) REPORT

The following taxi cab networks are required to provide monthly WAT taxi KPI reports in the format outlined below to the Ministry of Transport by no later than 14th day of each month.

1. Taxis Combined Services Pty Ltd (TCS)
2. Silver Service Taxis Pty Ltd (Silver Service)
3. South Western Cabs (Radio Room) Pty Ltd (South Western Cabs)
4. Yellow Cabs of Sydney Pty Ltd (Yellow Cabs)
5. ABC Radio Taxi Ltd (ABC Cabs)
6. Premier Cabs Pty Limited (Premier Cabs)
7. Legion Cabs (Trading) Cooperative Society Ltd (Legion Cabs)
8. RSL Ex-Servicemen's Cabs & Co-Operative Members Ltd (RSL Cabs)
9. St George Cabs Cooperative Ltd (St George Cabs)
10. Manly Warringah Cabs (Trading) Co-Operative Society Ltd (Manly Cabs)
11. Doulis Logistics Pty Ltd (VIP Cabs)
12. MACT Network Pty Ltd (Lime Taxis)
13. Radio Cabs (Wollongong) Co-Operative Society Ltd (Wollongong Radio Cabs)
14. Newcastle Taxis Pty Ltd (Newcastle Taxis)
15. Combined District Radio Cabs Pty Ltd (Central Coast Taxis)

Key Performance Indicator	Reporting Criteria	Reporting data
KPI 1 Number of booking requests <i>Total number of all bookings received from passengers and in loads.</i>	<p>Includes all booking requests including those where a job is not completed, that is, cancellations, no shows, no car available, bookings offloaded (internal or external).</p> <p>A "booking request" is a customer applying for the provision of one or more taxis to transport people or packages on a particular date and time between a defined origin and destination. The booking commences (and is counted) when the taxi company accepts the request and starts processing that request.</p> <p>These booking requests are to be allocated to the month in which the taxi is required. Booking request excludes enquiries and taxi fare requests.</p> <p>Booking requests to be reported by the taxi company receiving that request regardless of whether it is subsequently offloaded (internally or externally).</p> <p>External offload of a taxi network is considered as a new booking.</p> <p>Multiple taxi bookings are to be treated as separate bookings equal to the number of taxis required.</p>	

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KPI 2 Number of rejections <i>The total number of rejects for bookings received by the network each month.</i>	Includes the rejection of <ul style="list-style-type: none"> - a job on cover, - an offered job is rejected, and - time outs (i.e. the driver has not responded) The results reported for this KPI are the aggregate of all three of those components.	
KPI 3 Total number of jobs accepted by drivers.	This is the number of bookings accepted by drivers each month, regardless of the subsequent outcome of the booking e.g. cancellations, no shows etc.	
KPI 4 Average acceptance time <i>Time period between when the booking is made available to when a taxi driver accepts the booking.</i>	The KPI is the average of the monthly acceptance times.	
KPI 5 Number of M3s (No Shows) <i>The number of booking requests in the month where the customer is not at the booking address when the taxi arrives.</i>	This count can only have one "no show" per booking request.	

<p>KPI 6</p> <p>Taxi Pick Up Time</p> <p><i>The pick up time is the time from when the booking is required by the customer to the time the taxi turns its meter "on".</i></p>	<p>Bookings that are picked up by a taxi driver and show the date and time of when "the taxi meter is turned on".</p>	
<p>KPI 6.1</p> <p>Pick up within 15 mins of booking being made</p> <p><i>Percentage of total recorded "meter on" events where the pick up time was less than or equal to 15 minutes.</i></p> <p>Standard 85% picked up within 15 mins</p>	<p>Both absolute numbers and percentage to total pick ups must be reported.</p> <p>Negative pick up times should be allocated to less than 15 minutes (or within 15 minutes) time band.</p> <p>Negative times occur when the driver picks up a passenger before the required time. These are to be treated as zero pick up times and included in pick ups within 15 minutes.</p>	
<p>KPI 6.2</p> <p>Pick up within 30 mins of booking being made</p> <p><i>Percentage of total recorded "meter on" events where the pick up time was greater than 15 minutes but less than or equal to 30 minutes.</i></p> <p>Standard 98% picked up within 30 mins</p>	<p>Both absolute numbers and percentage to total pick ups must be reported.</p>	

<p>KPI 6.3</p> <p>Pick up within 60 mins of booking being made</p> <p><i>Percentage of total recorded "meter on" events where the pick up time was greater than 30 minutes but less than or equal to 60 minutes.</i></p> <p>Standard 99% picked up within 60 minutes</p>	<p>Both absolute numbers and percentage to total pick ups must be reported.</p>	
<p>KPI 6.4</p> <p>Total taxi pick ups</p>	<p>Total number of recorded "meter-on" events in a month.</p>	
<p>KPI 6.5</p> <p>Average pick up time</p> <p><i>The KPI is the average of the pick up times in the month reported.</i></p>	<p>Pick up time is averaged over the month.</p> <p>Only records that have a date and time stamp when the meter is engaged should be included in the calculation of average pick up time.</p> <p>Negative times (when the driver picks up before the required time) are to be treated as zero pick up times.</p>	
<p>KPI 7</p> <p>Number of ringbacks</p> <p><i>These are the number of ring backs made by the customer inquiring about a taxi booking request.</i></p>	<p>Multiple ring backs for a single booking are to be included.</p>	

<p>KPI 8</p> <p>Number of taxis operating on the network</p> <p><i>Total number of taxis <u>authorised</u> to operate on the network as at the last day of the calendar month.</i></p>		
<p>KPI 9</p> <p>Telephone answering</p> <p><i>The time elapsed between:</i></p> <p><i>b) the time the PABX registers a call on a line; and</i></p> <p><i>b) the time the PABX answers the call.</i></p>		
<p>KPI 9.1</p> <p>Number of phone calls received including abandoned calls.</p> <p><i>These are all telephone calls received in a month including abandoned calls.</i></p>	<p>This includes all phone calls to the telephone operator plus the calls received through Voice Recognition Systems.</p> <p>Data from Voice Recognition System is included in the reports.</p>	
<p>KPI 9.2</p> <p>Number of phone calls answered: within one minute</p> <p><i>Standard 85% answered within 1 minute (excluding abandoned calls)</i></p>	<p>The data from Voice Recognition Systems is included in the less than 1 minute category.</p>	

KPI 9.3 Number of phone calls answered: within two minutes <i>Standard 98% answered within 2 minutes (excluding abandoned calls)</i>		
KPI 9.4 Total average answering time <i>The average answering time of all calls answered.</i>	This includes calls answered by telephone operators and from the Voice Recognition System.	
KPI 9.5 Abandoned telephone calls <i>Standard - abandoned calls to be no more than 5% of telephone calls received in a month.</i>	Number of calls abandoned after 20 seconds wait reported by the PABX in a month.	
KPI 10 Average number of radio jobs completed per month per car	Total pick Ups (KPI 6.4) divided by Number of taxis operating on the network (KPI 8).	
KPI 11 Number of taxis signed on		
KPI 11.1 Number of taxis signed on at 8 a.m.	8 a.m. number of cars signed on per day averaged over the month.	

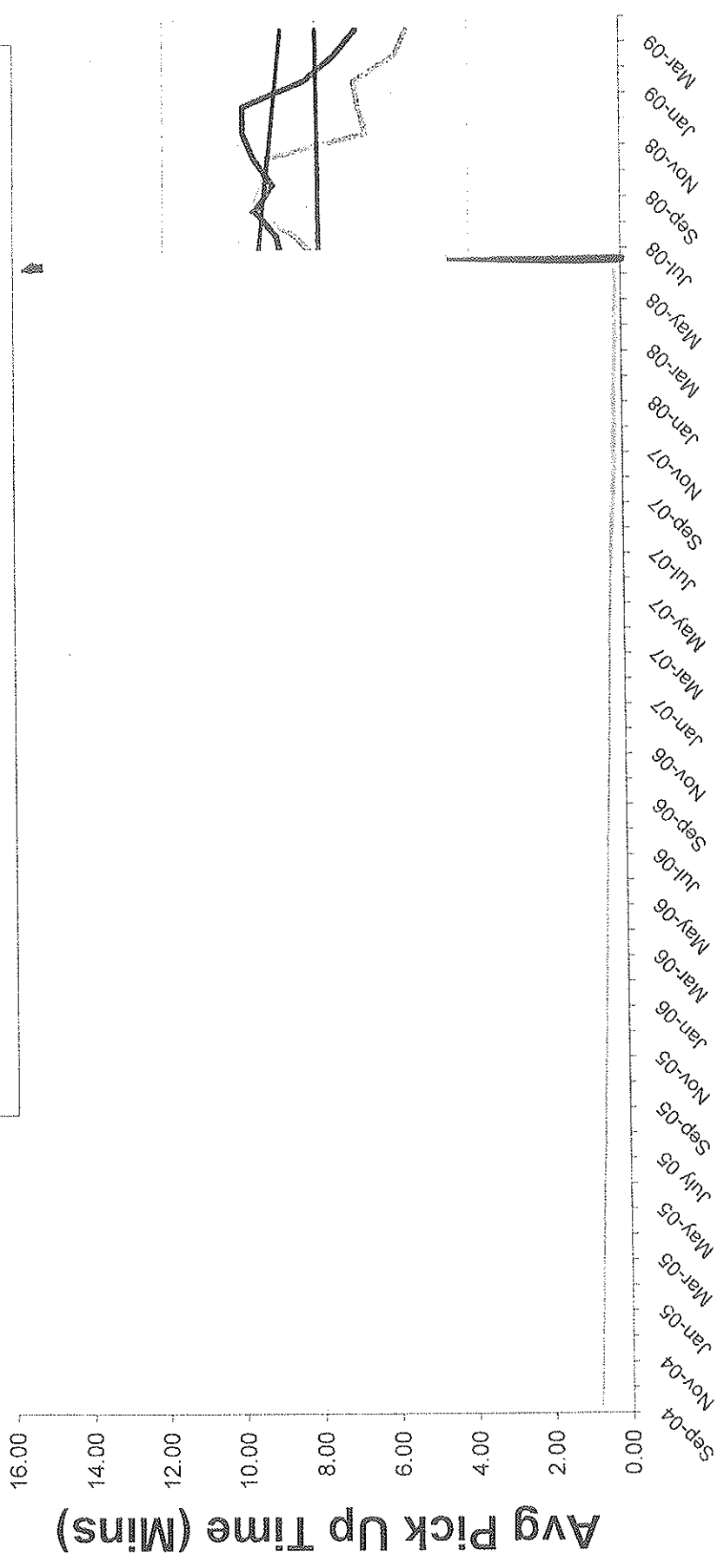
KPI 11.2 Number of taxis signed on at 4 p.m.	4 p.m. number of cars signed on per day averaged over the month.	
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Appendix B: Wheelchair Accessible Taxis – performance against Key Performance Indicators

[illegible]

Sydney Average Pick Up Time (Mins) Sept. 2004 to March 2009

Standard Taxis WATs Trend (WATs) Trend (Standard)



Appendix C: Wheelchair Accessible Taxi modifications in NSW

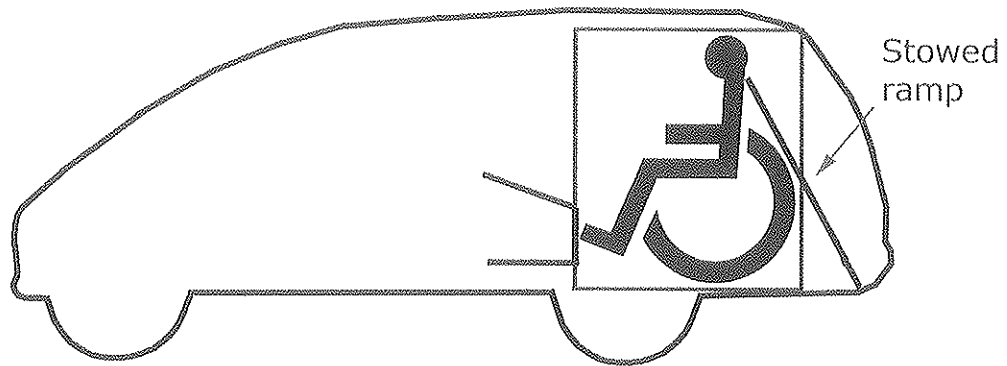


Figure 1: Ramp problem

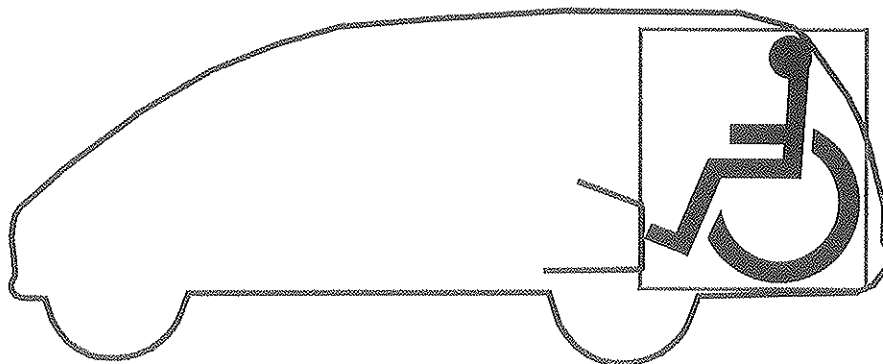


Figure 2: Door problem

Appendix D: Interpretation of the 'allocated space' requirement

Figure 1

