



Wheelchair Accessible Taxis: Review of Fares and Subsidies: Submission of the Office of the Anti-Discrimination Commissioner

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Office of the Anti-Discrimination Commissioner

Celebrating Difference, Embracing Equality

Level 1, 54 Victoria Street, Hobart • GPO Box 197, Hobart, Tasmania, Australia, 7001

Telephone: [03] 6233 4841 • Statewide: 1300 305 062 • Facsimile: [03] 6233 5333

E-mail: antidiscrimination@justice.tas.gov.au • Website: www.antidiscrimination.tas.gov.au

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Executive summary

People with disability continue to be disadvantaged in the availability and cost of public transport.

Many people with disability are reliant on the use of taxis, which is the most expensive form of land-based public transport.

The cost of taxi services adds to the difficulty people with disability experience in participating in and contributing to the social, economic and cultural life of the community.

While on the face of it the charging of higher tariffs for people who use wheelchairs is discriminatory, an analysis of the taxi subsidy scheme available to some people with disability in Tasmania shows that in most instances people who use wheelchair accessible taxis are not disadvantaged by the higher tariffs.

The use of higher tariffs, along with other incentives, appears to have a positive effect on the availability of wheelchair accessible taxi.

Comparative financial disadvantage for people who are reliant on wheelchair accessible taxis occurs because of the cap on the rebate available and, as such, an effective cap on the length of subsidised journeys. The removal of that cap would assist in ensuring comparative financial disadvantage is minimised or even removed.

The OADC supports option 2 as outlined in the Government Discussion Paper and makes a number of recommendations for longer-term improvements in the provision of non-discriminatory taxi services.

Introduction

The Office of the Anti-Discrimination Commissioner (OADC) welcomes the opportunity to provide this submission to the Tasmanian Government review of fares and subsidies for wheelchair accessible taxis in response to the discussion paper published in December 2011 (the Discussion Paper).¹

The provision of equitable access to public transport is of ongoing interest and concern for the Anti-Discrimination Commissioner. Improvements to the mechanisms for encouraging the provision of wheelchair-accessible taxis (WATs) and ensuring non-discriminatory fare structures are welcomed.

Governments across Australia have recognised that people with disability, including people who use wheelchairs and other mobility devices for independent

¹ Government of Tasmania, Department of Infrastructure, Energy and Resources (DIER), *Wheelchair Accessible Taxis: Review of Fares and Subsidies* (2011).

mobility, face barriers to equitable transport within the community. These barriers include the following:

- Some people with disability, because of the nature of their disability, are unable to obtain a driver's licence. For example, there are people with physical disability who are physically unable to drive a motor vehicle, and there are people with neurological conditions such as epilepsy who are not permitted to obtain a driver's licence.
- Some people with disability who have, or are able to obtain, a driver's licence are unable, because of the economic disadvantages commonly faced by people with disability and the additional costs involved, to purchase a suitably modified vehicle to enable them to achieve independent mobility. For example, there are people with physical disability who are able to or have a driver's licence, but require a large vehicle and significant modifications to enable them to get into and out of their vehicle and access all of the necessary vehicle controls.
- Some people with disability, because of the nature of their disability, are unable to physically access conventional public transport vehicles, including, for example, urban and inter-urban bus services and taxis. For example, people who use wheelchairs are often unable to get on and off conventional buses and into and out of conventional taxis.
- Some people with disability, because of the nature of their disability, are unable to understand or effectively engage with public transport systems. For example, people with cognitive impairments may be unable to understand information about routes and timetables for scheduled services, and people with social phobias or some forms of psychiatric illness may not feel safe or confident enough to use mass public transport.
- Some people with disability, because of the nature of their disability, are unable to obtain necessary information to safely and independently use public transport systems. For example, people with vision impairments may not have access to timetabling information, information about arriving and departing vehicles at public transport stops or information about stopping points while on a public transport vehicle if such information is only provided in print form. Similarly, people with hearing impairments may not have access to relevant information if it is provided only through audible information.

While we have anti-discrimination laws that apply to a range of transport and transport-related matters, some access issues cannot simply be overcome through application of those laws. Often the disadvantage faced by people with disability in seeking independent mobility within and between communities comes from the interaction of a range of factors. So, for example, a person with a physical disability may not be able to obtain a driver's licence and, because of this, they must rely on public transport forms. However, the most affordable form of public

transport, buses, may not be using accessible vehicles (or using them with sufficient regularity to be useful) and, as a result, the person must rely on the more expensive option of taxis. However, if they are unable to get in and out of a conventional taxi, they may need to rely on wheelchair accessible taxis (WATs), which are less available than conventional taxis. In such circumstances, it is the interplay of a range of government and non-government systems that needs to be understood to develop appropriate policy responses to improve access for people with disability.

The Federal Government's development of the *Disability Standards for Accessible Public Transport 2002* (Clth) (the Standards) was a significant one in terms of identifying and seeking to remove some of the barriers to public transport systems for people with disability, particularly people with physical disability. However, the timeframe for full implementation of the Standards and the fact that the Standards don't and can't address the different cost impacts of different forms of transport mean that for many people with disability, including people with physical disability, independent mobility remains a costly and often unfulfilled goal.

The development by state and territory governments of transport subsidy schemes, including taxi subsidy schemes, goes some way to recognise that cost is a continuing barrier to equality for people with disability. Each state and territory has approached the issues of barriers facing people with disability in different ways, responding to a range of impairments differently. At their core, such schemes are a necessary part of governments recognising that people with disability have severely limited transport options and, in some cases, have no option other than taxis.

In Tasmania, the situation facing people with disability in seeking to travel independently within urban areas and between communities is affected by the lack of alternative modes of transport. Motorised urban travel is restricted to private vehicles, public buses or taxis (and in Hobart, ferries). Motorised inter-community travel is similarly restricted. Unlike many other parts of Australia, there are no urban or inter-community trains, no trams, no light rail, etc.

An additional factor of relevance to Tasmania is the high percentage of the population living outside major urban centres, the relatively small population and the need for people to travel between urban centres or to urban centres to access key services. The strong focus in Tasmania on three regional centres, and the common practice of holding events and meetings outside the capital city of Hobart adds to the complexity of the situation.

All this means that people with disability face particular challenges in travelling independently and participating fully in the work, cultural and social life of their communities. It also means that the Tasmanian Government faces particular challenges in ensuring equitable access to effective public transport options for all people with disability. With a small population, viability is a particular

pressure point for small public transport operators such as taxi operators and drivers.

Anti-discrimination law and the provision of taxi services for people with disability

The *Anti-Discrimination Act 1998* (Tas) (the Tasmanian Act) provides that it is unlawful to discriminate against a person on the basis of, among other attributes, disability.² Under the definition found in section 3 of the Tasmanian Act, disability includes ‘reliance on a ... wheelchair’.

There is no requirement under the Tasmanian Act for the disability to be permanent. So, for example, a person who is reliant on a wheelchair due to a temporary sporting injury has the same protection from discrimination because of that wheelchair-reliance as a person who has a permanent mobility impairment, such as quadriplegia, that results in them using a wheelchair.

The protection under the Tasmanian Act applies to any conduct that occurs in Tasmania and protection is not limited to Tasmanians, but applies to any person who is discriminated against in Tasmania or by a person or organisation in Tasmania. So, for example, a person visiting Tasmania from interstate who is reliant on a wheelchair has the same protection against discrimination as a Tasmanian resident.

Discrimination is unlawful in specified areas of activity, including the provision of services, which includes ‘services ... relating to transportation and travel’.³

As such, the provision of taxi services comes within the relevant area of activity of provision of services for the purposes of the Tasmanian Act.

Discrimination that is prohibited under the Tasmanian Act includes both ‘direct’ and ‘indirect’ discrimination.⁴ The Tasmanian Act provides, in section 14, that:

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

² *Anti-Discrimination Act 1998* (Tas) s 16(k).

³ *Anti-Discrimination Act 1998* (Tas) ss 3 and 22(1)(c).

⁴ *Anti-Discrimination Act 1998* (Tas) s 14(1).

Indirect discrimination is defined in section 15 of the Tasmanian Act:

- (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.

It is important to note that equivalent provisions exist in the *Disability Discrimination Act 1992* (Cth) (the DDA).⁵

Charging a person a different fee for a service because they have a disability is a form of direct discrimination. An example of indirect discrimination would be starting the meter for a taxi fare from the time the taxi pulls up to pick up a passenger and continuing the meter running until the person leaves the vehicle. This would be a condition, requirement or practice that has the effect of disadvantaging people who use wheelchairs because of the additional time taken for them to embark and disembark from a taxi and have the wheelchair safely secured within the vehicle.

Under the Tasmanian Act, 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 Another exception 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 This submission deals later with the question of whether or not these exceptions are relevant.

In respect of legislative compliance, a narrower ‘exemption’ applies under the DDA to ‘anything done ... in direct compliance with a prescribed law’.⁹ No Tasmanian laws have been prescribed for the purposes of section 47 of the DDA.

⁵ *Disability Discrimination Act 1992* (Cth) ss 4, 5, 7 and 24.

⁶ *Anti-Discrimination Act 1998* (Tas) s 24.

⁷ *Anti-Discrimination Act 1998* (Tas) s 25.

⁸ *Anti-Discrimination Act 1998* (Tas) s 26.

⁹ *Disability Discrimination Act 1992* (Cth) s 47.

The DDA provides an exemption for ‘special measures’, being acts:¹⁰

... reasonably intended to:

(a) ensure that persons who have a disability have equal opportunities with other persons in circumstances in relation to which a provision is made by this Act; or

...

(c) afford persons who have a disability or a particular disability, grants, benefits or programs, whether direct or indirect, to meet their special needs in relation to:

(i) ...

(ii) the provision of ... services ...

...; or

(v) their capacity to live independently.

This submission later considers the relevance of these exceptions and exemptions to the particular circumstances.

The OADC notes that Australia is bound by the provisions of the *Convention on the Rights of Persons with Disabilities* (the CRPD)¹¹, and that obligations under that Convention are relevant to the provision of services by state and territory governments. Of particular relevance to the current review is Article 9 of the CRPD, which states, among other things:¹²

1. To enable persons with disabilities to live independently and participate fully in all aspects of life, States Parties shall take appropriate measures to ensure to persons with disabilities access, on an equal basis with others, to the physical environment, to transportation ... both in urban and in rural areas. These measures, which shall include the identification and elimination of obstacles and barriers to accessibility, shall apply to, inter alia:

a. ... transportation...

...

The current arrangements in Tasmania

The OADC notes the comment in the introduction to the Discussion Paper that ‘Tasmania is the only Australian jurisdiction where fares paid by people travelling in WATs in their wheelchairs (Tariffs 3 and 4) are higher than the fares charged by standard taxis (Tariffs 1 and 2)’¹³ and the immediate concern

¹⁰ *Disability Discrimination Act 1992* (Cth) s 45.

¹¹ *Convention on the Rights of Persons with Disabilities*, opened for signature 30 March 2007, UN Doc A/61/611, (entered into force 3 May 2008, ratified by Australia 17 July 2008, entered into force for Australia 18 August 2008) (*Convention on the Rights of Persons with Disabilities*).

¹² *Ibid*, Art 9.

¹³ DIER, above n1, 3.

this raises of the potential discrimination embodied in the current differential tariff arrangements.

The applicable tariffs for a person who uses a wheelchair travelling in a WAT—Tariffs 3 and 4—are set out in the *Taxi Industry Regulations 2009* (Tas).¹⁴

The higher tariffs are off-set—at least in part—by the subsidy available to members of the Transport Access Scheme (TAS).

The TAS is administered by the Tasmanian Government and is designed ‘to provide assistance to people who have a permanent and severe disability’.¹⁵ It is open to Tasmanian residents.

The TAS has two tiers of subsidy available for taxi fares. All members of the TAS are eligible for a subsidy of 50% up to a maximum of \$25 per trip, while TAS members who use WATs because they are wheelchair reliant are eligible for a subsidy of 60% up to a maximum of \$30 per trip.

There is no subsidy in place for people with temporary conditions that result in them relying on a wheelchair and requiring transport in WATs.

The OADC understands from discussions with the Department of Infrastructure, Energy and Resources and the Discussion Paper that taxi drivers are required not to turn their meter on until they begin driving and to turn it off when they stop the vehicle at the destination.¹⁶ As such, drivers are not permitted to charge a metered time rate for assisting a passenger to embark and disembark. This arrangement is appropriate as it removes the potentially indirect disability discrimination that would otherwise arise (as discussed above under ‘Anti-discrimination law and the provision of taxi services for people with disability’).

The Discussion Paper notes that the ‘higher fares are intended to provide payment to drivers for the extra time that drivers needed to assist passengers travelling in these vehicles and the necessity of travelling more slowly when carrying some passengers’.¹⁷ The higher fares provide, in effect, a means of overcoming any disincentive that arises from the additional time and an incentive to give preference to passengers who require a WAT because of disability over other passengers. Without such an incentive, drivers may give preference to other passengers on the basis that there are no additional time factors involved in embarking and disembarking, etc, despite the failure to offer

¹⁴ *Taxi Industry Regulations 2008* (Tas) Sch 3, cl 1, 2 and 5.

¹⁵ Department of Infrastructure, Energy and Resources, *Information Brochure: Transport Access Scheme* <[http://www.transport.tas.gov.au/_data/assets/pdf_file/0016/52342/TAS - Information Brochure.pdf](http://www.transport.tas.gov.au/_data/assets/pdf_file/0016/52342/TAS_-_Information_Brochure.pdf)>.

¹⁶ DIER, above n1, 7.

¹⁷ DIER, above n1, 3.

the same service to a person with disability being discriminatory, in breach of the Tasmanian Act.

The Discussion Paper sets out other incentives to encourage the take up of WAT licences.¹⁸ One incentive is the availability of WAT licences at no cost. This provides a direct incentive to operate a WAT, but does not directly impact on whether or not the WAT is used to transport people who use wheelchairs. It is clearly a benefit to the operator, but has no beneficial effect for the driver. As such, it is not an incentive that increases the likelihood of a WAT driver giving preference to providing taxi services to a person who uses a wheelchair over a person who doesn't.

It may be useful to consider more targeted incentives to ensure that those getting the benefit of a free WAT licence are adding to the availability of transport for wheelchair users. The OADC understands that a minimum service level requirement operates in some jurisdictions in Australia and believes such a system should be considered in this State.

Recommendation

That the Tasmanian Government consider implementing a minimum service level requirement for wheelchair accessible taxis in relation to the provision of taxi services to people who use wheelchairs.

There is also a trip subsidy that is paid to operators for each trip where a person using a wheelchair is carried. The trip subsidy has the potential to create an incentive, but with the current arrangement being that it is paid to the operator rather than the driver, there is no incentive for the driver unless the operator passes on the subsidy to the relevant driver. The effectiveness of this incentive could be improved by (a) paying the incentive to the driver (or requiring this of the operator); or (b) requiring a minimum percentage of the trip subsidy to be paid to the driver. A further improvement could enhance timeliness through increasing the trip subsidy where the response time is equivalent to conventional vehicle response times.

Recommendation

That the Tasmanian Government consider making changes to the existing trip subsidy paid to wheelchair accessible taxi operators for every trip for which a wheelchair passenger is carried to:

- (a) pay the trip subsidy direct to the relevant driver or require the operator to pass on all or a fixed minimum amount of the trip subsidy (say not less than 60%) to the relevant driver;*
- (b) create a greater incentive for drivers where the driver achieves a response time equivalent to conventional vehicle response times.*

¹⁸ Ibid.

In the current circumstances, the only incentive that has a direct benefit to the driver is the higher tariffs.

The Tasmanian Government is, in the Commissioner's view, to be commended for creating a system of incentives that work in conjunction with the prohibitions on discrimination contained in the Tasmanian Act, and supports the retention of incentives to the extent that they do not have a discriminatory effect for passengers.

Because of the continuing need to maintain incentives to ensure provision of taxi services for wheelchair users, the OADC does not support Option 1 in the Discussion Paper, being the removal of Tariffs 3 and 4. The OADC's support for the retention of Tariffs 3 and 4 is conditional on implementing measures to remove the discriminatory effect of this particular incentive. This is considered in more detail below under 'Members of the Taxi Assistance Scheme'.

Visitors to Tasmania

Interstate visitors

Visitors from interstate who are reliant on wheelchairs may have access to schemes similar to the TAS in their own state or territory. Each state and territory scheme operates slightly differently, provides a different level of subsidy and has a different cap. Different arrangements may also be in place in respect of when the taxi meter may be turned on and when it must be turned off. These are factors that will affect any comparison between the treatment afforded to people travelling in WATs in Tasmania and that afforded to people travelling in WATs in other states and territories. However, it is clear that some of the interstate schemes do provide for a higher subsidy for people who are reliant on wheelchairs.¹⁹

In NSW, the Taxi Transport Subsidy Scheme (NSW TTSS) provides participants with a 50 percent subsidy up to a maximum of \$30 and can be used for interstate taxi travel with prior arrangement.²⁰ The eligibility criteria for the NSW TTSS is largely similar to that in Tasmania under the TAS. People requiring travel in wheelchair accessible taxis are issued with different vouchers to other NSW TTSS participants but the subsidy appears to be at the same level.

Victoria has the Multi-Purpose Taxi Program (Vic MPTP), again for people with severe and permanent disability.²¹ The Vic MPTP provides a subsidy of 50 percent up to a maximum of \$60 per trip, with some people's subsidy subject to a

¹⁹ See, for example, the schemes in South Australia, Western Australia and the Australian Capital Territory.

²⁰ *Taxi Transport Subsidy Scheme (TTSS)* (2011) NSW Department of Transport <<http://www.transport.nsw.gov.au/ttss>> at 2 February 2012.

²¹ *Multi Purpose Taxi Program* (2012) Victorian Department of Transport <<http://www.transport.vic.gov.au/taxis/mptp>> at 3 February 2012.

yearly limit. There is a fee to obtain an MTRP card: \$16.50, and the card is valid for 6 years. Scheme members can get the same subsidy when travelling interstate through specially issued vouchers, but there is a limit on the number of vouchers permitted per week while travelling interstate with a maximum of 50 vouchers for each interstate trip.

South Australia has the Taxi Fare Subsidy Scheme (SA TFSS), again for people with permanent and severe disabilities.²² Under the SA TFSS, there is a subsidy of 50 percent for people who are able to walk and of 75 percent for people who are reliant on wheelchairs. The subsidy applies to fares up to \$40. For any fare over \$40, the passenger will receive the 50 or 75 percent subsidy for \$40 (that is \$20 or \$30) and then have to pay the full amount of the fare above the \$40. So if the fare is \$50, a person receiving a 75 percent subsidy would pay \$20 being \$10 of the first \$40 plus the \$10 over \$40.

Western Australia has the Taxi Users' Subsidy Scheme (WA TUSS), for people with permanent severe disabilities that prevent them using a conventional public transport bus service.²³ The WA TUSS provides a 50 percent subsidy up to a maximum of \$25 for non-wheelchair users and a 75 percent subsidy up to a maximum of \$35 for most passengers travelling in a wheelchair. Interstate TUSS vouchers are available.

Queensland has the Taxi Subsidy Scheme (Qld TSS), for people with severe disability.²⁴ Participants receive a subsidy of 50 percent up to a maximum of \$25 per trip. The scheme is available for people with temporary disability for between 6 and 12 months. Participants receive 20 interstate travel vouchers per year.

The ACT has the Taxi Subsidy Scheme (ACT TSS), for 'eligible people who are unable to use public transport due to a severe or profound activity limitations'.²⁵ The disability must prevent them using public transport for a minimum of 6 months.²⁶ For non-wheelchair users, there may be a subsidy of 50 percent up to a maximum of \$17 per trip, while for wheelchair users, the subsidy may be 75 percent up to a maximum of \$26 per trip.

²² *Taxi Fare Subsidy Scheme* (2011) sa.gov.au
<<http://www.sa.gov.au/subject/Transport%2C+travel+and+motoring/Public+transport+and+travel/Getting+around+with+a+disability+or+mobility+aid/Taxi+fare+subsidy+scheme>> at 2 February 2012.

²³ *Passenger subsidies* (2011) Government of Western Australia, Department of Transport
<<http://www.transport.wa.gov.au/taxis/15155.asp>> at 2 February 2012.

²⁴ *Taxi Subsidy Scheme* (2012) Queensland Government
<<http://www.qld.gov.au/disability/out-and-about/taxi-subsidy/>> at 3 February 2012.

²⁵ *ACT Taxi Subsidy Scheme* (2011) ACT Government, Community Services
<http://www.dhcs.act.gov.au/_data/assets/pdf_file/0019/5248/Application_for_the_ACT_Taxi_Subsidy_Scheme.pdf> at 3 February 2012.

²⁶ *Taxi Subsidy Scheme* (2011) ACT Government Concessions
<http://www.concessions.act.gov.au/transport/taxi_subsidy_scheme> at 3 February 2012.

The NT has the Taxi Subsidy Scheme (NT TSS), for people with a disability that ‘prevents them being able to use public transport to access the community’.²⁷ The NT TSS has a number of different categories of members and members in category A and B area also allocated 120 ‘lift incentives’ per year. The lift incentive is a flat fee payable to drivers of Multiple Purpose Taxis in recognition that there may be additional time required to embark and disembark from an MPT and that drivers do not always charge for this time, even though they are permitted to do so. As with the higher tariffs in Tasmania, this is a means of providing an incentive to drivers to give preference to wheelchair-reliant passengers.

Overseas visitors

Visitors from overseas who require transport in a WAT because they rely on a wheelchair for mobility will face the higher tariffs and may or may not be members of subsidy schemes in their own country that could offset the higher tariffs.

Considering the application of law to the current scheme

On the face of it, the higher tariffs applied to people who use wheelchairs when travelling in a WAT appear to be discriminatory.

The potentially discriminatory treatment comes through Tariff 3 and Tariff 4 being higher than the conventional tariffs, Tariff 1 and Tariff 2. A higher fare is, on its face, less favourable treatment and it is clearly directly linked to the fact of disability, being ‘reliance on a wheelchair’. As such, it appears that people who are wheelchair reliant are directly discriminated against when travelling in WATs.

However, further consideration is needed to determine whether or not a person who uses a wheelchair is, in fact, experiencing detriment through paying a higher fare because of the higher tariff when travelling in a WAT than a person who does not use a wheelchair would be charged if travelling in a WAT or a conventional vehicle for the same trip.

Different considerations apply for different WAT passengers.

Members of the Taxi Assistance Scheme

In respect of Tasmanian residents who are members of the TAS, in order to determine whether or not there is a higher actual charge per trip, it is necessary to consider the effect of the taxi fare concession (subsidy) provided under the TAS. As noted above and detailed in the Discussion Paper, the subsidy provided to a ‘wheelchair-reliant member’ of TAS when travelling in a WAT is higher than

²⁷ *Northern Territory Taxi Subsidy Scheme* (2011) Northern Territory Government, Northern Territory Transport Group <<http://www.transport.nt.gov.au/taxi/nttss/index.shtml>> at 3 February 2012.

the subsidy provided to other eligible members when travelling in a taxi. The latter would be charged the standard tariffs, Tariff 1 or Tariff 2. The question then becomes, to what extent (if at all) does the additional subsidy of 10%—being the difference in subsidy between these two groups—offset the higher tariffs (Tariff 3 or Tariff 4). There are two elements to this consideration: the effect of the higher tariffs and subsidy on the fares paid by WAT passengers when compared with non-TAS members; and the effect of the higher tariffs and subsidy on the fares paid by WAT passengers when compared with other TAS members.

Table 1 in the Discussion Paper²⁸ indicates that it is likely that for trips of over 144 kilometres, the subsidy is no longer sufficient to offset the higher tariffs. This is because of the cap on the subsidy.

This means that the imposition of the cap results in there being less favourable treatment of a person with disability (being a person who is reliant on a wheelchair) than a person without disability for journeys of over 144 kilometres. Wheelchair users are perhaps more likely than others to utilise taxis on such longer trips as their alternatives for such trips are more limited.

The OADC has considered also the effect of the differential cap as between TAS members who are wheelchair users and TAS members who are not. Table 1 below shows the comparable effect of the higher tariff with the cap. Table 2 below shows the comparable effect of the higher tariff and higher rebate with the removal of both caps. Table 3 below shows the comparable effect of the higher tariff and higher rebate with only the WAT rebate uncapped. (All of these tables use the base data provided by DIER in the Discussion Paper. The OADC notes that these do not provide comparisons for Tariff 4 and Tariff 2 and considers that these should be tested to ensure that the same overall effect is achieved before any new approach is implemented.)

²⁸ DIER, above n1, 4.

Table 1: Effect of differential tariff, rebate and rebate caps (current situation)

Fare	Indicative distance (km)	Fare under Tariff 3			Fare under Tariff 1 (with TAS)				Fare under Tariff 1	
		Total fare	Subsidy paid by TAS (60%)	Fare paid by TAS-WAT passenger	Estimated total fare	Subsidy paid by TAS (50%)	Fare paid by TAS passenger	Benefit/(cost) to TAS-WAT passenger cf TAS passenger	Estimated total fare	Benefit/(cost) to TAS-WAT user cf non-TAS passenger
\$7.00	1.1	\$7.00	\$4.20	\$2.80	\$5.19	\$2.60	\$2.60	-\$0.21	\$5.19	\$2.39
\$10.00	2.6	\$10.00	\$6.00	\$4.00	\$7.89	\$3.95	\$3.95	-\$0.06	\$7.89	\$3.89
\$12.00	3.6	\$12.00	\$7.20	\$4.80	\$9.69	\$4.85	\$4.85	\$0.04	\$9.69	\$4.89
\$15.00	5.1	\$15.00	\$9.00	\$6.00	\$12.39	\$6.20	\$6.20	\$0.20	\$12.39	\$6.39
\$20.00	7.7	\$20.00	\$12.00	\$8.00	\$16.89	\$8.45	\$8.45	\$0.45	\$16.89	\$8.89
\$25.00	10.2	\$25.00	\$15.00	\$10.00	\$21.39	\$10.70	\$10.70	\$0.70	\$21.39	\$11.39
\$30.00	12.8	\$30.00	\$18.00	\$12.00	\$25.89	\$12.95	\$12.95	\$0.95	\$25.89	\$13.89
\$35.00	15.3	\$35.00	\$21.00	\$14.00	\$30.39	\$15.20	\$15.20	\$1.20	\$30.39	\$16.39
\$40.00	17.8	\$40.00	\$24.00	\$16.00	\$34.88	\$17.44	\$17.44	\$1.44	\$34.88	\$18.88
\$50.00	22.9	\$50.00	\$30.00	\$20.00	\$43.88	\$21.94	\$21.94	\$1.94	\$43.88	\$23.88
\$60.00	28	\$60.00	\$30.00	\$30.00	\$52.88	\$25.00	\$27.88	-\$2.12	\$52.88	\$22.88
\$70.00	33.1	\$70.00	\$30.00	\$40.00	\$61.88	\$25.00	\$36.88	-\$3.12	\$61.88	\$21.88
\$100.00	48.3	\$100.00	\$30.00	\$70.00	\$88.88	\$25.00	\$63.88	-\$6.12	\$88.88	\$18.88
\$150.00	73.8	\$150.00	\$30.00	\$120.00	\$133.87	\$25.00	\$108.87	-\$11.13	\$133.87	\$13.87
\$200.00	99.2	\$200.00	\$30.00	\$170.00	\$178.86	\$25.00	\$153.86	-\$16.14	\$178.86	\$8.86
\$288.50	144.2	\$288.50	\$30.00	\$258.50	\$258.50	\$25.00	\$233.50	-\$25.00	\$258.50	\$0.00
\$300.00	150	\$300.00	\$30.00	\$270.00	\$268.84	\$25.00	\$243.84	-\$26.16	\$268.84	-\$1.16
\$400.00	200.9	\$400.00	\$30.00	\$370.00	\$358.83	\$25.00	\$333.83	-\$36.17	\$358.83	-\$11.17

Table 2: Effect of differential tariff and rebate with no cap on rebate for any TAS member (option 2)

Fare	Indicative distance (km)	Fare under Tariff 3			Fare under Tariff 1 (with TAS)				Fare under Tariff 1	
		Total fare	Subsidy paid by TAS (60%)	Fare paid by TAS-WAT passenger	Estimated total fare	Subsidy paid by TAS (50%)	Fare paid by TAS passenger	Benefit/(cost) to TAS-WAT passenger cf TAS passenger	Estimated total fare	Benefit/(cost) to TAS-WAT user cf non-TAS passenger
\$7.00	1.1	\$7.00	\$4.20	\$2.80	\$5.19	\$2.60	\$2.60	-\$0.21	\$5.19	\$2.39
\$10.00	2.6	\$10.00	\$6.00	\$4.00	\$7.89	\$3.95	\$3.95	-\$0.06	\$7.89	\$3.89
\$12.00	3.6	\$12.00	\$7.20	\$4.80	\$9.69	\$4.85	\$4.85	\$0.04	\$9.69	\$4.89
\$15.00	5.1	\$15.00	\$9.00	\$6.00	\$12.39	\$6.20	\$6.20	\$0.20	\$12.39	\$6.39
\$20.00	7.7	\$20.00	\$12.00	\$8.00	\$16.89	\$8.45	\$8.45	\$0.45	\$16.89	\$8.89
\$25.00	10.2	\$25.00	\$15.00	\$10.00	\$21.39	\$10.70	\$10.70	\$0.70	\$21.39	\$11.39
\$30.00	12.8	\$30.00	\$18.00	\$12.00	\$25.89	\$12.95	\$12.95	\$0.95	\$25.89	\$13.89
\$35.00	15.3	\$35.00	\$21.00	\$14.00	\$30.39	\$15.20	\$15.20	\$1.20	\$30.39	\$16.39
\$40.00	17.8	\$40.00	\$24.00	\$16.00	\$34.88	\$17.44	\$17.44	\$1.44	\$34.88	\$18.88
\$50.00	22.9	\$50.00	\$30.00	\$20.00	\$43.88	\$21.94	\$21.94	\$1.94	\$43.88	\$23.88
\$60.00	28	\$60.00	\$36.00	\$24.00	\$52.88	\$26.44	\$26.44	\$2.44	\$52.88	\$28.88
\$70.00	33.1	\$70.00	\$42.00	\$28.00	\$61.88	\$30.94	\$30.94	\$2.94	\$61.88	\$33.88
\$100.00	48.3	\$100.00	\$60.00	\$40.00	\$88.88	\$44.44	\$44.44	\$4.44	\$88.88	\$48.88
\$150.00	73.8	\$150.00	\$90.00	\$60.00	\$133.87	\$66.94	\$66.94	\$6.94	\$133.87	\$73.87
\$200.00	99.2	\$200.00	\$120.00	\$80.00	\$178.86	\$89.43	\$89.43	\$9.43	\$178.86	\$98.86
\$288.50	144.2	\$288.50	\$173.10	\$115.40	\$258.50	\$129.25	\$129.25	\$13.85	\$258.50	\$143.10
\$300.00	150	\$300.00	\$180.00	\$120.00	\$268.84	\$134.42	\$134.42	\$14.42	\$268.84	\$148.84
\$400.00	200.9	\$400.00	\$240.00	\$160.00	\$358.83	\$179.42	\$179.42	\$19.42	\$358.83	\$198.83

Table 3: Effect of differential tariff and rebate with no cap on rebate for TAS members using WATs, but retaining cap for other TAS members

Fare	Indicative distance (km)	Fare under Tariff 3			Fare under Tariff 1 (with TAS)				Fare under Tariff 1	
		Total fare	Subsidy paid by TAS (60%)	Fare paid by TAS-WAT passenger	Estimated total fare	Subsidy paid by TAS (50%)	Fare paid by TAS passenger	Benefit/(cost) to TAS-WAT passenger cf TAS passenger	Estimated total fare	Benefit/(cost) to TAS-WAT user cf non-TAS passenger
\$7.00	1.1	\$7.00	\$4.20	\$2.80	\$5.19	\$2.60	\$2.60	-\$0.21	\$5.19	\$2.39
\$10.00	2.6	\$10.00	\$6.00	\$4.00	\$7.89	\$3.95	\$3.95	-\$0.06	\$7.89	\$3.89
\$12.00	3.6	\$12.00	\$7.20	\$4.80	\$9.69	\$4.85	\$4.85	\$0.04	\$9.69	\$4.89
\$15.00	5.1	\$15.00	\$9.00	\$6.00	\$12.39	\$6.20	\$6.20	\$0.20	\$12.39	\$6.39
\$20.00	7.7	\$20.00	\$12.00	\$8.00	\$16.89	\$8.45	\$8.45	\$0.45	\$16.89	\$8.89
\$25.00	10.2	\$25.00	\$15.00	\$10.00	\$21.39	\$10.70	\$10.70	\$0.70	\$21.39	\$11.39
\$30.00	12.8	\$30.00	\$18.00	\$12.00	\$25.89	\$12.95	\$12.95	\$0.95	\$25.89	\$13.89
\$35.00	15.3	\$35.00	\$21.00	\$14.00	\$30.39	\$15.20	\$15.20	\$1.20	\$30.39	\$16.39
\$40.00	17.8	\$40.00	\$24.00	\$16.00	\$34.88	\$17.44	\$17.44	\$1.44	\$34.88	\$18.88
\$50.00	22.9	\$50.00	\$30.00	\$20.00	\$43.88	\$21.94	\$21.94	\$1.94	\$43.88	\$23.88
\$60.00	28	\$60.00	\$36.00	\$24.00	\$52.88	\$25.00	\$27.88	\$3.88	\$52.88	\$28.88
\$70.00	33.1	\$70.00	\$42.00	\$28.00	\$61.88	\$25.00	\$36.88	\$8.88	\$61.88	\$33.88
\$100.00	48.3	\$100.00	\$60.00	\$40.00	\$88.88	\$25.00	\$63.88	\$23.88	\$88.88	\$48.88
\$150.00	73.8	\$150.00	\$90.00	\$60.00	\$133.87	\$25.00	\$108.87	\$48.87	\$133.87	\$73.87
\$200.00	99.2	\$200.00	\$120.00	\$80.00	\$178.86	\$25.00	\$153.86	\$73.86	\$178.86	\$98.86
\$288.50	144.2	\$288.50	\$173.10	\$115.40	\$258.50	\$25.00	\$233.50	\$118.10	\$258.50	\$143.10
\$300.00	150	\$300.00	\$180.00	\$120.00	\$268.84	\$25.00	\$243.84	\$123.84	\$268.84	\$148.84
\$400.00	200.9	\$400.00	\$240.00	\$160.00	\$358.83	\$25.00	\$333.83	\$173.83	\$358.83	\$198.83

These comparisons show that the removal of caps on all rebates under the TAS scheme result in TAS members retaining a benefit when compared to non-TAS members and TAS members who are WAT reliant achieve a slight benefit when compared to other TAS members. Such outcomes are arguably consistent with the overall purpose of TAS and recognise the additional barriers to independent travel experienced by those members of the TAS who are reliant on WATs.

On this basis, the OADC supports Option 2 in the Discussion Paper, being the removal of the per-trip cap applying to the subsidy for all TAS members.

Recommendation

That, subject to analysis in relation to Tariff 4 compared to Tariff 2, the Tasmanian Government remove the caps on subsidies paid for taxi fares for members of the Transport Assistance Scheme.

While the removal of the discriminatory effect against wheelchair-reliant passengers could be achieved through the removal of the per-trip cap for only these members of TAS, this would then result in much more significantly different treatment between wheelchair-reliant passengers and other passengers with disability, disadvantaging that second category of passengers and being discriminatory on the basis of particular disability.

The OADC acknowledges the cost impact to the Tasmanian Government of this option and that the impact is currently not quantified. However, all governments in Australia are under an obligation as a result of state, territory and federal anti-discrimination laws and the UN *Convention on the Rights of Persons with Disabilities* to ensure that people with disability have access to the public transport without discrimination.²⁹ So long as other forms of public transport in Tasmania remain less than 100% accessible, people with disability will be forced to rely on taxis more often than non-disabled people.

It is in recognition of the barriers faced by people with disability in accessing the community and transport that the OADC supports Option 2 in preference to Option 3.

Option 3 puts the onus onto the person with disability to seek reimbursement for any amount over the fare that would have been paid by a non-disabled person for the same journey. This requires the person with disability to understand their right to claim such a reimbursement and to know when that right is properly triggered. Some people with disability may, because of disability, be unable to exercise that right.

²⁹ *Convention on the Rights of Persons with Disabilities*, opened for signature 30 March 2007, UN Doc A/61/611, Art 9 (entered into force 3 May 2008, ratified by Australia 17 July 2008, entered into force for Australia 18 August 2008) ('*Convention on the Rights of Persons with Disabilities*').

Such a scheme would also inevitably involve people having to make claims when they were uncertain about whether or not their fare had been higher and the Government needing to establish a system for assessing such differences in circumstances where comparative fares are extremely difficult to determine after the fact.

In supporting Option 2, the OADC urges the Government to commit to a review of these arrangements in a reasonable timeframe to ensure that the arrangements achieve the most equitable outcomes possible for people with disability. Given the complexities of removing the discriminatory effect of differential tariffs on non-TAS members, alternative mechanisms for creating incentives and ensuring viability need to be explored with a view to removing the differential tariff in the longer term. The OADC urges DIER to work with industry and academics to develop and test models that recognise the ongoing transport disadvantage experienced by people with disability, particularly people who use wheelchairs.

Interstate visitors who are members of taxi subsidy schemes

The removal of the cap will not, however, deal with the potential for discriminatory effect for interstate visitors who are wheelchair reliant and are travelling in a WAT. Some of these visitors will, however, receive a differential subsidy through their membership of their own state or territory scheme. Not all interstate schemes, however, have a higher subsidy for people who are reliant on wheelchairs and most interstate schemes have a cap on the available subsidy.

For those travellers from states or territories with a single subsidy, the discriminatory effect of the higher tariffs applies to all taxi travel as none of them have a tariff subsidy of more than 50% which is the subsidy available on the lower tariffs in Tasmania.³⁰

For those travellers from states or territories with a different and higher subsidy for passengers who are reliant on wheelchairs and a cap on that subsidy, the discriminatory effect will apply to only longer journeys, depending on the level of the subsidy and the level of the cap.³¹ So long as there is a lack of accessible vehicles available for hire here in Tasmania through car rental companies there remains a very real possibility that visitors who use wheelchairs may engage taxis for longer trips and, as such, face the discriminatory effect of higher tariffs.

³⁰ Note, the OADC has not been able to ascertain the arrangements in the Northern Territory and, as such, this may not be accurate for people from the NT.

³¹ This would, for example, be the case for Western Australians and people from the ACT. In both cases the higher subsidy is 75%, 15% higher than the subsidy available for wheelchair-reliant members of the TAS. The cap on the subsidy from people from Western Australia is also higher: \$35 rather than \$30 and, as such, the discriminatory effect of the higher tariff would not come into play until a trip somewhat longer than the 144 km for TAS members. The cap on the subsidy for people from the ACT is lower: \$26 rather than \$30 and, as such, the discriminatory effect of the higher tariffs may come into play at a distance similar to the 144 km for TAS members.

For those travellers from states or territories with a higher subsidy for passengers who are reliant on wheelchair and no cap on that subsidy, there may be no discriminatory effect if the subsidy difference is sufficient to overcome the tariff differences.³²

This may be a matter that could usefully be raised for consideration by the Commonwealth Transport Ministers in order to achieve a level of uniformity that ensures that interstate travellers to Tasmania do not face discrimination because of the higher tariffs applied if they are wheelchair reliant.

In the interim, the OADC urges the Government to establish a working group to examine options for removing the discriminatory effect for interstate visitors who are on subsidy schemes. This would need to be convened and supported by DIER, and would usefully involve key disability organisations and the OADC. It would need to obtain information from each of the state and territory schemes about available rebates and any difference in rebates applying to different categories of users and any cap on rebates.

People who are temporarily reliant on wheelchairs

People in Tasmania who are temporarily reliant on wheelchairs are currently discriminated against when using WATs because of the higher tariffs. This is because they are not eligible for any concession and, as such, experience the full effect of the higher tariffs, which results in them being charged a higher fare for a journey than a person without their disability would be charged for the same journey.

The Government could give consideration to a mechanism to enable a person to be a temporary member of the TAS, similar to the arrangements in Queensland and the ACT. However, it should be noted that the ACT scheme is only open to people who have a temporary disability for at least 6 months and, as such, the discriminatory effect would remain for people with much more short-term mobility impairments.

Alternatively, the Government could implement a scheme whereby a person who has had to pay the higher tariffs because of temporary disability could be reimbursed for the difference between the tariffs or, as suggested in the Discussion Paper³³, a set percentage of the fare. Information about such a reimbursement could usefully be made available through medical practitioners and hospitals as people with temporary reliance on wheelchairs are most likely to be coming in contact with these service providers.

³² The only interstate travelers who appear to be in this category are those from South Australia. Although, there may be a similar arrangement place for travelers from the Northern Territory.

³³ DIER, above n1, 14.

As with interstate visitors, the OADC considers that further work needs to be done and this could usefully be done by a working group involving DIER, relevant disability groups and the OADC.

Overseas visitors

Without extensive research it is not possible to know what, if any, rebates or caps on rebates are available to overseas visitors with disability using taxis here in Australia. The work involved in ascertaining such details would likely be an unjustifiable demand on DIER's resources.

Alternatives may be to provide a scheme whereby overseas visitors could claim a refund for 60% of fares paid when using WATs. Schemes do exist in other countries to permit visitors to claim refund of local taxes, such as VAT. These could be a model for a scheme operating here in Tasmania.

Recommendation

That the Tasmanian Government establish a working group convened and resourced by the Department of Infrastructure, Energy and Resources and involving representatives of disability organisations, the taxi industry, academics with relevant transport expertise and the OADC to:

- (a) develop and test taxi service delivery models that recognise and respond to the ongoing transport disadvantage experienced by people with disability, particularly people who use wheelchairs;*
- (b) develop and test options for removing or compensating for the discriminatory effect of higher taxi tariffs on interstate visitors who are on subsidy schemes;*
- (c) develop and test options for removing or compensating for the discriminatory effect of higher taxi tariffs on people with temporary mobility impairments that result in them needing to travel in wheelchair accessible taxis;*
- (d) develop and test options for removing or compensating for the discriminatory effect of higher taxi tariffs on overseas visitors who are wheelchair users; and*
- (e) develop terms of reference for a future review of the tariff arrangements.*

Relevance of the exceptions

It is arguable that the charging of a higher tariff resulting in a discriminatory may be covered by the exception provided in section 24 of the Tasmanian Act, being an exception for 'actions required by law'.³⁴ It is not, however, covered by the exception found in section 47 of the DDA because the relevant Tasmanian legislation is not a 'prescribed law' for the purposes of that section. As such, the current discriminatory effect of the higher tariff for longer trips is likely to constitute unlawful discrimination for the purposes of the DDA.

The beneficial effect of the subsidy (up to the point of the cap) for all members of the TAS is a discriminatory effect in that it treats people differently on the basis

³⁴ This depends on whether or not a regulation is a 'law of the State' for the purposes of the Tasmanian Act.

of disability. It is, however, a benefit that favours people with disability and, as such, is likely to be saved by the exceptions provided in sections 25 and/or 26 of the Tasmanian Act and the exemption provided in section 45 of the DDA. These are provisions that permit discrimination that is beneficial to, in this case, people with disability in recognition of both historic and ongoing disadvantage. As such, the discrimination in favour of people with disability that exists by reason of the TAS subsidy is unlikely to constitute unlawful discrimination for the purposes of either the Tasmanian Act or the DDA.

Other matters

The OADC has no position on the high-occupancy tariff. However, it is arguable that the retention of this tariff and its availability only for WATs could have the effect of encouraging WAT drivers to preference high-occupancy jobs over jobs for wheelchair-reliant passengers. This is of concern.

As noted above, the provision of free WAT licences potentially creates an incentive. It is not, however, an incentive that is directly linked to increased transport provision for wheelchair users. The fact of more WATs on the road does not necessarily equate to more availability for wheelchair users if there are other customers that drivers see as commercially equally or more attractive.

Consideration could usefully be given to introducing for WAT licence holders, a requirement to meet at undertake at minimum a set percentage of trips for wheelchair users. This could go some way to assisting in the achievement of the performance standard under the *Disability Standards for Accessible Public Transport 2002* (Clth), which requires equivalent response times for those requiring WATs when compared to standard vehicle response times.

An alternative is a requirement that drivers give priority to bookings for wheelchair users. This is a current requirement in NSW. However, it is a requirement that would be more difficult to monitor for compliance purposes.

Recommendation

That the Tasmanian Government consider more targeted incentives or obligations on WAT operators to increase the availability of WATs to wheelchair users.

The need for WATs arises because conventional taxis are not wheelchair accessible. One consideration for the longer term would be to encourage the take up of accessible vehicles for all taxis, creating in the longer term a 'universal' taxi fleet.

Recommendation

That the Tasmanian Government continue to increase the number of WATs available in Tasmania and consider ways to encourage the use of accessible vehicles as standard taxis.