



**public interest**  
ADVOCACY CENTRE LTD

**Submission to the Department of Family and  
Community Services on the Draft NSW  
Disability Inclusion Plan**

**27 November 2014**

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# 1. Introduction

The Public Interest Advocacy Centre (PIAC) has a long history of working with people with disability to support their right to live independently and be treated equally in Australian society. PIAC welcomes the opportunity to contribute to the NSW Department of Family and Community Services discussion paper on the Draft Disability Inclusion Plan (Inclusion Plan), which is an important step in ensuring the better protection and promotion of the rights of people with disability in NSW.

We are at a pivotal point for people living with a disability. PIAC is hopeful that recent legislative and regulatory changes will help to address the marginalisation and acute disadvantage that our clients have experienced. At the federal level, the National Disability Insurance Scheme (NDIS) will radically overhaul the way that people with disability are provided with care and services. At the state level, the *Disability Inclusion Act 2014* (2014) (Inclusion Act), which is the legislative underpinning for the Inclusion Plan,<sup>1</sup> will support the roll out of the NDIS and is intended to better acknowledge the human rights of people with disability and articulate that both the State and community 'have a responsibility to facilitate the exercise of those rights'.<sup>2</sup> The Inclusion Act directly incorporates as one of its objects support for the purposes and principles contained in the *United Nations Convention on the Rights of Persons with Disabilities*.<sup>3</sup>

The Inclusion Plan has the potential to address many of the broader systemic and cultural issues that are not being addressed in either the NDIS or the Inclusion Act. The Plan is, accordingly, a vital cog in the new system. As stated in the introduction to the Discussion Paper, the 'ultimate goal' of the new legislative and regulatory framework

is to build a more inclusive NSW for all people with disability. The actions in the plan target the broader community, to break down barriers created by the community which prevent full access and inclusion for people with disability.<sup>4</sup>

All of PIAC's work in this area focuses on the need to remove the barriers people with disability face in participating in the ordinary work, cultural and other activities of our community. PIAC considers the Inclusion Plan to be an opportunity to address the historically entrenched and significant problems its clients continue to face. In this submission, PIAC draws on its legal casework and advocacy to make recommendations that would add new focus areas in the Inclusion Plan and further action points in relation to what is already included.

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<sup>1</sup> Section 10 *Disability Inclusion Act 2014* (NSW).

<sup>2</sup> Section 3(a) *Disability Inclusion Act 2014* (NSW).

<sup>3</sup> Section 3(e) *Disability Inclusion Act 2014* (NSW). The *United Nations Convention on the Rights of Persons with Disabilities* was adopted on 13 December 2006 and opened for signature on 30 March 2007. Australia became a signatory state on 30 March 2007 and ratified the Convention on 17 August 2008.

<sup>4</sup> *NSW Disability Inclusion Plan: Discussion paper and draft outline*, October 2014, NSW Government, Department of Family & Community Services, at page 4, available at [http://www.facs.nsw.gov.au/\\_data/assets/file/0008/302588/NSW\\_Disability\\_Inclusion\\_Plan\\_Discussion\\_Paper.pdf](http://www.facs.nsw.gov.au/_data/assets/file/0008/302588/NSW_Disability_Inclusion_Plan_Discussion_Paper.pdf).

## 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 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 NSW Trade and Investment for its work on energy and water, and from Allens 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 inclusion & independence for people with disability

PIAC's expertise in this area is built on its litigation and advocacy work on behalf of clients, primarily in relation to disability discrimination. PIAC has run a number of test cases that have aimed to increase the accessibility of public and private services to promote the independence of people with disability. These cases have ensured, for example, that:

- taxis designated wheelchair accessible in NSW truly comply with the Disability Standards for Public Transport 2002;<sup>5</sup>
- action being taken on the NSW train network to make sure on-train announcements consistent, clear and audible;<sup>6</sup>
- many people with disability travelling on Virgin Blue planes do not have to travel with a paying companion;<sup>7</sup> and
- private coach company Murrays Australia Ltd, which runs an extensive bus travel network throughout the country, is under an obligation to provide wheelchair accessible buses in accordance with national Disability Standards for Accessible Public Transport.<sup>8</sup>

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<sup>5</sup> *Killeen v Combined Communications Network Pty Ltd* [2011] FCA 27.

<sup>6</sup> *Innes v Rail Corporation of NSW (No 2)* [2013] FMCA 36.

<sup>7</sup> *Corcoran & Anor v Virgin Blue* [2008] FCA 864.

<sup>8</sup> *Murrays Australia Ltd (No 2)* [2014] FCA 217.

In addition, PIAC is currently representing Gisele Mesnage, who is blind, in her bid to make sure that the Coles supermarket shopping website is accessible for people who are blind or vision impaired.<sup>9</sup>

PIAC's policy work in this area is grounded in its legal casework. PIAC has published several papers and submissions and participated in public consultations about people with disability in a wide range of related areas, including mental health,<sup>10</sup> accessible public transport,<sup>11</sup> access to justice,<sup>12</sup> housing<sup>13</sup> and electricity.<sup>14</sup>

## 2. Underlying principles

The purpose of the Inclusion Plan is twofold:

- to set out 'whole of government goals that support the inclusion in the community of people with disability and improve access to mainstream services and community facilities by people with disability'; and
- to provide 'for collaboration and co-ordination amongst government departments, local councils and other entities in the provision of supports and services'.<sup>15</sup>

The Plan recognises that the NSW Government must 'lead the way' to support the inclusion of people with disability and includes four focus areas for action: creating liveable communities; supporting access to employment; developing positive community attitudes and behaviours; and accessible systems and processes. The Plan also focuses on four priority populations of people with disability: children, Aboriginal and Torres Strait Islander people; people from culturally and linguistically diverse backgrounds; and women.

The Inclusion Act provides a clear framework that has at its core respect for the inherent dignity of those with disability and focuses on the need to include people with disability in mainstream society. Achieving inclusion necessarily requires legislation; for example, to prevent discriminatory treatment. But it will also require broader governmental policy to instigate change in the private sector and everyday society. This is reflected in the Preamble to the UN Convention, which recognises that:

<sup>9</sup> See 'Disability Discrimination on Coles shopping website: court case launched' *Media Release*, Public Interest Advocacy Centre, 5 May 2014, available at <http://www.piac.asn.au/news/2014/11/disability-discrimination-coles-shopping-website-court-case-launched>.

<sup>10</sup> Dodd, P and Cohen, M *A Mental Health Act for the 21<sup>st</sup> Century*, 19 December 2012, Public Interest Advocacy Centre, available at <http://www.piac.asn.au/publication/2013/01/mental-health-act-21st-century>

<sup>11</sup> Cohen, M et al *Get on Board! 2012 Review of the Disability Standards for Accessible Public Transport*, 31 May 2013, Public Interest Advocacy Centre, available at [http://www.piac.asn.au/sites/default/files/publications/extras/12.12.19\\_a\\_mental\\_health\\_act\\_for\\_the\\_21st\\_century.pdf](http://www.piac.asn.au/sites/default/files/publications/extras/12.12.19_a_mental_health_act_for_the_21st_century.pdf).

<sup>12</sup> Roth, J et al *Equality before the law: submission in response to the Productivity Commission Issues Paper about Access to Justice Arrangements*, 4 November 2013, Public Interest Advocacy Centre, available at <http://www.piac.asn.au/publication/2013/11/equal-law>.

<sup>13</sup> Sowerwine, S and Schetzer, L *Skating on thin ice: difficulties faced by people living with mental illness accessing and maintaining social housing*, 15 October 2013, Public Interest Advocacy Centre, available at [http://www.piac.asn.au/sites/default/files/publications/extras/13.11.04\\_equal\\_before\\_the\\_law\\_-\\_submission\\_in\\_response\\_to\\_the\\_productivity\\_commission\\_issues\\_paper\\_about\\_access\\_to\\_justice.pdf](http://www.piac.asn.au/sites/default/files/publications/extras/13.11.04_equal_before_the_law_-_submission_in_response_to_the_productivity_commission_issues_paper_about_access_to_justice.pdf).

<sup>14</sup> Hodge, C *More power to you: electricity and people with physical disability*, 26 November 2012, Public Interest Advocacy Centre and Physical Disability Council of NSW, available at <http://www.piac.asn.au/publication/2012/11/more-power-you>.

<sup>15</sup> Section 10(1)(a) and (b) *Disability Inclusion Act 2014*.

disability results from the interaction between persons with impairments and attitudinal and environmental barriers that hinders their full and effective participation in society on an equal basis with others.

PIAC supports the human rights based approach that has been adopted to frame the delivery and treatment of people with disability in the Inclusion Act. PIAC believes that a human rights framework approach enables the State Government to set achievable standards. The ability to change attitudes and influence beyond the mandate of government will be strengthened by the adoption of language that is a constant reminder and focus on the equal attainment of those rights and the promotion of independence and social and economic inclusion that the Act is intended to achieve.<sup>16</sup>

### 3. Leading the way

PIAC welcomes the acknowledgment in the Inclusion Plan that the barriers faced by people with disability are entrenched in all areas of public and private life. Inclusion that is holistic and meaningful will only be achieved for people with disability when there are proactive approaches adopted not only by the Government but also by the private sector. Indeed, when introducing the 2014 Act to the NSW Parliament, the Minister for Families and Community Services stated that 'it is not for people with disability to change to accommodate society but it is up to society to change in order to accommodate people with disability'.<sup>17</sup>

In PIAC's experience, inclusion for people with disability is often restricted by the action, or inaction, of private companies. This is demonstrated in the following case study.

#### Case study 1

PIAC is currently representing Gisele Mesnage, who has recently lodged a claim of unlawful discrimination in the Federal Court against the major supermarket company, Coles. Ms Mesnage, like thousands of blind and vision-impaired people across the country, relies on screen-reader technology to access websites. Since 2008, upgrades of the Coles shopping website have rendered it almost impossible for Ms Mesnage to use it to do her shopping. Despite years of attempts to negotiate a solution, Ms Mesnage has faced recurring difficulty in accessing the website, with it often taking days to complete one order, or she is unable to complete one at all.<sup>18</sup>

Everyone in Australian society has benefited from the convenience that the expansion of online shopping has brought. For people with disability, accessible online services are not only convenient but life-changing. As Ms Mesnage stated in reference to her legal claim, 'For me, online shopping is a revolution. Not only do I want to be part of it, I need to be part of it. It's about independence.'<sup>19</sup>

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<sup>16</sup> Section 3(b) *Disability Inclusion Act 2014*.

<sup>17</sup> NSW *Parliamentary Debates*, Legislative Council, 14 August 2014, p 30693, Minister for Family and Community Services, The Hon Gabrielle Upton.

<sup>18</sup> At the time of writing, the legal action against Coles is ongoing. See 'Disability Discrimination on Coles shopping website: court case launched' *Media Release*, 5 November, 2014, Public Interest Advocacy Centre, available at <http://www.piac.asn.au/news/2014/11/disability-discrimination-coles-shopping-website-court-case-launched>.

<sup>19</sup> Browne, R 'Blind woman Gisele Mesnage sues Coles over shopping website', 5 November 2014, *Sydney Morning Herald*, available at <http://www.smh.com.au/digital-life/digital-life-news/blind-woman-gisele-mesnage-sues-coles-over-online-shopping-website-20141105-11h6zw.html>.

Ms Mesnage's case study is but one example of how inclusion for people with disability is too often blocked by the inaction of private companies. Her experience is echoed in other jurisdictions, such as in the United States where a number of legal actions have been brought against online retailers in a bid to make websites accessible. For example, in 2008, the US arm of Target agreed to modify its website to satisfy accessibility guidelines and also set up a US\$6m fund to meet settlement claims.<sup>20</sup>

Forcing private companies to act by bringing discrimination claims is one way to address exclusion; however, litigious processes can take years to resolve and are of huge personal and financial cost to the litigant. The Inclusion Plan states that it aims to set the benchmark for all of the community in terms of how to include people with disability as part of mainstream society; however, it recognises that a 'fully inclusive society requires actions beyond the influence or control of the NSW Government'.<sup>21</sup> In the 'Leading the Way' section of the Inclusion Plan, potential actions are set out which seek to influence the way that private companies operate by, for example, 'supporting research and economic analysis on the costs and benefits of greater inclusion for people with disability in NSW'.<sup>22</sup>

PIAC recommends that, although there are some limitations to the action government can take to change the behaviour of private companies, an action point should be added which will concentrate on identifying actions that will go beyond peripheral supportive measures. Clear incentives should be developed that will mean that companies act proactively to ensure inclusion and eliminate the everyday hurdles people with disability face. For example, the American National Federation of the Blind has developed a rewards system whereby online retailers are awarded a 'Gold level certification' in order to recognise 'commitment and innovation' in ensuring equal web access for people who are visually impaired.<sup>23</sup> Ultimately, the aim of the Inclusion Plan should be to ensure that accessibility is not an anomaly, but an accepted and unquestionable standard automatically adopted by private and public actors alike.

#### ***Recommendation – inclusion by private companies***

*PIAC recommends that an action point be added to the 'Leading the Way' section of the Inclusion Plan that focuses on the development of concrete incentives to ensure that private companies proactively incorporate inclusive practices.*

## **4. Focus areas for action**

PIAC supports the areas of focus that the Plan adopts. We believe, however, that in some respects the Plan should go further.

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<sup>20</sup> Palazzolo, J 'Disabled Sue Over Web Shopping: Advocates for Blind, Deaf say Netflix, Target are Legally Obligated to Make Sites Easier to Navigate', 21 March 2013, *Wall Street Journal Online*, available at <http://online.wsj.com/articles/SB10001424127887324373204578374483679498140>.

<sup>21</sup> Draft Inclusion Plan, above note 4, at page 9.

<sup>22</sup> Draft Inclusion Plan, above note 4, at page 9.

<sup>23</sup> 'Newegg.com is first online retailer to receive the Federation's Gold Level Certification', 6 August 2009, *National Federation of the Blind*, available at <https://nfb.org/node/1111>.

## 4.1 Addressing discrimination

In PIAC's experience, discrimination on the basis of a person's disability is one of the main obstacles to inclusion. People with disability face discrimination in all of the focus areas the Inclusion Plan adopts. Given its widespread impact and hugely detrimental consequences, PIAC believes that there should be a stand-alone focus area on the need to combat discriminatory treatment of people with disability.

The Inclusion Act will require every public authority to publish a disability action plan

setting out the measures it intends to put in place (in connection with the exercise of its functions) so that people with disability can access general supports and services available in the community, and can participate fully in the community.<sup>24</sup>

The action plan must include specific steps that set out the strategies the government agency will adopt which will support people with disability, such as providing access to buildings, facilities and information and accommodating the specific needs of people with disability.<sup>25</sup> The relevant public authority must report annually on the operation of its plan to the relevant Minister.<sup>26</sup>

While this is a positive development that PIAC supports, it falls short of previous recommendations PIAC has made that a positive duty be imposed on public sector organisations to take reasonable steps to eliminate disability discrimination and promote equality.<sup>27</sup> There are limitations to simply requiring departments to adopt an inclusion plan in relation to which they must self-report annually. The creation of a plan and requirement of review does not give rise to any enforceable private law rights and is far weaker than the ability to enforce a breach of duty. For example, the *Equality Opportunity Act 2010* (Vic) creates a positive duty to take reasonable and proportionate measures to eliminate disability discrimination, applying not only to public sector organisations but also businesses, clubs and sporting organisations.<sup>28</sup> The Victorian Equal Opportunity and Human Rights Commission (VEOHRC) may investigate a breach of this duty or conduct a public inquiry (but it cannot receive individual complaints).<sup>29</sup> If VEOHRC finds a breach of the duty, it can issue a compliance notice and the Victorian Civil and Administrative Tribunal can enforce the notice.<sup>30</sup>

PIAC appreciates that amendment of legislation is not within the scope of this consultation. However, given the weakness of the statutory plan and review model, PIAC believes it is important that the state-wide Inclusion Plan, to which all public authority inclusion plans must have regard, include as a stand-alone heading the need to eliminate discrimination as a focus for action under Part 4 of the Plan. This would go some way to promoting the elimination of discrimination in a proactive and positive manner rather than as a reaction to individual complaints under anti-discrimination legislation.

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<sup>24</sup> Section 12(1) Disability Inclusion Act.

<sup>25</sup> Section 12(3) Disability Inclusion Act.

<sup>26</sup> Section 13 Disability Inclusion Act.

<sup>27</sup> See *Equality before the law for people with disability: Submission in response to Australian Law Reform Commission Issues Paper: Equality, Capacity and Disability in Commonwealth Laws*, 20 January 2014, Public Interest Advocacy Centre, available at <http://www.piac.asn.au/publication/2014/01/equality-law-people-disability>.

<sup>28</sup> Section 15(2) *Equal Opportunity Act 2010* (Vic).

<sup>29</sup> Section 15(3) and s 15(4) *Equal Opportunity Act 2010* (Vic).

<sup>30</sup> Sections 139 and 151 *Equal Opportunity Act 2010* (Vic).



## ***Recommendation – disability discrimination***

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*PIAC recommends that the need to combat discriminatory treatment of people with disability should be listed as a separate focus for action area under Part 4 of the Inclusion Plan.*

### **4.2 Accessible transportation**

The Inclusion Plan refers to transport as a specific issue that ‘*may be the subject of a Liveable Communities forum*’.<sup>31</sup> PIAC has represented clients with disability in a number of cases where they have encountered unequal treatment in their attempts to access public transport.

Accessible public transport is a necessity for people with disability. As the following case studies show, the provision of accessible transport requires concentrated action on the part of transport providers to ensure, on the basis of consultation with people with disability, that the transport is usable, safe, available and affordable. The UN Declaration recognises the importance of accessible transportation in the lives of people with disability and requires States to:

- take appropriate measures to ensure that people with disabilities can access, on an equal basis with others, transportation in both urban and rural areas;
- develop, promulgate and monitor the implementation of minimum standards and guidelines for the accessibility of transport;
- ensure private entities offer accessible service; and
- provide training for stakeholders on the issues that people with disability face.<sup>32</sup>

#### **Case study 2 – Accessible taxis**

PIAC client and disability advocate Greg Killeen, who has quadriplegia and uses a motorised wheelchair, relies on wheelchair accessible taxis (WATs) for 99% of his travel needs.<sup>33</sup> In 2006, Mr Killeen acquired a new wheelchair; he quickly discovered that, despite being within the dimensions set out in federal guidelines for WATs, he and his wheelchair did not fit into successive taxis he booked for transport, resulting in significant disruption to his life. Waiting for taxis meant Mr Killeen was late for work, missed long-standing medical appointments and missed out on social interaction.

Discovering that there were many others in his position, PIAC represented Mr Killeen in the Australian Human Rights Commission and then the Federal Circuit Court, where he alleged a breach of the national Disability Standards for Accessible Transport 2002 by the NSW Department of Transport and two Sydney taxi companies.

The Federal Circuit Court found in 2011 that the Standards had indeed been breached. Consequently, the Department of Transport issued a new Wheelchair Accessible Taxi Measurement Protocol, increasing the minimal space required in WATs and making this a requirement before a taxi licence is issued.<sup>34</sup>

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<sup>31</sup> Draft Inclusion Plan, above note 4, at page 12. [Emphasis added.]

<sup>32</sup> Article 9 – Accessibility, *UN Declaration on the Rights of People with Disabilities*.

<sup>33</sup> ‘Greg Killeen on the cost of disability discrimination’, 14 February 2012, Public Interest Advocacy Centre, available at <http://www.piac.asn.au/news/2013/02/greg-killeen-cost-discrimination>

<sup>34</sup> *Equality: Wheelchair accessible taxis*, Public Interest Advocacy Centre, available at <http://www.piac.asn.au/projects/equality/wheelchair-accessible-taxis>.

### **Case study 3 – Accessible train travel**

PIAC recently represented former Disability Discrimination Commissioner Graeme Innes AM in his personal capacity as he fought to make sure that blind and vision impaired people are able to safely and independently travel on NSW trains. Mr Innes, who is blind, made complaints to the NSW Rail Corporation (RailCorp) and the Transport Minister for several years regarding inaudible or non-existent ‘next stop’ announcements. When his successive complaints to Railcorp (now known as Sydney Trains) went unanswered, Mr Innes launched a claim in the Federal Circuit Court alleging that RailCorp discriminated against him.

Mr Innes was successful; the Court found that RailCorp had been discriminatory in its treatment of Mr Innes by failing to make reasonable adjustments to its operations to ensure that Mr Innes was equipped with the same information about the next station as his fellow passengers were who could read the station signs.

As a result of this decision, separate proceedings relating to more inaudible train announcements were settled. Sydney Trains has agreed to take further steps, over a three-year period beginning in 2013, to improve its system for audible announcements, including disability awareness training for its front-line staff.

### **Case study 4 – Accessible bus transport**

PIAC represented Julia Haraksin in her successful discrimination claim against Murrays Australia Ltd (Murrays). Ms Haraksin has bone-brittle disease and is reliant on a wheelchair for mobility. In 2009, Ms Haraksin telephoned Murrays and tried to book a seat on a wheelchair-accessible bus travelling from Sydney to Canberra for a work conference. The staff member at Murrays who took her call told Ms Haraksin that they did not have any wheelchair accessible buses that she could travel on. In taking on the bus company, Ms Haraksin stated

(I want) people to realise that legislation is important and that it needs to be respected ... and that people with disabilities have equal access to things.

People in the general community do not realise that everyday, people with disabilities still face quite a bit of discrimination.<sup>35</sup>

After a four year battle, the Federal Court of Australia found that Murrays discriminated against Ms Haraksin on the basis of her disability under the *Disability Discrimination Act 1992* (Cth). The Court also found that Murrays had breached the national Disability Standards for Accessible Public Transport 2002 by failing to accept Ms Haraksin’s booking as it did not have any vehicles equipped with wheelchair access. The Court ordered that Murrays modify a substantial proportion of its fleet in order to be wheelchair accessible.<sup>36</sup>

### **Case study 5 – Addressing prohibitive costs of air travel**

In 2008, PIAC represented Maurice Corcoran in his bid to eliminate one form of discrimination in air travel. Mr Corcoran challenged the requirement of Virgin Blue that a person who could not fasten their seatbelt, put on an oxygen mask or a lifejacket without assistance had to travel

<sup>35</sup> Malik, S “Disabled woman sues bus company” *Sydney Morning Herald*, 15 October 2010, available at <http://news.smh.com.au/breaking-news-national/disabled-woman-sues-bus-company-20101015-16mx3.html>.

<sup>36</sup> *Haraksin v Murrays Australia Limited (No 2)* [2013] FCA 217.

with a paying companion. This made air travel prohibitively expensive for people with disability.

In 2009, Virgin Blue issued new Independent Travel Criteria so that people like Mr Corcoran could travel without having to pay for a travelling companion.<sup>37</sup>

As these case studies demonstrate, inaccessible transport directly and significantly undermines inclusion. Public transport which fails to safely carry people with disability to attend a medical appointment or to a work conference greatly impedes the ability of people with disability to be independent and to be part of mainstream society.

PIAC accordingly recommends that there be specific action points attached to transport either as part of the Liveable Communities focus area or as a stand-alone area. Action points should set out specific goals and actions. For example, regarding the slow progress on improving train announcements, PIAC recommends that there be an action point to

- improve the consistency, clarity and quality of automated and manual audible on-train announcements so that the failure rate of making such announcements is no higher than 2%; and
- put in place an audit process so that compliance can be monitored.

The action point should also address the need to increase the number of wheelchair accessible taxis that are available for people with disability, which is still inadequate. These are the type of concrete actions that will make a huge difference to the lives of people with disability.

### ***Recommendation – Action on transport***

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*PIAC recommends that a specific action point on ensuring accessible transport be added to the 'Liveable Communities' focus area. This action point should specify immediate changes that are required to ensure that people with disability suffer no barriers to their freedom of movement within the community. For example, the action point should*

- *address the continuing problem of an inadequate number of wheelchair accessible taxis available to transport people with disability; and*
- *specify that the consistency, clarity and quality of automated and manual audible on-train announcements be approved so that the failure rate is no higher than 2%.*

## **4.3 Online accessibility**

As demonstrated in the case of Gisele Mesnage (Case study 1 above), ensuring the internet is accessible to people with disability is fundamental to independent living in the community. Use of the internet is not only about increasing independence in the context of service provision; it also enables cultural and social engagement by removing many of the physical barriers that have historically prevented people with disability from enjoying these aspects of community life.

Computer and internet use is a rapidly growing activity for people with disability; the proportion of people with disability aged 15 and over with access to a computer at home rose from 56% in 2003 to 70% in 2009.<sup>38</sup> In the latest assessment of Household Use of Information Technology,

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<sup>37</sup> *Disability Discrimination – air travel*, Public Interest Advocacy Centre, website, available at <http://www.piac.asn.au/legal-help/public-interest-cases/disability-discrimination-air-travel/disability-discrimination-air->

<sup>38</sup> Australian Bureau of Statistics, 'Computer and Internet Use by People with a Disability' 4429.0 Profiles of Disability, Australia 2009, 27 June 2012, at page 2.

over a million people with disability across Australia used the internet to use email and chat sites, access government services, buy and sell shares and purchase or order goods or services.<sup>39</sup>

Given the scope of internet use by people with disability and the fact that the ageing population will be increasingly reliant on the internet, PIAC recommends that this be reflected in the Inclusion Plan. This could be easily done by highlighting online accessibility as a specific issue requiring targeted action in a Liveable Communities forum under the Inclusion Plan Guidelines.

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### ***Recommendation – Online accessibility***

*PIAC recommends that online accessibility be included as a Liveable Communities forum topic in the proposed Inclusion Plan Guidelines.*

Adding online accessibility as a specific focus area within the Inclusion Plan should also aim to ensure that the benefits of internet use and new technologies are extended to as many people with disability as possible. Recent research undertaken by Vision Australia for the Australian Government Information Office, for example, identified that there is limited statistical data available regarding the number of people using assistive technology; what data is available indicates that the number of assistive technology users is low when compared with the number of people with disability in Australia.<sup>40</sup> PIAC recommends that an action point be identified under the Liveable Communities focus area to research what barriers exist to the use of assistive technologies and what could be done to make these technologies widely available to people with disability.

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### ***Recommendation – Research & education on assistive technologies***

*PIAC recommends, given the widespread and increasing use of the internet by people with disability, that an action point be added to the Liveable Communities focus area that would prioritise research into barriers to and education about the technologies available to facilitate online access.*

## **4.4 Accessible media**

The need for media to be accessible to people with disabilities on an equal footing with others is also fundamental to achieving mainstream inclusion. This is not only for the purposes of entertainment and access to cultural programs and education, but also to enable political participation. The UN Convention reflects the importance of access in this area. Article 29 of the UN Convention provides that State Parties should ensure that people with disability are able to exercise their political rights on an equal basis with others. Article 30 of the Convention requires signatory States to ensure that people with disabilities enjoy access to ‘cultural materials in accessible formats’ and ‘television programmes, films, theatre and other cultural activities, in accessible formats’.<sup>41</sup>

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<sup>39</sup> Australian Bureau of Statistics, ‘Table 4: Persons with a reported disability, internet use in the previous 12 months – by internet activity – 2003 and 2009’ *Household Use of Information Technology, Australia, 2010-11*, 15 December 2011.

<sup>40</sup> Vision Australia, *The Australian Government’s study into the Accessibility of the Portable Document Format for people with a disability*, November 2010, Australian Government Department of Finance and Deregulation, available at <http://www.finance.gov.au/publications/pdf-accessibility-study/>.

<sup>41</sup> Article 30(1)(a) and (b), UN Convention on the Rights of People with Disabilities.

As the following case study demonstrates, people with disability also face significant barriers in this context, which should be addressed in the Inclusion Plan.

### **Case study 6 – accessible media programmes**

Blind Citizens Australia (BCA) is currently campaigning for meaningful access to Australian television for people who are blind and vision-impaired. In 2012, the Australian Broadcasting Corporation (ABC) trialled an audio description service for their programmes to assist people who are blind and vision impaired to access television equally with others in the community. Following the successful trial, no further action was taken to make the provision of that service permanent.

Audio description is ‘extremely important’ for vision-impaired television viewers; as noted by the Vice-President of BCA,

When you are watching a television show, when you are blind or vision impaired, you’re trying to keep up with what’s going on, but quite often there are visual aspects of it that are integral to the plot, and if you miss those, you are at a loss.<sup>42</sup>

Audio transcription services are now available in comparable countries such as New Zealand, the United States and the United Kingdom.<sup>43</sup>

BCA is pursuing a claim in the Australian Human Rights Commission alleging the ABC is discriminating against people who are blind and vision-impaired in failing to provide an audio description service.

The Draft Inclusion Plan recognises the need to ‘focus attention and resources on the elements of community life that most people desire’.<sup>44</sup> As the above case study shows, there are concrete steps that could be taken which would make a meaningful difference to assist access to all sources of media for people with disability. PIAC recommends that accessible media be included as a target area within the ‘Liveable Communities’ focus area, which would identify barriers and set benchmarks for greater inclusion in this area.

### **Recommendation – Accessible media**

*PIAC recommends that an action point be added under the ‘Liveable Communities’ focus area to improve accessibility of media by identifying areas where media are inaccessible and what steps need to be taken by both public and private actors to make it available to people with disability.*

## **4.5 Energy and disability**

A further barrier to inclusion, which PIAC recommends the Inclusion Plan address, relates to the need to ensure affordable electricity for people with disability.

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<sup>42</sup> Transcript, ‘Blind Citizens Australia’s Discrimination Claim’, Interview with Vice-President of Blind Citizens Australia Greg Madson, 14 July 2013, Media Access Australia, available at <http://www.mediaaccess.org.au/audio-description-on-radio/blind-citizens-australias-discrimination-claim?TRANSCRIPT>.

<sup>43</sup> Ibid.

<sup>44</sup> Draft Inclusion Plan, above note 4, at page 10.

Electricity is regarded as an essential service for everyone in society; for people with disability, electricity is fundamental to their health, independence and mobility. Research undertaken in 2012 by PIAC, in collaboration with the Physical Disability Council of NSW, concluded that people with disability face entrenched multi-faceted disadvantage when it comes to paying for their electricity. People with disability not only have additional energy costs (for example, powering a motorised wheelchair or a communication device), they are also among those with the lowest incomes and struggle to afford electricity.<sup>45</sup>

The cost of electricity has increased considerably. In 2012/13 there was an 18.1% increase in regulated retail electricity prices, up from a 10% increase in 2010/11.<sup>46</sup> In the research undertaken by PIAC, it emerged a significant number of respondents surveyed had gone without essentials in order to pay their electricity bill.<sup>47</sup> The respondents who had gone without essentials were most likely to give up heating and cooling, followed by social activities, food and transport costs.<sup>48</sup> In focus groups, the comments of participants indicated that expensive electricity and the ability to pay for it had a huge impact on their daily lives. One participant, for example, stated:

My medical problem gets worse in summer and in summer you have to use the fan more or the air conditioning – if you don't use it then you get crook and you have worse problems so you have to pay even though you are struggling...<sup>49</sup>

PIAC made a number of recommendations in its report to address the difficulties faced by those with disability in the face of rising energy prices; for example, a review of the available assistance and eligibility criteria to provide for more accessible and meaningful rebates, and an education campaign to increase awareness of rebates for which individuals may be eligible.<sup>50</sup> PIAC also concluded:

Going without other essential items, in order to remain connected to this essential service, implies that people are not exercising choice but are forced by circumstances to accept lesser standards in regard to their health and levels of social connection.

Whether this is a situation that should be left to continue unchallenged is an important question for policy and key decision makers. ...[A] holistic approach that looks at the income levels, general costs of disability, energy related costs of disability and opportunities to assist people with disability be more energy efficient is needed to really challenge the current dynamic.<sup>51</sup>

The Draft Inclusion Plan's focus on 'Liveable communities' aims to direct 'attention and resources on the elements of community life that most people desire',<sup>52</sup> which includes accessible housing. Similarly the UN Declaration includes a right to enjoyment of the highest attainable standard of

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<sup>45</sup> Public Interest Advocacy Centre and the Physical Disability Council of NSW, *More Power to You: electricity and people with physical disability* (2012), available at <http://www.piac.asn.au/publication/2012/11/more-power-you>.

<sup>46</sup> Ibid, at page 7.

<sup>47</sup> Ibid, at page 13.

<sup>48</sup> Ibid, page 14.

<sup>49</sup> Ibid, page 12.

<sup>50</sup> Ibid, page 24.

<sup>51</sup> Ibid, page 14.

<sup>52</sup> Draft Inclusion Plan, above note 4, page 10.

health without discrimination<sup>53</sup> and an adequate standard of living, including adequate food, clothing and housing.<sup>54</sup>

Given the acute disadvantage experienced by people with disability when it comes to electricity consumption, PIAC urges FACS to include within the Inclusion Plan a specific action point that will focus on addressing the impact of the rising costs of electricity on the ability of people with disability to function within the broader community.

***Recommendation – affordable energy for people with disability***

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*PIAC recommends that there be a specific action point in the Liveable Communities focus area requiring the development of a state-wide plan, with engagement from the private sector, which addresses the impact of the high cost of electricity for people with disability and how this will be resolved.*

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<sup>53</sup> Article 25 – Health, *UN Convention on the Rights of Persons with Disabilities*.

<sup>54</sup> Article 28 – Adequate standard of living and social protection, *UN Convention on the Rights of Persons with Disabilities*.