

## Wheelchair Access

IMF is providing financial assistance to an anti discrimination proceeding commenced by Public interest Advocacy Centre Ltd on behalf of Mr. Greg Killeen. This is the first time that IMF has identified a pro bono opportunity with the assistance of PIAC. A summary of the issues to be addressed in the proceedings follows.

Mr. Killeen is pursuing a claim relating to the Public Transport Standards protecting wheelchair users. He is not seeking compensation. He merely seeks a new licensing regime that is designed to assist wheelchair passengers in NSW.

Mr. Killeen has, from personal experience, found that some taxis, designed specifically to support wheelchair travellers, are impractical to use. This is caused by either: the rear door being unable to close once the traveller is positioned in the vehicle, or the ramp used by the traveller to enter the vehicle, which folds in to the car, being positioned dangerously close to the occupant. This results in wheel chair travellers being unable to ride in vehicles which were converted for their use, or requiring travellers riding in the back of a vehicle to have the rear door slightly ajar.

Mr. Killeen argues that:

- (a) the inadequacy of these vehicles is in direct breach of s 32 of the *Disability Discrimination Act* 1992 (Cth), which states that it is unlawful to contravene a Disability Standard, including the Public Transport Standards; and
- (b) the space allocated for a wheelchair in the back of a converted vehicle is legally required to allow 800mm by 1,300mm of clear ground space and the minimum head room required is 1,410 mm under ss 9.1 and 9.3.

Mr. Killeen's case attempts to prove that this requirement should be interpreted as measurements of a cube, rather than two, two dimensional measurements of clear floor space and headroom. One problem with the provisions being interpreted as two dimensional rather than three is that it allows one arbitrary point to be selected as the place in which the passenger's head will fit. This place is the only area required to reach the height of 1,410mm designated for headroom. If the passenger happens to move their head, slouch or sit in their chair in anyway other than the expected position, they will be in danger of hitting their head. In the same way, if the floor space is interpreted as merely a two dimensional space, although the passenger may have enough space on the floor, their knees, or some other body part may

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be pressed up against the ramp or door which enters the metaphorical cube, though avoids the prescribed head height and floor space.

In essence, taxi operators argue that they do in fact adhere to the Public Transport Standards; they simply assume that the measurements were designed to be two dimensional. This interpretation leads to discomfort and potential danger for passengers. As such, Mr. Killeen is attempting to alter the interpretation of these requirements. If he is successful, then the taxis that do not reach this requirement must be re-altered to allow for this space to not be impinged by objects that could be particularly dangerous in a collision. Additionally all new taxis will have to comply with this interpretation of the Standards.

The merit of this case is threefold. First, it aims to protect the passengers from excessive injury in the case of fast breaking or an accident. Second, it will significantly develop the jurisprudence in disability discrimination law. This would be achieved through the establishment of the concept that it is sufficient to prove that there was non-compliance regardless of its effect. Additionally, it will address areas of law that are seldom addressed in the court room; such as unjustifiable hardship and remedies. As such, this case is one which will aid not only Mr. Killeen and wheelchair passengers in taxis but also disabled people generally.

#### Update

Mr Killeen was unsuccessful on a preliminary question regarding the Disability Standards and his claim was later discontinued.

A link to the decision handed down on 31 January 2011 is below:

<http://www.austlii.edu.au/au/cases/cth/FCA/2011/27.html>