

ARA15PA/93

15 September 2015

Mr John Howell  
Lawyer Legal Section  
Australian Human Rights Commission  
GPO Box 5218  
SYDNEY NSW 2001

Dear Mr Howell,

Thank you for your letter of 3 September 2015 enclosing a copy of a report by Michael Small Consulting providing expert advice relating to the technical aspects of the Australasian Rail Association's (ARA) application for temporary exemptions from the *Disability Discrimination Act 1992*, *Disability Standards for Accessible Public Transport 2002* and the *Disability (Access to Premises – Buildings) Standards 2010*.

The ARA and its members welcome the report and appreciate the opportunity to respond to the report and note the additional advice of your email of 11 September 2015.

Whilst industry is committed to providing access for people with disabilities and believes that the modernisation of the Transport Standards will give operators and providers the ability to provide targeted outcomes for people with disabilities, it should be considered that this process will be challenging with the resources and funding available. Collaboration among all stakeholders, including people with disability themselves and industry, will yield the best outcomes for research and policy relevance.

This new application has reduced the number of exemptions requested significantly (around 70 per cent) from the original application. In order to continue to ensure access to services for people with a disability, and the associated crucial social inclusion, that has a persistent impact on the interaction of people with a disability with the Australian community, it is critical to both industry and people with a disability that these exemptions are granted to provide certainty for all stakeholders. Moving forward, the industry is committed to maintain an open and collaborative approach to removing access barriers and negotiating challenges associated with providing access on our services.

Overall the rail industry supports a number of the broader matters raised in the Michael Small Consulting Report. This includes:

- The recommendation made in many exemptions that the matter can be dealt with in the current modernisation of the Transport Standards. This is the essence of the ARA submission – the exemptions remain in place until the revised Transport Standards are in law. The industry believes this consultative and collaborative process should remove the need for exemptions. The rail industry also thinks that where the matter is to be addressed in the current review of the Transport Standards it is more reasonable to defer exemptions rather than declining the request as has been suggested in a few specific cases in the report.
- The application of a five year timeframe to the exemptions. The rail industry believes a five year period is appropriate for all exemptions. This is a reasonable and practical approach given the time frame noted for the review of the Transport Standards. However, the industry would support the exemptions being for five years or until the revised Transport Standards are in place, whichever is the shorter. This includes

both 26.2 Hearing augmentation and 18.1 Tactile ground surface indicators – location where a specific working group, NAPTAC – Information Working Group has been established with members from industry, the commonwealth and the disability sector as part of the modernisation of the Transport Standards. Extensive consultation with people with disabilities (the major stakeholders) will occur as part of the Transport Standards modernisation process; disability groups will be consulted through the state and operator representatives of the NAPTAC Working Groups. This will allow maximum reach to a variety of disability organisations and representative along with progressive consultation through NAPTAC and NEDA representatives as members of that Committee. The remit of the working group will cover:

- clarification of existing standards relating to information provision,
  - consideration of potential requirement for new standards, and
  - development of non-statutory guidance on information provision.
- The recommendations for consultation with the disability sector on a range of matters noting the industry's strong preference is for the process to be customer driven and hence customer focused.
  - The provision of information on the ARA and, where appropriate, members websites as well as other suggested locations such as a site or a customer service centre or similar. However, it should be noted that rail operators in each state and territory have existing annual reporting processes in place relating to disability access. This includes annual progress reporting on Disability Access and Inclusion Plans and organisation annual reports that provide information on the achievements in improving disability access. The rail industry would support a streamlined annual reporting process on the achievements of each operator in improving disability access and have the information publicly available on the individual websites or the ARA website.
  - In relation to recommendations made by Mr Small in 12.4 the industry requests the exemption to remain as the original exemption application as it applies across all gauges and includes the design constraints of existing rolling stock. The industry is concerned that the recommendation relating to the provision of a narrow wheelchair raises potential health and safety risks to customers. This is because the customer would have to transfer from their own mobility aid to a narrow wheelchair on a moving train which may be subject to lateral sway, causing unsteadiness and the possibility of a fall. Furthermore, this recommendation raises real concerns about a customer's dignity in having to transfer while in view of other customers, due to the open plan nature of carriages.
  - The recommendations made by Mr Small in 15.4. Industry requests the exemption be applied across all gauges as it includes design constraints of existing rolling stock.

In relation to the new or varied specific conditions suggested with each exemption, some of these are covered above (e.g. consultation and provision of information). Of the more technical recommendations the ARA and its members believe most are sensible and achievable and hence are supported.

However, the industry has serious concerns in regard to the recommendations for reporting. There seems to be some inconsistency in the way the reporting request is written in the report. The rail industry strongly supports annual written reporting and publication of situations where an ARA member has utilised an exemption. The rail industry sees this as prospective reporting and, as such, entirely appropriate.

The rail industry strongly disagrees with any form of reporting that is retrospective and a number of the recommendations could be interpreted to require network information which our members have indicated would be an expensive exercise. A specific example relates to 6.4 (slope of external boarding ramps). To fulfil the currently proposed reporting condition would be a massively expensive and time consuming exercise for the industry given the variation in the fleet and the number of stations. Queensland Rail has also costed a full audit of its urban network at \$4 million and there would be an ongoing cost for annual auditing of the network. If this was extrapolated across Australia's urban network it indicates a significant investment would be required.

Similarly 2.1 part 1 (access paths – unhindered passage) would be massively expensive, most notably in South Australia.

Clearly this would be significant funding that could be put to far better use in upgrading existing premises, infrastructure and rolling stock. It would certainly be questionable if value for money is obtained by spending such significant money on auditing, rather than continuing to provide access and social inclusion for some of the most disadvantaged in our community. The rail industry has a clear preference to apply the maximum amount of available funds on further improvements for people with a disability. Once the revised Transport Standards are in place, there should be a better opportunity for a more comprehensive report across urban networks and hence the impact on all users of the system.

In order to continue to ensure access to services for people with a disability, and the associated crucial social inclusion, that has a persistent impact on the interaction of people with a disability with the Australian community, it is critical that that all these exemptions are granted for five years with modest reporting requirements if appropriate given that currently industry is already reporting as previously detailed.

Overall, the ARA and its members do not wish to make a further submission, rather we ask that the points we have raised above be noted by the AHRC in making its decision regarding the ARA's application for temporary exemptions.

The rail industry has invested billions in facilities for people with a disability over the past decade and jurisdictions have significant funding to spend over the next five years. The urban networks are complex, comprehensive and, in many cases, constructed decades ago. We all want to make our system fully accessible. The rail industry needs the requested exemptions while the Transport Standards are modernised and the need for exemptions removed.

Thank you once again for the chance to provide feedback.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'Phil Allan', written in a cursive style.

Phil Allan  
Chief Operating Officer  
Australasian Railway Association