



ARA Submission

AHRC Preliminary View - ARA Temporary Exemptions Assessment

The Australian Human Rights Commission

31 January 2022

ABN 64 217 302 489

The ARA

The Australasian Railway Association (**ARA**) is a not-for-profit member-based association that represents rail throughout Australia and New Zealand. Our members include rail operators, track owners and managers, manufacturers, construction companies and other firms contributing to the rail sector. We contribute to the development of industry and government policies in an effort to ensure Australia's passenger and freight transport systems are well represented and will continue to provide improved services for Australia's growing population.

The ARA and its members thank the Australian Human Rights Commission (**AHRC**) for the opportunity to provide a submission to its Preliminary View on its Temporary Exemptions Assessment.

This submission has been developed in consultation with ARA member organisations.

Any questions regarding this submission should be directed to Simon Bourke, General Manager – Policy and Government Relations via sbourke@ara.net.au.

Specific Comments

The ARA has reviewed the Preliminary View of the Australian Human Rights Commission (AHRC) dated 29 November 2021 (**Preliminary View**) in relation to the ARA's application to the AHRC dated 31 July 2020 (**Application**) for temporary exemptions to the *Disability Standards for Accessible Public Transport 2002 (DSAPT)* and the Disability (Access to Premises – Buildings) Standards 2010 (**Building Standards**) and sought feedback from its members across the rail industry.

The ARA and its members welcome the Preliminary View made by the AHRC for the granting of the five temporary exemptions sought by the ARA.

The ARA notes that the proposed conditions for the six (five of which the ARA applied for) temporary exemptions have been modified to those provided in the temporary exemptions previously granted by the AHRC in its decision given on 1 October 2015 (**2015 Decision**) as well as those recommended in report prepared by Equal Access dated 1 July 2021 (**Equal Access Report**). The ARA would like to reiterate that an extension of the conditions provided in the 2015 Decision would provide a consistent and transparent mechanism to monitor improvement since 2015.

One general comment that applied to all the conditions contained in the Preliminary View is the requirement for ARA members to submit several separate and individual strategies. It may be preferable for some ARA members to submit one consolidated strategy that outlines how that ARA member intends to address the final agreed conditions. Relevant ARA members could elect to provide one consolidated strategy or several strategies that address the required information relevant to the temporary exemption.

The following outlines some specific comments on the conditions contained in the Preliminary View for consideration by the AHRC.

1. DSAPT Part 2.1 'Access paths – Unhindered passage' and Premises Standards Part H2.2(1) 'Accessways'

ARA Exemption sought

For a period of five years, flange gaps of up to 75mm are permitted where a level crossing forms part of an access path on rail premises or rail infrastructure.

AHRC Preliminary View Conditions

For a period of 5 years, flange gaps of up to 75mm are permitted where a level crossing forms part of an access path on existing rail premises or existing rail infrastructure, subject to the following conditions:

1. the ARA member concerned provides a strategy to the ARA and Commission within 12 months of this exemption to demonstrate how the member intends to improve the flange gaps within each access path within a level crossing by:
 - a. eliminating the flange gaps with a suitable product
 - b. reducing the flange gaps to a maximum horizontal width of 55mm, or
 - c. phase out by grade separation, including its proposed timeframes for actioning this strategy at each location
2. the ARA member concerned conducts an audit of existing crossings against s 2.1 of the Transport Standards and cl H2.2 of the Access Code in the Premises Standards and provides a written report to the ARA and the Commission for each jurisdiction within 24 months outlining the findings, the proposed actions for remedy in each location, the proposed timeframes for the remedy in each location, and the proposed expenditure to remedy each location
3. the ARA member concerned take prompt and reasonable steps to implement the strategy at each of the locations identified in the audit
4. the ARA member concerned provides reports to the Commission every 12 months following the audit identifying each station where a level crossing forms part of an access path, the progress made to implement the strategy at that location, the actual expenditure incurred in implementing the remedy at each location in the previous 12 months and the percentage rate of improvement of access paths through level crossings by eliminating, reducing or phasing out flange gaps on access paths in accordance with condition 1, and
5. the ARA member makes these reports available on its website

ARA Comments

In relation to the proposed condition to provide a strategy, the ARA notes that products to remove or minimise a flange gap are still being trialled, with no suitable product having yet demonstrated it satisfies both operational and accessibility requirements in an Australian rail context. From a policy and regulatory context, the development of the strategy may be pre-emptive as there is need for

significant resources to both plan and fund any further grade separation to remove level crossings, as well as changes that may eventuate from the current reform of the DSAPT.

Further, the development and submission of a strategy, prior to an audit having been completed, seems counterproductive. The completion of an audit of existing crossings that achieves the prescribed requirements listed in point 2 would no doubt be needed to address the requirements of point 1. The ARA asks that the proposed strategy condition is expanded to include the requirement for an audit, noting that committing funding as part of a strategy would be difficult to achieve, given timelines will not align with funding cycles. Also, previous advice from the ARA citing a more realistic time frame of 24 to 36 months is preferable to enable meaningful consideration of the issues and funding implications.

While monitoring and reporting on the progress of the implementation of the strategy is supported in principle, there will be difficulties in providing actual expenditure due to the various funding sources per asset type. The ARA asks that consideration be given to providing actual total budget for whole project at sites where improvements have been made at level crossings. Further clarification is also needed on what is being measured in relation to the “percentage rate of improvement” so that ARA members can consider other data sources to provide the information.

2. DSAPT Part 2.6 ‘Access paths — conveyances’ and Part 2.8 ‘Extent of Path’

Exemption sought

For a period of five years, an access path is only required at a single door of existing rail conveyances.

AHRC Preliminary View Conditions

For a period of 5 years, an access path is only required at a single door of existing rail conveyances, subject to the following conditions:

1. equivalent access is provided at an alternative door of the rail conveyance in the following circumstances:
 - (a) if an allocated space is not available
 - (b) to ensure access to unique facilities, including an accessible bathroom (where provided), or
 - (c) to ensure a passenger can both board and alight the rail conveyance
2. the ARA member utilising this exemption installs signage in close proximity to the primary boarding point to notify passengers with mobility disability how access can be achieved to an alternative entry point, with staff assistance if required
3. the ARA member utilising this exemption reports to the Commission within 12 months of the exemption on the progress of its installation of the signage and annually until all stations affected have signage erected
4. the ARA member utilising this exemption provides a management plan to the Commission within 3 months of this exemption detailing:

- (a) the management controls set out by the ARA member on how staff manage passengers with disability who require an alternative boarding point, and
 - (b) the methods used to educate passengers on the availability of the alternative boarding point and staff assistance
5. the ARA member utilising this exemption provides a strategy to the ARA and the Commission within 12 months of this exemption to demonstrate how the member intends to provide access paths between the entrance of a conveyance and the allocated spaces and other essential facilities for passengers with disabilities, including its proposed timeframes for actioning this strategy, and proposed expenditure for that action
6. the ARA member utilising this exemption provides reports to the Commission every 12 months from the date of this exemption setting out the member's progress toward providing access paths between the entrance of a conveyance and all allocated spaces and facilities for passengers with disabilities, including the actual expenditure incurred in implementing the strategy in the previous 12 months and the number of conveyances over which this exemption is claimed, and
7. the ARA member utilising this exemption makes these plans and reports available on its website.

ARA Comments

The ARA notes that the AHRC has indicated it considers Part 2.8 applicable in addition to Part 2.6 in relation to access paths and intends to provide a temporary exemption to both parts of the DSAPT, even though the ARA only applied for a temporary exemption from Part 2.6. The ARA is supportive of the addition of Part 2.8 as a temporary exemption.

As previously outlined, alternative door boarding procedures are complex and vary amongst fleet type. The ARA recommends that mandating the installation of additional physical signage should only apply for the primary boarding point (tactile and ground surface markings on platform or signage). Communication of how passengers with mobility disability can access an alternative entry point are better delivered through a range of existing customer information channels and through staff interactions at the station prior to boarding.

As previously advised, the proposed timeframe of three months would be difficult to meet, due to internal organisational processes. The ARA asks that six to 12 months would be more appropriate to ensure all elements are covered under the proposed reporting condition.

Given the varying asset types used by ARA members across each of their networks, providing an access path to all allocated spaces inside a conveyance once the customer is onboard, can be difficult. For example, Sydney Trains utilises double decker conveyances. Consequently, providing a strategy within 12 months would not provide sufficient time to develop an informed plan that also complies with requisite Government approvals processes and project funding requirements.

3. DSAPT Part 6.4 'Slope of external boarding ramps'

ARA Exemption sought

For a period of five years, where the relationship between the platform and rail carriage means that an external boarding ramp can only be provided at a gradient greater than 1 in 8 and less than 1 in 4, ARA members are not required to provide staff assistance to customers to ascend or descend the ramp.

AHRC Preliminary View Conditions

For a period of 5 years, for existing rail stock, where the relationship between the platform and rail carriage means that an external board ramp can only be provided at a gradient greater than 1 in 8 and less than 1 in 4, ARA members are not required to provide staff assistance in ascending or descending the ramp, subject to the following conditions:

1. the ARA member utilising this exemption undertake within 12 months data mapping of all stations and stops state-wide to identify the relevant locations where an external board ramp can only be provided at a gradient greater than 1 in 8 and less than 1 in 4
2. a strategy is developed by the ARA member utilising this exemption and provided to the Commission within 12 months of this exemption on how platforms can be improved at nominated boarding points on a case-by-case basis, including timeframes for action and planned expenditure for the improvements
3. the ARA member utilising this exemption reports to the Commission annually thereafter on the number of locations where an external board ramp can only be provided at a gradient greater than 1 in 8 and less than 1 in 4, progress to demonstrate how the boarding ramp gradients are being improved at each station, and actual expenditure on the required works at each station in the last 12 months
4. the ARA member utilising this exemption makes these reports available on its website
5. the ARA member utilising this exemption ensures that service users can obtain information about restricted access at any particular rail station or infrastructure:
 - (a) at the location of the restriction
 - (b) via the ARA members' websites and downloadable fact sheets
 - (c) in person at Travel Centres, where they exist
 - (d) via a telephone call to the Customer Contact Centre, where available, and
 - (e) via any other forms of communication provided by the ARA member (such as a mobile application), and
6. any ARA member utilising this exemption provides free travel for any assistant accompanying a person with disability who requires assistance to use the ramps between 1 in 8 and 1 in 4 and publicises the free travel arrangements:
 - (a) at the location of the restriction (b) on the ARA members' websites and downloadable fact sheets 42
 - (b) at Travel Centres, where they exist
 - (c) to enquirers calling the Customer Contact Centre concerning access, where relevant, and

- (d) via any other forms of communication provided by the ARA member (such as a mobile application).

ARA Comments

As previously advised, the proposed condition giving ARA members 12 months to complete data mapping of all stations and stops state-wide and to develop a strategy on how platforms can be improved at nominated boarding points would be difficult to meet for all stations across the ARA members' networks. The ARA recommends 24 to 36 months would be more realistic and allow for a substantive data mapping and comprehensive strategy to be developed, given the numbers of stations involved and the need to obtain the necessary project funding within the funding cycle.

Flexibility should be afforded to ARA members in implementing point 2, given ownership and governance structures they may have over the infrastructure they operate, including rail track. For example, regional networks tend to operate on tracks owned by the Australian Rail and Track Corporation, VicTrack or Arc Infrastructure, potentially making it more difficult to gather the required information. The ARA believes 24 to 36 months would be more realistic and allow for a thorough mapping.

While reporting the progress to demonstrate how boarding ramp gradients are being improved at each station is supported in principle, there will be difficulties in providing actual expenditure due to the various funding sources per asset type. The ARA asks that consideration be given to providing actual total budget for whole project at sites where enhancements have been made for improving gradients at each station.

4. DSAPT Part 8.2 'Boarding - When boarding devices must be provided'

ARA Exemption sought

For a period of five years, a manual or power assisted boarding device is only required at a single door rather than all doors of a rail conveyance.

AHRC Preliminary View Conditions

For a period of 5 years, a manual or power assisted boarding device is only required at a single door of an existing rail conveyance, subject to the following conditions:

1. equivalent access is provided at an alternative door of the rail conveyance in the following circumstances:
 - (a) if an allocated space is not available
 - (b) to ensure access to unique facilities, including an accessible bathroom (where provided), or
 - (c) to ensure a passenger can both board and alight the rail conveyance
2. any ARA member utilising the exemption ensures that service users can obtain information about specified boarding points at any particular rail station or infrastructure:
 - (a) at any platform at which there is a specified boarding point
 - (b) via the ARA members' websites and downloadable fact sheets

- (c) in person at Travel Centres, where they exist
 - (d) via a telephone call to the Customer Contact Centre, where available, and
 - (e) via any other forms of communication provided by the ARA member (such as a mobile application) 43
3. any ARA member utilising this exemption ensures that assistance is provided at each station in deploying the assisted boarding device for passengers who require assistance boarding and alighting a rail conveyance without the requirement for passengers to book or make prior arrangements for assistance
 4. any ARA member utilising the exemption provides a report to the Commission and the ARA within 12 months of the grant of this exemption on:
 - (a) the number of conveyances over which this exemption is claimed;
 - (b) measures taken to ensure that staff and passengers are adequately informed of:
 - i. the doors of rail conveyances at which boarding devices are available, and
 - ii. the equivalent access measures available, and
 - (c) measures taken to ensure that assistance is provided to passengers at each station at all times the railway is operating, whether by the driver of the conveyance or by ensuring sufficient staff are available at stations to assist passengers through the deployment of the assisted boarding device, the number of staff at each station and the roles in which they are employed, and the planned and actual expenditure incurred in implementing these measures
 5. the report be updated every 12 months
 6. the ARA member utilising this exemption makes the report available on its website, and
 7. the ARA member utilising this exemption provides de-identified reports to the Commission on any complaints made to it or an external agency (of which the ARA member is aware) alleging a failure in the provision of equivalent access. The report should identify the station that was the subject of the complaint.

ARA Comments

The ARA has no objection to any of the proposed conditions for this exemption.

It is also important to ensure that complaints reported as required by point 7 refer to formal complaints of discrimination and not general feedback.