



Submission in response to preliminary view

**Application for temporary exemptions –  
Australian Railways Authority**

**28 January 2022**

Physical Disability Council of NSW  
3/184 Glebe Point Road, Glebe NSW 2037

02 9552 1606  
[www.pdcnsw.org.au](http://www.pdcnsw.org.au)

[hayley.stone@pdcnsw.org.au](mailto:hayley.stone@pdcnsw.org.au)  
[serena.ovens@pdcnsw.org.au](mailto:serena.ovens@pdcnsw.org.au)



## Contents

Who is the Physical Disability Council of NSW? .....	3
Recommendations.....	4
Introduction.....	4
Exemptions sought by the ARA.....	5
Concluding comments .....	10

## Who is the Physical Disability Council of NSW?

The Physical Disability Council of NSW (PDCN) is the peak body representing people with physical disabilities across New South Wales. This includes people with a range of physical disability issues, from young children and their representatives to aged people, who are from a wide range of socio-economic circumstances and live in metropolitan, rural and regional areas of NSW.

Our core function is to influence and advocate for the achievement of systemic change to ensure the rights of all people with a physical disability are improved and upheld.

The objectives of PDCN are:

- To educate, inform and assist people with physical disabilities in NSW about the range of services, structures, and programs available that enable their full participation, equality of opportunity and equality of citizenship.
- To develop the capacity of people with physical disability in NSW to identify their own goals, and the confidence to develop a pathway to achieving their goals (i.e. self-advocate).
- To educate and inform stakeholders (i.e.: about the needs of people with a physical disability) so that they can achieve and maintain full participation, equality of opportunity and equality of citizenship.

## Recommendations

### **Recommendation 1**

*That the AHRC seeks further information, if it has not already done so, regarding details of the trials of gap fillers conducted and efforts made to secure federal funding specific to realising Cl. 2.1 and H2.2 of the Premises Standards (Accessways).*

### **Recommendation 2**

*That the AHRC does not grant further exemptions in relation to non-compliance with Clause 2.1 Access Paths – unhindered passage and cl.H2.2 (1) of the Premises Standards (Accessways).*

### **Recommendation 3**

*That the AHRC does not grant the exemption sought under Clause 2.6 “Access Paths – Conveyances”*

### **Recommendation 4**

*That the AHRC satisfies itself that the provision of a single access path to a single door of a conveyance does not jeopardise the health and safety of passengers with disabilities by providing limited options for escape in an emergency*

### **Recommendation 5**

*That the AHRC does not grant the exemption request under Cl. 6.4 “Slope of External Boarding Ramps”*

### **Recommendation 6:**

*That the AHRC require as a condition of granting the exemption, that ARA members provide public signage where relevant advising that rail staff will not be available to assist passengers to alight or exit the train via ramp.*

### **Recommendation 7**

*That the AHRC grants the exemption with an additional requirement that the any ARA member seeking to use the exemption commit to undertaking progressive upgrades to infrastructure and investigations into dynamic boarding/alighting systems.*

*That any ARA member seeking to utilise the exemption provide annual progress reports to the AHRC on infrastructure upgrades and investigations regarding dynamic boarding/alighting systems.*

## Introduction

PDCN appreciates the opportunity to provide comment on the preliminary view of the Australian Human Rights Commission regarding the Australasian Railways Association Exemption application 2020.

Firstly, it is unfortunate that we find ourselves in the same position on matters where the ARA has already been granted exemptions. Whilst we appreciate that there are various challenges to realising accessibility across our rail networks, we note that ARA members have already been granted more than 14 years of exemptions.

Granting a further 5 years for compliance further stalls progress towards disability inclusion and lessens community faith in the Disability Discrimination Act, as a tool to realise our commitments under the UNCRPD and Australian Human Rights Commission as the authority responsible for the administration of the DDA. While these matters remain outstanding, our members are denied equitable access to one of the most basic elements of community infrastructure – rights that taken for granted daily, by many within our community, and which are intrinsically connected to other aspects of social inclusion, such as the capacity to participate in community or attend work.

It is for these reasons that we are disappointed that the preliminary view of the AHRC to grant the exemptions sought in totality. We do not consider that the ARA has provided sufficient new evidence to warrant a further five years of delay. The evidence that has been submitted does not satisfy us that ARA Members have prioritised compliance since they were granted the same exemptions in 2015. We note the Commission's comments at 10.18 of the preliminary view:

*The Commission considers that exemptions should not be granted lightly. In exercising its statutory discretion, the Commission must have regard to the circumstances of each individual case and balance the relevant factors. Given the significant legal consequences for potential complainants, the Commission must be satisfied that a temporary exemption is appropriate and reasonable, and persuasive evidence is needed to justify the exemption.*

And note that many of the challenges raised by the ARA – lack of Federal Government Investment, lack of local government and community support for infrastructure projects, rolling stock life, operational constraints, workforce skills shortages, patronage growth, network widths and the ongoing review of the DSAPT are issues that have been ongoing now for over a decade and in many instances are only indirectly relevant to exemptions currently sought.

An important secondary issue in relation to several of the specific exemptions requested by the ARA are that they relate, not only to accessibility for people with physical disability, but also potentially to their safety.

Unresolved issues around flange widths, the provision of only one access path to and from existing rail conveyances, and a request that ARA members be exempt from providing staff assistance for people to navigate access ramps at gradients greater than 1:8 and less than 1:4, all pose potential safety risks for people with disability, which we will detail across our submission.

It is important to note that PDCN are not technical experts in accessible transport infrastructure. Our comments and recommendations are based on the practical experiences of our membership in the use of public transport.

#### Exemptions sought by the ARA

The ARA's application refers to matters that were the subject of previous exemptions granted by the Commission in 2015, namely:

- **Clause 2.1 Access Paths – unhindered passage and cl.H2.2 (1) of the Premises Standards (Accessways).** The AHA has requested that flange gaps of 75 mm to be permitted where a level crossing forms part of the access path on rail premises or rail infrastructure.
- **Clause 2.6 “Access Paths - Conveyances”** – the AHA has requested that an access path is only required at a single door of existing rail conveyances
- **Clause 6.4 “Slope of External Boarding Ramps”:** the AHA has requested that where the relationship between the platform and the rail carriage means that an external board ramp can only be provided at a gradient greater than 1:8 and less than 1:4, AHA members are not required to provide staff assistance to customers to ascend or descend the ramp
- **Clause 8.2 “Boarding”** – when boarding devices must be provided” the AHA has requested that a manual or power assisted boarding device is only required at a single door rather than all doors of a rail conveyance.

We note that the ARA states that it has sought to minimise the potential impact on people with disability by not requesting any new temporary exemptions or temporary exemptions that had previously been denied.

It is not clear whether this means that other legislative requirements under the DSAPT are currently not being met by member organisations and this is a point of concern.

We will refer to each of the exemptions sought within the current application individually:

**Clause 2.1 Access Paths – unhindered passage and cl.H2.2 (1) of the Premises Standards (Accessways).**

The ARA in its application states that there are some 23,500 railway crossings across Australia. 3084 are in NSW.<sup>1</sup> Many crossings are in regional areas with limited or no alternative routes for pedestrians to use.

Flange gaps have the capacity to catch castor wheels on wheelchairs and mobility scooters. They also have the potential to catch walking sticks or walking frames used by people with limited mobility, which could result in serious injury or death.<sup>2</sup>

While the DSAPT does not specifically refer to flange gaps, the risks posed by flange gaps are well known and working to minimise the risks posed should be considered within the scope of Clause 2.1.

Likewise, while we appreciate that the DSAPT is currently undergoing its third review, we do not support the granting of exemptions on the basis that this review is ongoing. The exemptions sought (with the exemption of flange gaps) relate to existing provisions under the 2002 DSAPT, of which ARA members are obligated to comply with as a minimum.<sup>3</sup>

---

<sup>1</sup> NSW Government, Transport for NSW, *Road and Rail Crossings* <[Road and rail crossings - Traffic engineering & management - Partners & suppliers - Business & Industry - Roads and Waterways – Transport for NSW](#)> accessed 28 January 2022

<sup>2</sup> Ibid.

<sup>3</sup> Equal Access, *Disability Standards and Accessible Public Transport* <[DSAPT Disability Standards Accessible Public Transport Consultants DDA \(disabilityaccessconsultants.com.au\)](#)> accessed 28 January 2022.

Information regarding the maximum gap widths that modern wheelchairs and mobility scooters can safely transverse could be readily accessed from the Assistive Technology Industry – we also note that 50mm has been recognised as safe for independent use in Europe.<sup>4</sup>

We appreciate that the ARA has detailed efforts to investigate materials to fill the gaps caused by the flanges, referring to ‘numerous’ trials. The ARA refers to grade separations as the only alternative to gap fillers, but appears to discount this as viable alternative on the basis that overpasses, or underpasses are not always appropriate and that there is insufficient appetite from some customers.

We would ask that the AHRC make additional inquiries in relation to this request including:

- Details of gap fillers trials conducted to determine the extent to which resolving this issue has been prioritised
- Details of all efforts across the past 5 years to secure federal funding specific to realising Clauses 2.1 and cl H2.2 of the Premises Standards (Accessways) either via gap fillers or grade separations.

We do not support the granting of this exemption.

Having said this, if the AHRC is minded towards granting this specific exemption, we would the conditions proposed in Part A of AHRC’s Preliminary View.<sup>5</sup>

**Recommendation 1:**

*That the AHCR seeks further information, if it has not already done so, regarding details of the trials of gap fillers conducted and efforts made to secure federal funding specific to realising Cl. 2.1 and H2.2 of the Premises Standards (Accessways).*

**Recommendation 2:**

*That the AHRC does not grant further exemptions in relation to non-compliance with Clause 2.1 Access Paths – unhindered passage and cl.H2.2 (1) of the Premises Standards (Accessways).*

**Clause 2.6 “Access Paths - Conveyances”**

As stated, the ARA has requested that an access path is only required at a single door of existing rail conveyances. We understand conveyances to mean buses, ferries, light rail, trains, and trams, (though in this case likely only referring to trains.) We would argue that people with accessibility requirements should have equal access to all conveyance doors, and that safety issues can arise if there is only one viable way for people with disability to access, or exit, a conveyance.

While we appreciate the logic (and potential convenience to our members) of having a designated access point to board conveyances, and the advantage of allowing for the more efficient of onboard accessible amenities, we are concerned that the potential safety

---

<sup>4</sup> Shiels, Alison, ARA Temporary Exemptions Assessment prepared for the Australian Human Rights Commission, 1 July 2021 <[equal\\_access\\_expert\\_report\\_2.docx \(live.com\)](#)> accessed 28 January 2022.

<sup>5</sup> Australian Human Rights Commission, Notice of Preliminary View on Application for Temporary Exemption: Australasian Railway Association, 29 November 2021 <[Recommendations \(humanrights.gov.au\)](#)> accessed 28 January 2022.

implications of a single point of access/exit have not been addressed in the ARA's application, particularly in emergency circumstances.

PDCN would request that the AHRC assure itself that allowing such an exemption will not jeopardise the health and safety of passengers with disability.

We are also uncomfortable in principle with what amounts to segregation of passengers with disability into a specific part of a conveyance as a matter of convenience and efficiency. Best practice inclusion would facilitate passengers with disabilities having equal access to all parts of a conveyance. Not every passenger with disability will need manual assistance to board conveyances nor will they necessarily need to exclusively use accessible facilities.

We do not support this exemption. We would ask that the AHRC requests that the ARA conduct a safety audit on the viability of a single access path to a single door of rail conveyances and provide more detail on what level of accessibility a passenger could ordinarily expected from a 'second option' access path.

**Recommendation 3:**

*That the AHRC does not grant the exemption sought under Clause 2.6 "Access Paths – Conveyances"*

**Recommendation 4:**

*That the AHRC satisfies itself that the provision of a single access path to a single door of a conveyance does not jeopardise the health and safety of passengers with disabilities by providing limited options for escape in an emergency*

**Clause 6.4 "Slope of External Boarding Ramps"**

The ARA has applied for an exemption to provide railway staff to assist passenger to alight and exit rail conveyances via ramp when the ramp can only be provided at a gradient greater than 1:8 and less than 1:4.

Whilst we appreciate that there may be safety considerations for both passengers and staff which need to be carefully managed, we are concerned that granting this exemption will mean that passengers who do require assistance will not be able to access it and note that not every passenger will have a carer to assist them to navigate a ramp irrespective of the fact that carers are able to travel free of charge.

In such instances, rail staff, who are appropriately trained to assist passengers to navigate ramps and mindful of safe work practices and OH&S are far preferable to other passengers, which a passenger with disabilities may otherwise have to turn to if they need assistance.

We are also unsure how the exemption might work practically in the context of portable ramps, which are manually positioned by station staff, for example, would staff position the ramp and then provide no further assistance, even if asked to do so? We also anticipate that there could be difficulties, in practice, for railway staff to gauge ramp gradients.

PDCN does not support this exemption being granted. We anticipate that it would cause significant inconvenience and hardship to people with disability who require ramps.

If the exemption is granted, it is important that the expectation that passengers navigate ramps at a gradient greater than 1:8 and less than 1:4 is publicly communicated,

particularly if there is an expectation that people with disability have a carer to assist them. This will allow passengers to either ensure that they travel with a carer who can otherwise assist them, or make alternative arrangements, for example, using an alternative station.

Stations where it is not possible to achieve gradients that allow for rail staff assistance should have signage indicating that ramp gradients prohibit rail staff from assisting passengers to alight or exit trains.

**Recommendation 5:**

*That the AHRC does not grant the exemption request under Cl. 6.4 “Slope of External Boarding Ramps”*

**Recommendation 6:**

*That the AHRC require as a condition of granting the exemption, that ARA members provide public signage where relevant advising that rail staff will not be available to assist passengers to alight or exit the train via ramp.*

**Clause 8.2 “Boarding – when boarding devices must be provided”**

The final exemption sought by the ARA relates to when a manual or power assisted boarding device, such as a ramp, should be provided. The DSAPT requires that such devices be provided for all doors of a rail conveyance. The ARA seeks an exemption, which if granted, would permit manual or power assisted boarding devices to only be available at a single door of the conveyance.

The ARA notes that passengers can currently seek information about specified boarding points across different railway stations and infrastructure via several different means and refer to various practical reasons for seeking the exemption.

Whilst we would advocate for people with disability to have equal access to boarding via any door of a conveyance and to consequently be able to sit in whichever carriage they wish, we appreciate that there can be limitations in being able to accommodate this, particularly at smaller, regional train stations where there are limited staff, or where the existing platform size/structure limits access to all access points or carriages

We accept that request is reasonable in the circumstances, providing that the information regarding where manual or power assisted boarding devices will be located at particular stations continues to be made explicit and the ARA is obligated to work towards the recommendations made in Monash University’s Institute of Railway Technology DSAPT review, namely that ARA members:

- Undertake progressive upgrades to infrastructure through platform renewals to set a consistent platform coping height within each network limiting vertical step variability,
- Continue to investigate dynamic boarding/alighting systems
- Review and provide further clarity, identify implications for industry/people with disability and those who represent them on the phrase “any accessible entrance” within clause 8.2 of the DSAPT

It is important that passengers with disabilities are not put to additional effort or burden when boarding a train using a boarding device.

**Recommendation 7:**

*That the AHRC grants the exemption with an additional requirement that the any ARA member seeking to use the exemption commit to undertaking progressive upgrades to infrastructure and investigations into dynamic boarding/alighting systems.*

*That any ARA member seeking to utilise the exemption provide annual progress reports to the AHRC on infrastructure upgrades and investigations regarding dynamic boarding/alighting systems.*

## Concluding comments

Emeritus Professor Rosalind Croucher AM in the AHRC Preliminary View, makes a powerful observation in relation to the exemption application on foot:

*By the time of the expiry of the temporary exemptions now being granted, the target dates for compliance with the Premises Standards will have lapsed. The members of the ARA will have had 24 years to achieve compliance with the Transport Standards, and 15 years to achieve compliance with the Premises Standards.*

Disability inclusion is too often sidelined in the day-to-day operations across businesses and services. The capacity for entities to seek exemptions (and particularly rolling exemptions) reduces public confidence in the legislative mechanisms to meet Australia's obligations under the UNCRPD and the institutions vested with the responsibility to ensure that the rights of persons with disability are realised.

PDCN members expect the AHRC to exercise its power to grant exemptions sparingly, and when exemptions are granted, to hold entities to account to redress non-compliance, as soon as practicable. The granting of subsequent exemptions should be considered extraordinary and should only be permitted when an entity has demonstrated genuine and consistent efforts to comply with the DDA and there are compelling reasons why compliance cannot be achieved at a particular time.

We appreciate that we are not privy to all information submitted by the ARA in support of its request. When considering the current application, we ask that the AHRC consider the timeline of efforts undertaken by ARA members since 2015 to meet their compliance under the DSAPT across each exemption, and to consider whether the ARA has provided any new information that would alter the trajectory towards compliance.