



All Aboard Network
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24 September 2020

To
Australian Human Rights Commission

Submission on the application by the Australasian Railway Association for temporary exemptions from the Disability Standards for Accessible Public Transport

The All Aboard network is a forum of individuals and representatives of community and local government organisations who have an interest in the accessibility of public transport in Victoria. It was first established in 2011.

The All Aboard network advocates for non-discriminatory independent access to all forms of public transport for all people.

These temporary exemptions were first granted in 2007 and extended in 2012, 2012, 2013, 2014 and then again in 2015.

The All Aboard network notes that this application is for only 5 temporary exemptions, a considerably smaller number than previous applications. However, we also note that does not necessarily mean that compliance has been achieved with respect to those Parts of the DSAPT for which exemptions are not being sought with this application.

Members of the All Aboard network have considered the application by the Australasian Railway Association (ARA) for temporary exemptions from the Disability Standards for Accessible Public Transport (DSAPT) and make the following comments and recommendations:

Exemption sought:

Clause 2.1 – ‘Access Paths – Unhindered Passage’ and clause H2.2 of the Access Standards ‘Accessways’: 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.

Comments:

As noted in the ARA application, the rail flange gap is not considered separately as an obstruction or hindrance where that rail flange gap forms part of an access path. Should it be? Should an obstruction or hindrance be considered acceptable or less dangerous because it serves some other important purpose?

The ARA application also points out that there is conflict between this clause of the DSAPT and AS1742.7 (not referenced in the DSAPT) which allows a flange gap of 65mm to 75mm. The ARA also points out that Monash University in its report recommends the adoption of

the European Union (EU) ~~Persons with reduced mobility technical specifications~~ where it states that wheelchairs being used around railways should be able to accommodate a horizontal gap of 75mm and a vertical gap of 50mm.

It should be noted that many sports wheelchairs have front wheels of approximately 75mm diameter. These would easily get caught in a 75mm flange gap. Perhaps the ARA is suggesting that the owner of such a chair should leave it at home on any day that they feel they may encounter an access path that crosses a train line.

The adoption of the EU standard would be a backwards step in accessibility standards in Australia and is likely to increase the danger for mobility aid users and pedestrians in the rail environment.

In 2015, the Australian Human Rights Commission (AHRC) extended this previously granted five year temporary exemption with a condition allowing the 75mm flange gap. During the 18 years since the DSAPT began, we note that little has changed with regard to addressing the ~~flange gap problem~~ on access paths.

Given that it is thirteen years since the first exemption application was granted, the All Aboard network believes that granting a further five year temporary exemption without a stricter requirement to address the flange gap problem would not be in the best interests of the public.

Recommendation:

That the application be granted with conditions.

For a period of three years, flange gaps of up to 75mm where a level crossing forms part of an access path on rail premises or rail infrastructure. This exemption is subject to the following conditions:

- The flange gap on all pedestrian rail crossings be reduced to a maximum of 65mm, in line with the minimum stated in AS1742.7, by the end of the exemption period.
- The ARA member concerned submits a report to the Commission at the beginning of each one year period of the exemption that:
 - Contains details of the level of compliance with this clause of the DSAPT at that time
 - Contains a detailed plan for the rectification work to be undertaken over the next 12 months.
 - Those reports shall be available to the public via the ARA and Commission websites. Reports from previous years shall also be available on those same websites.

Exemption sought:

Clause 2.6 – ‘Access Paths – Conveyances’: For a period of five years an access path is only required at a single door of existing rail conveyances.

Comments:

The All Aboard network recognises the importance of the conditions attached by the AHRC in 2015 to the temporary exemption:

- Equivalent access provided at an alternative door of the rail conveyance in the following circumstances:
 - If an allocated space is not available; or
 - To ensure access to unique facilities; or
 - To ensure a passenger can both board and alight the rail conveyance;
- The ARA member concerned provides a written report .
- The ARA makes such reports available to the public through its website. (All Aboard noted that at the date of writing this submission, only the 2019 reports are available on the ARA website)

The conditions still lead to significant discrimination against passengers who need to use the designated single door for access to the conveyance. For example on the Melbourne train network where the first door of the train is the nominated accessible entry:

- A passenger requiring the accessible entry must, in many circumstances, travel the entire length of the platform, perhaps 100m or more, to get to the nominated boarding point.
- The access path from the platform entry to the boarding point is often unmarked and unclear.
- The access path from the platform entry to the boarding point should be clear of all obstacles at all times. This should include passengers waiting for the next train and passengers alighting from or boarding the current train. Users of mobility aids frequently miss their trains because their path to the single nominated accessible entry is blocked by other passengers, who of course can choose any entry they like.
- A passenger may, on their way to the boarding point, be required to pass several doors of the conveyance that are labelled with the international accessibility sign and in fact have allocated spaces inside those doors.
- The nominated boarding points often have no shelter, no information provision and/or no safety devices.
- In some cases, a platform services both three carriage and six carriage trains. The stopping points for these trains are different to each other. A person may find themselves waiting at the wrong boarding point. There are reported incidents of train drivers not waiting for a passenger to get from the wrong boarding point to the correct one.
- Metro Trains Melbourne (MTM) has only partially opted to consolidate the required 2 per car allocated spaces into an area of up to 8 spaces. Some trains still have only 2 spaces accessible via the first door, while others have between 3 and 6 spaces that can be reached via that single designated accessible entry. This applies not only to existing conveyances, but to new ones as well. When a single entry door is nominated, one half or more of the allocated spaces are not available for use by passengers with mobility devices.

The request by the ARA to provide single door access rather than all-door access to rail conveyances comes about because there has been no work done by some ARA members to develop a boarding solution that would work at all doors of a train. Certainly on the Melbourne metropolitan rail network, all the work done to improve boarding has been concentrated on the first door of the train, while there seems to be no plan to provide access to the entire train.

On those rail networks where only a single door has been nominated as the accessible entry, passengers who need the step-free access remain unable to choose where they ride. They are unable to choose based on perceived safety, comfort or convenience. They continue to miss trains because they are often required to travel further and navigate more obstacles within the station precinct in order to get to their one special boarding point than other passengers.

The DDA is now 28 years old and the DSAPT is now 18 years old. After those 18 years on some rail networks we still only have access to one door of a train. That is all trains, both existing at the beginning of the DSAPT in 2002 and every new train since then. The DSAPT requires 100% compliance for all new infrastructure and conveyances.

The 2007 to 2015 ARA applications for temporary exemption for clause 8.2 have been explicitly for existing conveyances. It is therefore assumed that new conveyances are not and should not be included in the exemption. But all new trains on the MTM network have only one nominated accessible boarding point. MTM operates new trains in exactly the same manner as if they were existing conveyances. This is a breach of the DSAPT 33.1 and a breach of the conditions of the temporary exemption to this clause 8.2.

Recommendation:

That the application be granted with conditions.

For a period of three years, an access path is only required at a single door of existing rail conveyances if:

- All of the allocated spaces as specified in DSAPT 9.6 are accessible from that single door and are compliant with DSAPT Parts 9.1, 9.7, 9.9, 9.10 and 9.11.
- This door is clearly marked as the only accessible entry, on the conveyance, at the boarding point and along the access path.
- An internal accessible path is available to provide movement from one train carriage to another in order to allow egress in the case that the nominated accessible entry becomes inoperable or otherwise unusable.
- The ARA member concerned submits a report to the Commission at the beginning of each one year period of the exemption that:
 - Contains details of the level of compliance with this clause of the DSAPT at that time
 - Contains a detailed plan for the rectification work to be undertaken over the next 12 months.
- Those reports shall be available to the public via the ARA and Commission websites. Reports from previous years shall also be available on those same websites.

Otherwise, an access path is required at all doors of existing rail conveyances that, subject to compliance with DSAPT Part 9.6:

- Have the international symbol of disability access displayed, and
- Have allocated spaces inside the rail car that are accessible from that door

- The ARA member concerned submits a report at the beginning of each one year period of the exemption that details the level of compliance with this clause of the DSAPT at that time and a detailed plan for the rectification work to be undertaken over the next 12 months
- The ARA member concerned submits a report to the Commission at the beginning of each one year period of the exemption that:
 - Contains details of the level of compliance with this clause of the DSAPT at that time
 - Contains a detailed plan for the rectification work to be undertaken over the next 12 months.
- Those reports shall be available to the public via the ARA and Commission websites. Reports from previous years shall also be available on those same websites.

Note: the second scenario is intended to have the effect of providing access to all doors that appear to be, or should be accessible due to having signage indicating accessibility and/or having allocated spaces (that are included in the required number, 2 per car, of allocated spaces for the conveyance) inside.

Exemption sought:

Clause 6.4 – ‘Slope of external boarding ramps’: For a period of five years where the relationship between the platform and the rail carriage means that the 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 to customers to ascend or descend the ramp.

Comments:

As noted previously, the DSAPT has been in operation now for 18 years. That should have been plenty of time to rectify all circumstances where an external boarding ramp would exceed a gradient of 1 in 8.

It is understood that there are occupational health and safety considerations where direct assistance is required in certain circumstances. However it should also be understood that these circumstances exist because of the failure by rail service providers and operators to address the causes.

It is concerning that the ARA suggests that a free companion pass is the answer where a passenger must provide their own care-giver to overcome a DSAPT non-compliant situation which has been caused by the action or inaction of an ARA member. If a passenger needs to employ a care-giver to assist in overcoming a non-compliant ramp gradient, the ARA member responsible should pay equivalent compensation.

Recommendation:

The application for temporary exemption from clause 6.4 should not be granted.

Exemption sought:

Clause 8.2 – ‘Boarding – When boarding devices must be provided’: 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 conveyance.

Comments:

Please see comments to Clause 2.4 . ~~Conveyancesq~~

Recommendation:

Please see recommendation for Clause 2.4 . ~~Conveyancesq~~

Conclusion.

It is clear that at the time of the ARA’s 2015 application for temporary exemptions to some Parts of the DSAPT, that there was an expectation by the ARA that the DSAPT modernisation process would be completed by the 5 year expiry in 2020.

It is also clear that the ARA has been forthright in proposing amendments to the DSAPT over time. Many of those proposed amendments would have had the effect of diminishing the accessibility of rail transport while reducing the costs and other burdens to ARA members.

The ARA has expressed enthusiasm for the DSAPT modernisation process. History suggests that there is a mixture of goodwill and self-interest in that enthusiasm. Certainly, based on the suggested amendments to the DSAPT that accompanied their 2007 application, it appears that the ARA wants to make compliance easier and cheaper for their members. This would have negative consequences for people with disabilities.

With the aforementioned points in mind, it would be reasonable to conclude that the ARA has been, and is using the temporary exemption process to buy time until it can exert its considerable influence on the DSAPT modernisation to its advantage.

Finally, I wish to draw the Commission’s attention to the DDA Section 32 - It is unlawful for a person to contravene a disability standard. It is a concern of the All Aboard network that there are many clauses of the DSAPT that were a part of the ARA’s 2015 Temporary Exemption application, but are not a part of this 2020 application. We request that the Commission seek information from the ARA as to the circumstances surrounding the absence of those clauses from the current application and whether the ARA or its members are, or will be committing unlawful acts subject to the DDA Section 32 by their omission.

Thank you for your consideration.

Yours faithfully,

Ray Jordan
(Admin)
All Aboard Network