



Anti-Discrimination
New South Wales

Emeritus Professor Rosalind Croucher
President
Australian Human Rights Commission
GPO Box 5218
Sydney NSW 2001

Att: Prabha Nandagopal
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Dear President

**Submission regarding the application for a temporary exemption under the
Disability Discrimination Act 1992 (Cth) made by the Australasian Rail Association
(ARA)**

Anti-Discrimination NSW (ADNSW) welcomes the opportunity to make a submission on the application for temporary exemptions under the *Disability Discrimination Act 1992 (Cth)* (DDA) made by the ARA.

ADNSW administers the *Anti-Discrimination Act 1977* (the ADA) which makes it unlawful to discriminate in specified areas of public life against a person on grounds which include their sex, race, age, disability, homosexuality, marital or domestic status, transgender status and carer's responsibilities. Under the ADA, disability discrimination is unlawful in the provision of goods and services, including public transportation in NSW.

ADNSW firmly supports the removal of barriers and obstacles which prevent people with a disability from fully participating in all areas of life. Accessible public transport is integral to the independence of people with a disability and provides access to workplaces, public facilities and services and the environment.

ARA Exemption Application

Prior to its current application, the ARA was granted temporary exemptions on two previous occasions; under the DDA in 2007 and under the DDA, *Disability Standards for Accessible Public Transport 2002 (Cth)* (DSAPT) and the *Disability (Access to Premises – Buildings) Standards 2010 (Cth)* (Premises Standards) in 2015. Several exemptions granted in its 2015 application were subject to conditions. ADNSW acknowledges that the number of temporary exemptions sought in its current application is fewer than in previous applications and that since its last exemption was granted in 2015 ARA members have undertaken to improve compliance with the DSAPT. ADNSW also appreciates that ARA members continue to engage with customers regarding their accessibility requirements.

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ADNSW makes the following submissions in response each exemption sought by the ARA in its current application:

1. *Clause 2.1 'Access paths – Unhindered passage' and Clause H2.2(1) of the Premises Standards 'Accessways': For a period of five years, flange gaps up to 75mm are permitted where a level crossing forms part of an access path on rail premises or rail infrastructure.*
 - a. ADNSW accepts that at present there is no safe product that can reduce or eliminate flange gaps on level crossings and that there may never be a universal solution to flange gaps. Therefore, ARA members must work towards phasing out pedestrian level crossings used to access railway stations.
 - b. ADNSW does not oppose the granting of the exemption provided it is subject to the same conditions in the temporary exemption granted to ARA in 2015.
2. *Clause 2.6 'Access paths – conveyance': For a period of five years, an access path is only required at a single door of existing rail conveyances.*
 - a. ADNSW does not oppose the granting of the exemption provided it is subject to the same conditions outlined in the 2015 temporary exemption relating to rail conveyances.
3. *Clause 6.4 'Slope of external boarding ramps': For a period of five years, 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 to customers to ascend or descent the ramp.*
 - a. ADNSW notes that trains operating in Sydney and Intercity networks are accessible for customers using mobility devices with direct assistance from station staff or crew using a platform to train boarding ramp. Additionally, the new Sydney Metro stations have roll on roll off access to all train doors.
 - b. ADNSW acknowledges the work health and safety issues associated with aiding customers boarding and alighting from access ramps.
 - c. ADNSW does not oppose the granting of the exemption provided it is subject to the same conditions outlined in the 2015 temporary exemption. In particular, ARA members must take steps to increase the number of locations where external boarding ramp slopes of 1 in 8 or better will be achieved.
4. *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 entry rather than all doors of a rail conveyance.*
 - a. ADNSW does not oppose the granting of the exemption provided it is subject to the same conditions outlined in the 2015 temporary exemption.

Although ADNSW does not oppose the granting of these exemptions sought in the current application, ADNSW does not support the ARA repeatedly seeking temporary exemptions under the DDA every five years. ADNSW considers that the ARA and its members have a continued obligation to find permanent solutions to achieve compliance with the DSAPT and

Premises Standards. The approval of temporary exemptions does not shift the transport industry's obligations to provide accessible transport.

ADNSW thanks the AHRC for considering this submission.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Annabelle Bennett', written in a cursive style.

Dr Annabelle Bennett AC SC
President
Anti-Discrimination NSW

Date: 29 September 2020