Australasian Railway Association

Supplementary Submission to the Australian Human Rights Commission – Temporary Exemption Applications

14 August 2015

**Part 1**

**Introduction**

The ARA is pleased to provide this supplementary submission to support the ARA exemption applications. There are two parts to this submission. Part 1 deals with concerns raised by the general public including organisations representing people with disabilities. Part 2 deals with specific issues asked by the AHRC in its communication dated 28 July 2015.

Before providing detailed responses to the issues raised by the public, the ARA wishes to make the following statements for the AHRC’s consideration.

1. **The rail industry supports the objects of the DDA:** All ARA members that are party to this submission support the spirit and intent of the *Disability Discrimination Act 1992* (DDA) and subordinate instruments. The objective of the DDA is to eliminate (as far as possible) barriers to access and causes of discriminatory service.  ARA members have worked collectively and individually to reduce barriers caused by the legacy infrastructure.  It is not possible using existing resources to upgrade all existing infrastructure to comply with the Transport Standards.  This is due both to the constraints of the existing infrastructure and the failure of the existing Standards to provide realistic specifications for rail operators to comply with.  The latter is being addressed through the process to modernise the Transport Standards initiated by the Commonwealth Government in response to the 2012 Review of Transport Standards.

2.     **Purpose of the exemptions:** There seems to be a perception that the ARA seeks exemptions to remove its obligations to provide accessible transport for people with disabilities. In truth, exemptions are granted by the AHRC and used by the industry as legal protection where the industry is unable to fully comply with the requirements set out in the Transport and Premises Standards due to various reasons including infrastructure and engineering constraints or lack of government funding to upgrade rail services and facilities. In these circumstances, the industry has explored and utilised alternative solutions to improve customer experience and provide accessibility to rail services. Examples of these solutions are clearly articulated in the primary application. The exemptions are not aimed at removing the industry’s responsibility to provide accessible transport. Rather, the exemptions provide the industry with an opportunity to explore alternative solutions to ensure accessibility to its services, while working to upgrade towards compliance, rail services and facilities.

3.     **Current exemptions have helped provide more accessible journeys:** Much progress in making existing stations accessible can be directly attributed to existing exemptions which take into account the rail environment constraints. The exemptions have provided a way forward for operators and providers to upgrade existing stations. The overall objective is to refurbish or upgrade existing infrastructure to the fullest extent possible, within the constraints of the legacy infrastructure. This approach is justified by the increased patronage of stations as they are refurbished by customers of all ages and abilities and access to community facilities. It is also important to note without the exemptions in place, the associated higher costs would result in fewer accessible stations on ARA member networks.

4.     **Progress towards compliance:** The ARA application shows the progression towards compliance with the Transport Standards and Premises Standards within a complex rail environment in the years since exemptions were previously granted. The ARA, on behalf of its members, has sought notably fewer exemptions, with the application referring to 22 of the previous 31 granted exemptions and just 3 of the previous 30 deferred exemptions. All ARA members can demonstrate significant increases in the number of accessible stations and rollingstock since 2007, and ongoing investment. For example, Transport for NSW recently announced a further $890 million over four years for the Transport Access Program.

5.     **Modernisation of the Transport and Premises Standards:** As the AHRC may note from the public submissions, many concerns were raised in relation to the actual requirements set out in the Transport Standards and whether changes are required. The Federal Government, through the Department of Infrastructure and the Department of Industry, also recognises these issues and has subsequently conducted public inquiries into the two standards. While the Inquiry into the Premises Standards is still in progress, the Transport Standards Inquiry has now completed. Results from that Inquiry clearly highlighted the inflexible standards and targets that do not recognise constraints within the rail environment and the needs of people with disabilities. The 2012 Transport Standards Review Report also calls for the development and adoption of new flexible, modal specific standards for both rail platforms and conveyances that recognize the constraints without providing a lower level of protection to people with disability than is currently provided under the Transport Standards. The 2012 Review Report is attached along with this submission (Attachment 1). To illustrate further, the 2007 Transport Standards Review Report also recognises the shortfalls of the Transport Standards and calls for more performance-based, modal specific standards to be developed. The 2007 Review Report is attached along with this submission (Attachment 2). The ARA urges the AHRC to take the review results into consideration as well as the current work by the National Accessible Public Transport Advisory Committee which is directly outlined below.

6.     **The establishment of the Rail Standards Working Groups:** The 2012 Transport Standards Review Report recommends that the Australian Government, jointly with State and Territory Governments, commence a process for updating and modernising the Transport Standards. This work should be undertaken in close consultation with local government, industry and the disability sector, and include research on the technical issues raised in this review, the development of options, and assessment of the impact of any proposed changes to the standards, with this work to be completed by 30 June 2017. In actioning this recommendation, the Australian Government established the National Accessible Public Transport Advisory Committee and subsequently the Rail Standards Working Group (RSWG) to carry out the task.

The ARA and its members are participating fully in the RSWG and have committed to providing resources including secretariat support via the ARA, staff time and expertise as well as potential funding for any work that may be undertaken. The RSWG has already met three times and is in a final stage of finalising project scoping. The scoping paper will be submitted to the relevant Committees within the Federal Government. The AHRC should note that the Commonwealth representatives to the RSWG have met with the Attorney-General’s Department and the Office of Best Practice Regulation during this process and worked with industry members to develop an estimated timeframe for the modernisation of the Transport Standards specific to rail. This timeframe has been estimated to be around 2.5 – 3 years.

This strong commitment from the industry highlights that the industry fully appreciates the needs of people with disabilities and also the shortfalls of the existing Transport Standards. It also highlights the industry’s willingness to find a way forward that meets the spirit of the DDA and needs of people with disabilities while taking into consideration the industry’s constraints.

7.     **New services address compliance:** All new rolling stock and infrastructure aims to comply with the requirements set out in the Standards and in some cases exceed the minimum requirements. It should be noted that there are some clauses in the Transport Standards that should be removed because they include specifications that are unachievable. While this issue is currently being considered through the process to modernise the Transport Standards, in the short to medium term ARA members will continue to seek legal protection through the exemption process.

In respect of existing stations and older rollingstock, full compliance is sometimes not possible due to end-of-life rollingstock timeframes and legacy infrastructure limitations. On these occasions, alignment with the deemed-to-satisfy provisions or Transport Standards equivalent access provisions is applied to provide an accessible journey for people with a disability.

8.     **Practicality of applying the standards:** It is matter of significant concern to operators generally that the legislation has progressively begun to be interpreted much more literally than was intended or envisaged. Applying the Transport Standards in a literal sense without consideration of reasonable practicability can work counterproductively, especially when compliance becomes physically, technologically or economically impossible for operators.

This submission contends that such an approach is at odds with the intent of the legislation, namely, to increase accessibility to public transport services. As a case in point, compliant access paths on rail platforms may on many occasions only be achieved through the resumption of surrounding property and complete reconstruction of the rail station. While the work is technically feasible, the public value is difficult to demonstrate when considering costs, lengthy administrative processes involved in resuming property, and disruption to existing services.

9.     **Conflict between the Transport Standards and Workplace, Health and Safety Standards:** There is also a concern that requirements of the Transport Standards can at times conflict with workplace health and safety standards, as well as other legislative and regulatory requirements, that operators are obligated to meet. For many operators, compliance with the Transport Standards has led to many instances where passenger safety, vehicle standards, occupational health and safety, and workplace practices have been compromised. As a consequence, industrial injuries have been sustained and passengers have been subjected to additional risk. For example, providing direct assistance to a wheelchair user boarding via a 1:4 ramp, considered accessible with assistance in Part 6.4(c), is deemed unsafe for staff under State / Territory based Health and Safety regulations. However, longer ramps are not practical in many circumstances because of restricted platform widths. Another example would be the provisions for the gap to rail vehicles where there is a safety requirement to keep vehicles away from platforms and structures (i.e. operation standards require a minimum separation), whereas the Transport Standards requirements specify a maximum gap. These two standards are in direct conflict.

**Note: The ARA agrees with the respondents that responses in the relevant provisions of the Transport Standards also apply to Part H2 in the Premises Standards.**

**Response to general comments**

**Response to the Association of Consultants in Access Australia (ACAA)**

The ARA would like to make following responses to the ACAA’s comments:

1. The purpose of the application is not to be site-specific.  This was a general application made on behalf of the ARA for all operators. The industry would be committed to a discussion of conditions to be imposed if the exemptions were granted, which may include readily made information to customers regarding specific locations to inform the most accessible journey.
2. The ARA application shows the progression towards compliance with the Transport Standards and Premises Standards within a complex rail environment in the years since exemptions were previously granted.  The ARA, on behalf of its members, has sought notably fewer exemptions, with the application referring to 22 of the previous 31 granted exemptions and just 3 of the previous 30 deferred exemptions. The Progress that the industry has made was also noted in the 2012 Review of the Transport Standards.
3. In relation to the ACAA’s comment on ‘direct assistance’, the industry does not believe that this is a key fulcrum of alternative solutions.  Performance based outcomes do not necessarily rely on direct assistance measures. Operators balance OH&S requirements when determining performance based solutions. Frontline staff are involved in any changes to procedure which may carry any risk. Some operators have dedicated funds to the sufficient training of staff to provide direct assistance to customers.
4. Approach 2: the ARA requires further clarification from the ACAA regarding the intent of this approach.  It appears that the suggestion to ‘continue exemptions already in place’ relates only to exemptions for accessways on premises. Continuing exemptions relate to much more than just access paths and ramp gradients. The proposed layout of information would add very little value for customers.
5. Approach 3: the ACAA suggests that ARA members develop site-specific performance based solutions in the form of Alternative Building Solution Reports which document both the enduring non compliances and the local management process by which equivalent access can be provided in the form of direct assistance or other means.  Whilst the suggestion of developing ‘Alternative Building Solution Reports’ has merit it also serves to highlight some of the difficulties with the application of the Premises and Transport Standards.

**Response to the All Aboard Network**

The ARA would like to make following responses to the All Aboard Network’s comments:

1.    As previously outlined in the introductory remark, the ARA and its members support the spirit of the DDA and we hope to strengthen ties with disability groups to reach functional solutions that cater for all customer requirements. For example, V/Line in Victoria is in regular consultation with All Aboard Network members and All Aboard members also participate in V/Line’s annual accessibility forum.

2.    The ARA application is developed on behalf of its members based on the discussion with the AHRC.  The ARA believes that a group application is the preferred approach of the AHRC as opposed to separate applications. The application does draw on specific examples from specific operators.  However, the application largely reflects industry wide issues and serves to highlight challenges with practical implementation of compliance requirements in the rail environment, nationally.

3.    The ARA agrees with All Aboard Network that lack of funding is an ongoing problem. Providers/operators do make applications for funding to implement Federal legislation.

4.    The distinction between new rollingstock on existing track and physical constraints of existing track imposes limitations regardless of whether the rollingstock is new or old are problematic.  Currently, the legislation doesn’t provide a practical mechanism to take this limitation into account and provide certainty in relation to alternative solutions.

**Response to People with Disability Australia (PWDA)**

The ARA would like to make the following responses to the People with Disability Australia (PWDA)’s comments:

1.    The ARA has been working to seek legal recognition of the RISSB Accessible Rail Services Code of Practice under the DDA 1992 until 2014 including through the exemption process. However, based on discussion with the AHRC and a letter from the AHRC dated 7 November 2014, the ARA has agreed to drop the legal recognition of the code from the exemptions application and pursue clause-by-clause exemption applications as well as the modernisation of the Transport Standards.

2.    As previously outlined, there has been significant progress in public transport accessibility in all states and territories.  This exemption application is reflective of the improvements as not all the original exemptions are necessary.  Furthermore, much progress to date on improving accessibility of legacy infrastructure is directly attributable to the exemptions. Using these exemptions has permitted a way forward for operators/providers and the disability sector to provide more accessible journeys. This approach is justified by the increased patronage of stations as they are refurbished.

3.    Exemptions on the whole relate to clauses which cannot be complied with due to the constraints of the legacy infrastructure.  ARA members have collectively developed a range of alternative solutions to improve accessibility of the rail environment.  Many of these solutions – particularly those involving new technologies - are evolving over time.  While these solutions are being refined, exemptions are required.

4.    In WA, the Public Transport Authority is going above and beyond the standards for new projects such as the Perth Stadium through establishing an Access and Inclusion Working Group which have resulted in future improvements such as two lifts per platform (which is not currently required under the Act and Standards).  Emergency telephones are also provided on the station concourse and platform levels, which would be beneficial in the cases where lifts are out of the order. Physical limitations prohibit multiple options in some cases and the resources could be allocated elsewhere.

5.    Compliance with the Transport Standards is not required to the extent that compliance would cause “unjustifiable hardship” to the transport Operator/Provider. While this defence mechanism was provided for exceptional cases and sets out a number of factors to be taken into consideration, it is uncertain that a defence of “unjustifiable hardship” would succeed in the event of a complaint of discrimination.

**Response to Victorian Council to Social Service**

The ARA would like to make the following responses to the Victorian Council to Social Service (VCOSS)’s comments:

1. ARA members have previously applied for individual exemptions for operator specific issues and, the current application does indeed draw on specific examples from specific operators.  However, the application largely reflects industry wide issues and serves to highlight challenges with practical implementation of compliance requirements in the rail environment at a national level.
2. Since the implementation of the Transport Standards, the rail industry has taken all reasonable steps to comply with the Standards, taking into account resourcing, operational and budget constraints.  In addition, operators investigate customer complaints on a case by case basis which has resulted in minor ‘spot’ works being carried out to improve the accessibility to specific stations and stops.
3. The exemption application is not an appropriate document to cover the significant progress made by all operators or to document solutions since the implementation of the Transport Standards in 2002.
4. ARA members would welcome the opportunity to review milestone targets.  The current mandated timeframes for compliance do not adequately take into account design and service life constraints of rollingstock and fixed assets.

**Response to Deafness Council**

The ARA would like to make the following responses to Deafness Council’s comments:

1. The NSW Accessible Transport Advisory Committee (ATAC) is actively involved in advising on key transport projects. Several Deafness organisations are represented on the ATAC.

 **Clause Specific Responses**

**2.1 Access paths – Unhindered passage**

1. The ARA agrees with PWDA’s comment regarding the urgent need to provide permanent alternative solutions. This is why the ARA is actively participating the Rail Standards Working Group with an aim to modernise the Transport Standards as outlined in the introductory comments. The industry recognises that exemptions are only temporary solutions therefore it is working closely with the Commonwealth Government and Disability sector representatives to modernise the standards.
2. Where possible rail operators seeks to close and/or divert level crossings or enhance their safety through the provision of improved safety features/equipment. This work is primarily progressed through station upgrade plan which prioritises access upgrades across the network. Grade separation between rail tracks and access paths is a considered in any station access upgrade.
3. Delineating the ‘maximum practicable number of station entrances/exits’ may be difficult given the constraints to resources/funding and the quantum of work required across networks. For example, is it ‘practicable’ to upgrade one station with multiple entry points or is it ‘practicable’ to upgrade multiple stations instead? Ensuring appropriate access to individual stations should be balanced with the provision of maximum access across networks and communities while ensuring design ensure the continuous accessible path of travel does not require people with disabilities to travel further than other customers.

**3.1 Circulation space for wheelchairs to turn in**

1. Furniture and pole placement is currently considered when endeavouring to provide complaint manoeuvring areas. Naturally when space permits, larger areas are provided.

[**6.4 Slope of external boarding ramps**](#_Toc416458670)

1. Due to a combination of technical, operational and safety factors, it is not practicable to achieve the horizontal and vertical gaps required for independent access by all people with disabilities even when building new stations. This is discussed at length in Part 2. While differences in level are unavoidable, rail operators ensure that it is minimised. For example, in WA, the Transwa regional train service is a booked service, and ramps can be deployed at any door. Customer service is also provided while boarding and alighting the train by many operators.
2. It was not a condition that operators would push the mobility aid. Having said that some operators do provide that service, while other operators have used alternative methods for achieving accessible boarding, such as companion cards (or similar) that provide for a companion to travel free to accompany a person and assist with boarding.
3. Operators also have available web based and app based information on which stations and services are accessible so that customers can plan their journeys.
4. If the allocated spaces are occupied by customers using mobility devices, drivers will obtain permission from Control to align the next car with the raised section of the platform, thus ensuring an accessible outcome.

**8.2 Boarding- When boarding devises must be provided**

1. Due to a combination of technical, operational and safety factors, it is not practicable to achieve the horizontal and vertical gaps required for independent access by all people with disabilities even when building new stations. This is discussed at length in Part 2. While differences in level are unavoidable, rail operators ensure that it is minimised. In WA, sacrificial strips are provided on the doorway of the railcar to further minimise the train platform gap. In Victoria, PTV has recently engaged an external consultant to review the current boarding procedures and provide a suite of options to increase the accessibility of boarding points on both a short and long term scale. Customers with disabilities, engineers and customer service experts are involved in the consultation process and will workshop a range of recommendations once presented that will be available to all operators and providers.

**11.2 Handrails and grabrails - Handrails to be provided on access paths**

1. In response to PWDA and All Aboard Network, the ARA application addresses Standard 11.2 in both Group 1 and Group 2 to assist in clearly indicating issues where a decision was previously deferred, as requested by the AHRC. The placement of handrails and grabrails impacts on many areas of a station precinct whereas the previous temporary exemption applies to only one part of the station environment (rail station platforms).
2. ARA members do utilise handrails and grabrails to provide additional support and passive guidance where appropriate. Unfortunately, the clause as it stands creates ambiguity and does not provide certainty that these ‘common sense’ measures meet requirements.
3. It is current practice to design and install handrails on rail platforms based on risk assessments taking in consideration, customer needs. This includes, but is not limited to, handrails where passengers are likely to required additional support or passive guidance and at fixed locations where passengers are required to pay fares. Handrails are also installed where it does not intrude into required circulation spaces.
4. The defense mechanism of “unjustifiable hardship” was provided for exceptional cases and sets out a number of factors to be taken into consideration, no operator/provider is able to decide with any certainty that a defence of “unjustifiable hardship” would succeed in the event of a complaint of discrimination.

[**18.1 Tactile ground surface indicators - Location**](#_Toc416458682)

1. While Industry acknowledges the requirements of people who are blind or vision impaired, the layout of directional TGSI’s should be designed to reduce the impact on people who use mobility aids such as manual wheelchairs and people who have ambulant disabilities or difficulties in traversing uneven surfaces. Industry advises that Hazard TGSIs will always be at platform edges and at grade pedestrian crossings, that is, safety critical areas, but is wary of the over use of directional TGSI’s given the barriers they can impose on other people. The use of directional TGSI’s is a contentious issue which requires further discussion within the disability sector.
2. As is rightly pointed out there has been “at least 8 years to *adopt architectural solutions or alternative way finding aids consistent with AS1428.4: 2002 Appendix B*” and very recently ground-breaking technology using Bluetooth beacons that provides audible directions via "bone conduction" earphones which allows the user to hear sounds around them as well is being trialled overseas. The directions warn users when they are approaching escalators and ticket barriers and which platforms they may be approaching. It's the first such trial of a technology which can guide blind and partially sighted people underground or in areas with limited mobile phone reception. Should these trials be successful and after careful and full consultation with the disability sector, this technology may be the way forward to provide access to all facilities and services.

[**26.2 Hearing augmentation – listening systems - Public address systems — conveyances**](#_Toc416458685)

1. It is acknowledged that upgrades to, or new, stations and trains throughout Australia are not being undertaken at the speed that would be preferred. However, as previously advised there are a number of contributing factors, most notably, funding. With the funding available, operators and providers use best endeavours to ensure value for money and that solutions reach the greatest number of people possible.
2. Whilst providing assistive hearings technology at any cost would be preferable; providing Passenger Information Displays on platforms and inside trains with accompanying announcements is for use by everyone.
3. Having said that, ARA members do provide, and have done so for number years, hearing augmentation on refurbished platforms and trains when practicable. For some operators, all new trains, now that the technology is available, will have hearing augmentation as will new stations at Greenfield sites. For example, touch kiosks have recently been installed for trial at the Adelaide Railway Station in an enclosed area with travel information provided visually, audibly and by Braille.

**Specific response to Peter Kerley’s comments**

1. The respondent appears to have misunderstand the current legislation regarding the extent of coverage of hearing augmentation:
	* Transport Standards clause 26.1 and 26.2(b) applies
	* Access Code for Buildings part H2 applies and takes precedence over D3.7(2)
	* AS 1428.2-1992 requires “at least 10 percent of the total area of the enclosed space”
2. It should be noted that as referenced by the legislation AS 1428.2-1992 does not contain performance parameters for hearing augmentation.
3. The question of whether the legislation is adequate or can be improved is not the subject of the submission for exemption and should be considered in a separate forum.
4. The consideration of exemptions must be against the current legislation.
5. Whilst Transport for NSW standards reflect the current legislation there are practical constraints that may mean the compliance is not feasible. For example:
	* Sources of electromagnetic interference
		+ Static (e.g. electric cables and systems)
		+ Dynamic (e.g. movement of rolling stock)
	* Metal structures affect the magnetic field strength
		+ Static (e.g. metal platform reinforcing and canopy structures)
		+ Dynamic (e.g. movement of rolling stock)
	* Potential electromagnetic interference with safety systems e.g. trackside signalling systems
	* Rolling stock is generally subject to higher levels of electromagnetic interference and magnetic field strength losses due to metal structures
	* Retrofitting coverage in existing stations due to electromagnetic interference, magnetic field strength losses due to metal structures and physical space constraints across a multitude of configurations

**Part 2**

**Specific questions raised by the AHRC on 28 July 2015**

1. **Deaf Australia’s statement that the ARA has not consulted that body in relation to access issues for deaf people**

**ARA Response:** The ARA believes that Deaf Australia may have incorrectly interpreted comments regarding consultation as relating to direct consultation on the new exemption application. We acknowledge that this consultation did not occur.

ARA members understand the importance of ensuring information and products used are inclusive and have consulted with Deaf Australia and other similar organisations in relation to access issues impacting people who have a hearing impairment or are deaf.

The Department of Planning, Transport and Infrastructure (SA), an ARA member, commenced consultation with a representative of the Australian Association of the Deaf who is deaf at its inaugural monthly Disability Consultative Committee meeting in 2007. This representation continued with Deaf Australia until mid-2014. Auslan interpreters of the representative’s choice attended DPTI meetings.

In line with the Terms of Reference of the committee, another organisation representing people who are deaf or hearing impaired now attends. The exemptions to the Transport Standards are discussed at these meetings along with other matters relating to the provision of public transport services, such as the RISSB National Accessible Code of Practice and station design specifications. During Deaf Australia’s time as representatives, the availability and type of information on platforms, stops and conveyances was discussed and acted on.

Many improvements suggested by the Deaf Australia representatives were implemented, and continue to be. Most notably, the addition of LED emergency response information inside the lift if failure occurs advising that attendance is imminent. This function is innovative and not mentioned in the Transport Standards or the Australian Standards for lifts. The function has been implemented following consultation around different ways to provide inclusive information and is now a requirement in the station design specifications.

Numerous further consultations took place with Deaf Australia representatives to ensure best practice in delivering visual information occurred with the rollout of a new Adelaide Metro ticketing system. This video is available on the website for public viewing and includes both captioning and Auslan instructions.

Furthermore, in Victoria, VicDeaf was also consulted during the development of the ‘Stop Here’ App. VLine actively consults with Deaf Blind Victorians and regional Deaf Access groups. These groups along with customer with hearing impairments regularly attend V/Line’s accessibility forum.

Both the Deaf Australia NSW and the Deafness Council NSW are represented on Transport for NSW’s Accessible Transport Advisory Committee. The committee meets quarterly and is consulted on all major transport infrastructure projects and customer service and information initiatives.

Other members from different jurisdictions are also in close consultation with relevant organisations representing people with hearing difficulty. For example, Yarra Trams has met and consulted with VicDeaf (not Deaf Australia) regarding alternative ways to provide information to passengers with hearing impairment during disruptions. Metro Trains also consulted with VicDeaf in the development of the ‘Stop Here’ app. Deaf Services Queensland and Better Hearing Australia have representatives on the Queensland Rail Accessibility Reference Group. Staff and members for each of these organisations have also attended numerous accessibility consultations in relation to visual displays and effective communication techniques. Deaf Australia is welcome to nominate a representative (based in Brisbane) to attend the quarterly Reference Group meetings and/or project consultations.

1. **The proposition advanced by Mr Stewart that any exemption in relation to the application of clause 26.2(b) of the Transport Standards should be limited to specified existing conveyances only.**

**ARA Response**: Mr Stewart’s submission suggests that the ARA seeks exemptions to remove its obligations to provide accessible transport for people with disabilities and that ongoing, industry-wide exemptions should not be granted. In truth, exemptions are granted by the AHRC and used by the industry as legal protection where the industry is unable to comply with the requirements set out in the Transport and Premises Standards due to various reasons, notably infrastructure and engineering constraints. In these circumstances, the industry has explored and utilised alternative solutions to improve customer experience and allow accessibility to rail services. Examples of these solutions are clearly articulated in the primary application.

It is acknowledged that upgrades to trains throughout Australia are not being undertaken at the speed that would be preferred. However, as previously advised, there are a number of contributing factors, most notably, funding and the timeframes for delivery of new trains. With the funding available, operators and providers use best endeavours to ensure value for money and that solutions reach the greatest number of people possible.

Mr Stewart notes that AS1428.5 is the definitive standard for hearing augmentation. The ARA notes that while many of the Australian Standards referenced in the Disability Standards for Accessible Public Transport have been superseded, the point of reference needs to be what the current law states. AS1428.5 is not currently referenced in the Disability Standards for Accessible Public Transport. Where it is practical to do so, ARA members do exceed the requirements set out in the standards. Mr Stewart has acknowledged this in the case of NSW. However, even in this jurisdiction, electrical interference affects some older rollingstock.

Not all technological solutions offered by ARA members rely on smartphone technology. Transport for NSW also has introduced Passenger Information Screens on some CBD stations that customers can walk up to.

Where smartphone applications are used, work is being done to introduce technology that specifically meets the needs of people with disability. Transport for NSW is currently working with a third party app developer on an app that will convert announcements on board trains to text.

Another example is from South Australia where diesel trains are fitted with hearing loops in addition to Passenger Information Displays (PIDs) that have equivalent audio announcements via automated voice to provide the same information to passengers who are hearing impaired and cannot use alternative technologies:

* due to young age – our children are the most vulnerable in our society;
* the elderly – due to memory issues common with age, which affects reading before affecting hearing and other functions;
* the dyslexic – which is variable, where some can read static messages, but not moving messages, and others who can’t read at all;
* people who use English as a second language – it is far easier to understand the spoken language than the written language;
* low income – whether due to unemployment, age pension, or other reasons, not everyone has a smartphone;
* low vision – those who can’t see the PIDs or smartphones, can’t use them;
* Short or seated people – in a crowded conveyance it is often difficult to see information displays; and
* While standing (because all seats are used) it is not always possible to use a smartphone on a moving conveyance.

As demonstrated by the examples above, the advances in technology since the development of the Transport Standards has allowed operators find new and alternative ways of providing customers with information. The exemption to new conveyances allows operators to continue to consult on improved and meaningful communication, as well as embrace emerging technologies.

The proposition raised by Mr Kerley that the exemption in relation to the application of clause 26.2(b) of the Transport Standards not be granted on the basis that a more recent specification exists in Australian Standards.

The respondent appears to have misunderstood the current legislation regarding the extent of coverage of hearing augmentation:

* 1. DSAPT clause 26.1 and 26.2(b) applies
	2. Access Code for Buildings part H2 applies and takes precedence over D3.7(2)
	3. AS 1428.2-1992 requires “at least 10 percent of the total area of the enclosed space”

It should be noted that as referenced by the legislation AS 1428.2-1992 does not contain performance parameters for hearing augmentation.

The question of whether the legislation is adequate or can be improved is not the subject of the submission for exemption and should be considered in a separate forum.

The consideration of exemptions must be against the current legislation.

1. **With respect to the ARA’s application for an exemption from Standard 2.1 of the Transport Standards, Section B, Part 2 states:**

*Part 2: Temporary exemption: existing rail premises and existing rail infrastructure*

* + 1. *For a period of three years, an access path is required to provide entrance and exit only at a single boundary point for existing rail stations.*

**We note that this exemption is sought for a period of three years. Other exemptions in the current application are sought for a period of five years. Is this difference deliberate or is it a typographical error?**

**ARA Response:** The ARA apologises for the typographical error. The ARA is applying for an exemption from Standard 2.1 for a period of **five** years.

1. **The submission made by People with Disability Australia in relation to the application for an exemption from clause 8.2 of the Transport Standards**

**ARA Response:** we understand the concerns raised and wish to advise that due to combination of technical, operational and safety factors, it is not practicable to achieve the horizontal and vertical gaps required for independent access by all people with disabilities even when building new stations. This is due to the issues faced when compliance with AS 7633 Railway Infrastructure: Clearances 2012 and AS 7507 AS 7507.1-2009 Australian Standard - Railway Rolling Stock is required. The standards provide a method to control the hazard of a collision between a railcar and a platform by considering a range of tolerances. For example, the combined result of the tolerances lateral translation of vehicle body, body roll, wheel clearance and the cant effect is a 115mm from the nominal platform to the rolling stock outline. Some rolling stock is smaller than the outline, then the gap increases to 148mm. In curved platforms it is necessary to make additional allowance for the effect of end or centre throw. Further variations due to historic platforms and movement of ballasted track may also negatively impact the gap at some locations. Likewise track is constructed to achievable tolerances. To avoid a collision between rolling stock and platforms a gap greater than 40 mm horizontal must be provided.

While differences in level are unavoidable, due to a number of combinations including operating different models and types of rolling stock with different dimensions, rail operators ensure that it is minimised. In WA, sacrificial strips are provided on the doorway of the railcar to further minimise the train platform gap while other operators rely on deploying a boarding ramp.

Equivalent access is 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 and exit the station.

In Victoria, Public Transport Victoria has recently engaged an external consultant to review the current boarding procedures and provide a suite of options to increase the accessibility of boarding points on both a short and long term scale. Customers with disabilities, engineers and customer service experts are involved in the consultation process and will workshop a range of recommendations once presented.

The ARA and its members would welcome an opportunity to discuss the conditions to be imposed on the operators if the exemptions were to be granted.

1. **In relation to clause 15.4 of the Transport Standards, the ARA’s revised application of 1 May 2015 includes a description of the exemption currently in force, and the conditions attached thereto, but does not include a section stating the exemption now sought.**

**ARA Response:** The ARA apologises for this error. The exemption sought is as follows:

*For a period of* ***five*** *years, compliance with clause 15.4 is not required for narrow gauge and standard gauge accessible rail cars, subject to the following conditions:*

* *accessible toilets are configured and maintained such that passengers using mobility aids (that conform to the assumptions in Part 40 of the Disability Standards for Accessible Public Transport Guidelines 2004 (No 3)) may enter, position their aids, use the accessible toilets and exit.*
1. **The second submission made by All Aboard, about the overlap in membership of the APTJC and the ARA, and any implications that may have in relation to the weight to be given to the APTJC submission. We also ask that the ARA provide a list of ARA members who are also APTJC members.**

**ARA Response:** The following members are representatives of both the APTJC and the ARA Disability Policy Working Group:

* A representative from the Department of Planning, Transport and Infrastructure (SA);
* A representative from Transport for New South Wales; and
* A representative from Public Transport Authority (WA)

The ARA would like to point out that both committees have distinct terms of reference. The APTJC’s role and membership composition is governed by statute. While there is some limited cross-over (the full membership of the ARA Disability Policy Working Group includes 17 representatives), the view of the APTJC reflects the position that is necessary to balance the views put forward by advocacy groups and other disability stakeholders.

1. **Please provide a current list of all ARA members on whose behalf the exemption applied for.**

**ARA Response:** This application is made on behalf of the following ARA members (rail operators and infrastructure owners/managers):

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **QLD**  | **SA** | **ACT** | **NSW** | **VIC** | **WA** | **National**  |
| Queensland RailGold Coast Light Rail  | Department of Planning, Transport and Infrastructure  | Capital Metro  | Transport for New South Wales Sydney TrainsNSW TrainsJohn Holland Group | Public Transport Victoria Metro Trains Melbourne VLineYarra Trams  | Public Transport Authority  | Australian Rail Track CorporationGreat Southern Rail  |