



National Inclusive Transport Advocacy Network

To the Australian Human Rights Commission,

Further submission (2021) on the application by the Australasian Railway Association (ARA) for temporary exemptions from the Disability Standards for Accessible Public Transport (DSAPT)

Who are we?

The National Inclusive Transport Advocacy Network (NITAN), born from a discussion on transport issues jointly led by the Australian Federation of Disabled Organisations (AFDO) and the Australian Human Rights Commission, was subsequently established by AFDO and has worked during its formation with a core working group of members from the following organisations:

- All Aboard Network
- Australian Federation of Disability Organisations
- Council for Intellectual Disability
- Disability Justice Australia.
- Disability Resources Centre
- First Peoples Disability Network
- Inclusion Moves
- National Ethnic Disability Alliance
- People with Disability Australia
- Physical Disability Council of NSW
- Victorian Legal Aid,

Along with other state-based advocacy organisations and individuals with expertise in legal, transport and disability rights.

We aim to be the voice of people with disability on transport matters, however, we recognise the disability community is made up of a diverse range of people with a differing needs and priorities. We understand that to be effective, we need to engage with experts in their field. We are open to ideas on how this can occur and look forward to shaping our voice with the disabled communities' assistance.

Our Purpose

The National Inclusive Transport Advocacy Network seeks to represent a national voice of people with disability advocating for accessible and inclusive public transport systems across Australia.

Our Objectives

1. Community Inclusion

Promote the ethos that full, equal community integration of people with a disability is not possible without a completely accessible 'whole of journey' public transport system Australia wide and advocate this position to all governments, industry and community stakeholders.

2. Influence

Ensure that the voices of people with disability are heard in the design and shaping of public transport systems across Australia, and in their day to day operations.

Support others with requisite experience and qualifications as they advocate on public transport issues encompassing a "nothing about us without us" approach.

3. Alliances

Build a strong network of allies and rally the many voices of people with disability to speak as one national voice.

In order to achieve its purpose and objectives NITAN will:

- Align itself fully with the goals of the National Disability Strategy.
- Develop a national strategic disability transport plan and discussion paper on national disability transport issues.
- Provide a national voice and connection for people with disability and associated organisations who conduct transport advocacy.
- Educate people with disability and advocates on their transport rights as well as national/international best practice for public transport services.
- Ensure that state and territory based transport advocacy groups can feed into a national advocacy network that is independent and non-partisan.
- Share ideas between transport advocates across states and territories and between disability transport advocates and the Federal government.
- Use traditional and emerging media to raise public awareness of public transport issues facing people with disability
- Act as a collection and distribution point for the stories of people with disability which can be used by transport advocates and others to consider possible legal test cases.
- Raise to public prominence individual issues and cases concerning public transport via digital petitions and other mediums

- Provide advice or training to members on how to effectively engage on transport issues with Ministers and shadow/cross bench parliamentary members of all levels of government.
- Enable information exchange between NITAN and state based transport advocacy groups.
- Lend its expertise to collegiate organisations who are advocating for goals that are in alignment with NITAN.
- Act as a repository of transport related information that can be freely accessed and shared with disability advocates.
- Source best practice examples of services, practices and designs from Australia and internationally to use as benchmarks in advocacy/negotiations with governments and/or public transport providers.
- Encourage members of NITAN to become members of local, state and national accessibility reference groups. Seek members on these groups to ensure that, as much as possible, they are created and operating in a user focused, co-design framework.

Opening statement:

NITAN restates the following from its earlier submission on the issue.

NITAN notes these applications for exemption are a continuation of exemptions first granted in 2007. Given it is now 2020, with each passing year, more emphasis must be placed on innovation. This is a focus to eliminate the harm caused to disabled people by a lack of adherence to the DSAPT and systems, infrastructure and processes that run counter to the objects of the DDA.

The reasoning accepted in 2007 and beyond must be held to a higher critical analysis in 2020. We must ask for every exemption that involves new or renovated infrastructure or mode of transport; what has been done to ensure we procure, not the same as always, but new, innovative infrastructure that meets compliance? We must acknowledge we have reached the point where we should put more weight on innovation than we do on simply reporting our failings to adhere ad nauseam. There comes a time where this approach simply can't be seen to be furthering the objects of the DDA.

NITAN notes the assertion by the ARA that this exemption application is a reduced list from their previous 2015 application and holds concern that work to make compliance of the full 2015 exemption list may not have occurred. The ARA speaks on many disability inclusion topics within its application, many of which NITAN categorises as irrelevant to this application.

However, ARA is silent on whether the necessary improvements in other areas to gain compliance have been met. Some information on this issue may be gleaned from the ARA's exemption reporting, however, multiple projects still seem to be running and not yet complete, leaving their compliance an open question. NITAN would respectfully ask that the ARA confirm without doubt they have overcome these hurdles as a show of good faith to both the disabled community and the AHRC.

The Disability Discrimination Act and its associated standards (DSAPT included) must be seen as sacrosanct and are to be taken in full not piecemeal. A failure to adhere to one part of the standard should be seen as an insult to the very legal instrument meant to aid inclusion and reduce discrimination. This conduct should then be taken into consideration in any further exemption application.

NITAN rejects the premise that the ARA's need to apply for exemptions has only come about as the DSAPT modernisation has been delayed. This argument is seen by NITAN as misleading in that there has been no release of material by the Commonwealth modernisation taskforce nor the Department of Infrastructure (lead agency for DSAPT modernisation) that would lead a reasonable person to believe the modernised DSAPT will hold substantially less weight or a diminishing of standards in any way shape or form.

If the DSAPT had continued on its original time frame, the ARA would simply be finding itself applying for exemption from a modernised standard not the current. Leading to no less of a discriminatory situation for the disabled community.

NITAN notes the various references to disabled community engagement within their exemption. We understand that transport providers hold passenger representative bodies in many forms and under many titles. We shall for simplicity refer to these as 'accessibility reference groups'. NITAN holds concern that the engagement with the disabled through these groups would not mean a reasonable person's interpretation as 'authentic engagement'. At the very least the ARA application does not provide enough evidence for NITAN to be comfortable that the disabled community has been engaged with in a matter that is informed.

In fact, multiple NITAN members reported concern from state based ARA member accessibility reference group members that they had not understood the content provided to them or could not recall it being provided at all. NITAN is respectful of the hard work done on these groups often in a voluntary capacity by disabled people. This work is vital. However for it to be seen as valid for use in such important mechanisms as exemption application it must be work that is transparent and robust. NITAN holds concern that engagement may be with those 'who show up' rather than a full engagement plan with not only those currently using the service but those who should be able to access it if compliant.

The concern of consulting with those who are willing to volunteer time is of course centred on whether they have the requisite experience and knowledge of the DSAPT and DDA instruments to make informed consent as it will on behalf of their community. Enquiries should be made of the quality of the engagement with these groups and of their experience and knowledge independent of ARA and its members to ensure the disabled community can have faith in them as a function.

NITAN adds the following further context post the Equal Access report

NITAN members continue to express dismay with ARA members providing solutions they purport to the equal of meeting the DSAPT. Including Transperths reliance on disabled passengers calling one hour prior to boarding and assistance to traverse flange gaps. These practices lead NITAN to believe that ARA members do not have sufficient understanding or respect for the principles of the DSAPT to trust they could in any way adhere to conditions set out.

NITAN notes with dismay there seems to still be no end date or resolution to the long running trials and research on flange gap fillers. Only the removal of temporary exemptions on this matter will provide the burning bridge needed for research to be completed and approval sought for these fillers.

Commentary on specific exemption applications:

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.

NITAN restates:

NITAN notes that currently Australian Standards (AS) are used to provide guidance within DSAPT. However there is no surety of this continuing post the current DSAPT during its modernisation. Therefore NITAN holds concern with the marriage of AS and DSAPT. Similar concern is held with the introduction of a European standard as this would clearly be a backward step given some states are moving towards flange gaps of 55mm.

NITAN notes the various trials of gap filler materials and the various programs existing to remove some at grade crossings. NITAN understands STRAIL’s modular system has been in use globally since 1976, and veloSTRAIL has proved effective for speed trains up to 120 km/h.

NITAN Recommendation: The exemption should be granted but with the following conditions;

1. The provision of business case modelling within 6 months from date of exemption showing a fully costed and funded plan for EITHER grade separation of pedestrian crossings or suitable gap filled flange gaps to reduce the width of said to the 55mm currently the aim in WA at a maximum.
2. Should this business case not be provided within the timeline the application for exemption should then be seen as not complying and be formally cancelled.

Further NITAN comments on the Equal Access report:

The conditions set out do nothing to further research in this area. The ARA has learnt to rely upon temporary exemptions being not temporary by cyclical. NITAN proposes an end date of this research be a firm condition of the temporary exemption. NITAN proposes that a ‘strategy’ must include funding allocation and timeframes. Timeframes that are not ‘taking into consideration’ as was the wording used but **meeting** the end date of the temporary exemption or the compliance schedule whichever is the later.

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.

NITAN restates:

NITAN notes the conditions imposed by the AHRC in the 2015 exemption applications. However, these conditions still lead to significant discrimination against passengers forcing them to use only a single access door. 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.
- 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 from 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.

As discussed in NITAN's opening statement, we must move incrementally forward in order to meet the objects of the DDA. After an 18 year period under the current DSAPT many 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 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. Again as discussed in NITAN's opening statement, a breach of an exemption should be seen as a failing to respect the legal instrument and this conduct MUST be taken into account during further exemption applications.

NITAN Recommendation: **The application should be granted but with the following conditions;**

Either A or B below;

- A.** For a period of three years, an access path is only required at a single door of existing rail conveyances if:
1. 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.
 2. This door is clearly marked as the only accessible entry, on the conveyance, at the boarding point and along the access path.
 3. 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.
 4. The ARA member concerned submits a report to the Commission at the beginning of each one year period of the exemption that:
 - a. Contains details of the level of compliance with this clause of the DSAPT at that time
 - b. Contains a detailed plan for the rectification work to be undertaken over the next 12 months.
 - c. 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.

OR;

- B.** An access path is required at all doors of existing rail conveyances that, subject to compliance with DSAPT Part 9.6:
1. Have the international symbol of disability access displayed, and
 2. Have allocated spaces inside the rail car that are accessible from that door
 3. 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
 4. The ARA member concerned submits a report to the Commission at the beginning of each one year period of the exemption that:
 5. Contains details of the level of compliance with this clause of the DSAPT at that time
 6. Contains a detailed plan for the rectification work to be undertaken over the next 12 months.
 7. 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: Option B 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.

Further NITAN statement on the Equal Access report:

The reliance on ARA members to understand and adhere to equivalent access principles is troubling for NITAN. There is a general lack of faith that many ARA members are providing equivalent access despite their assurances. Further to the Equal Access conditions NITAN must insist a full equivalent access process is conducted by each ARA member on this issue in keeping with AHRC guidelines and such reports being made available publicly within 6 months.

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.

NITAN restates:

With the current DSAPT being in effect for 18 years, the failure to enact a solution to this issue is frankly one of a lack of willpower and budget foresight and management.

It is understood that there are occupational health and safety considerations where direct assistance is required in certain circumstances. However, 18 years should have been plenty of time to rectify matters of infrastructure to ensure compliance had the work had been given priority early enough. Costed and funded business plans for platform raising have simply not been completed. It is NITANs view that the AHRC should not be in the business of bailing out transport providers that have not adequately budgeted and program managed this work.

As noted in NITANs opening statement, the ARA outlines many so-called disability initiatives through its application. One of relevance here is around free companion passes. It is concerning that the ARA suggests that a free companion pass is the answer where a passenger must provide their own support person 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 support person to assist in overcoming a non-compliant ramp gradient, the ARA member responsible should pay equivalent compensation.

The use of direct assistance by informal supports also should never be seen as a solution to what is principally a budgeting and program management of infrastructure improvement issue. Infrastructure is either compliant and therefore independently accessible or it is not. There is no room for nor mention of middle grounds in the DSAPT.

NITAN Recommendation: The application for exemption from clause 6.4 should NOT be granted.

Further NITAN statement on the Equal Access report

NITAN rejects in the strongest terms the assertion by Equal Access that ‘assisted access’ should be interpreted as the disabled person providing the assistance through a support worker. Should this interpretation be allowed to stand, the well instituted principle in the DSAPT of direct assistance would surely not be far behind in being overruled. Whilst NITAN could suggest that the operator provide free travel for a personal support worker to travel with an individual it is loath to do so as this does not further the objects of the DDA and DSAPT in terms of independent access. This exemption should therefore not be granted and guidance provided to clarify the meaning of assisted access.

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.

NITAN restates:

Comments from above in reference to both 2.6 and 6.4 are also relevant re this exemption.

The current one door boarding policy still results in significant disruption to the customer journey of a disabled person and substantially differentiates it from that of an able-bodied passenger.

Very little work has been done to NITANs knowledge to innovate ramp solutions that avoids the need for direct assistance. With many best practice examples existing overseas that see automated ramps resulting in little to no gap between carriage and platform necessitating direct assistance. NITAN is disappointed not to see this innovation reflected in the procurement of rolling stock in an Australian context. We can only surmise the current exemption is driving this lack of innovation.

NITAN Recommendation: The application should be granted but with the following conditions:

1. The proposed exemption should ONLY apply to existing rail stock. This should be expressly outlined.
2. The ARA should commence within 6 months a co-design project with the disabled community and rail industry on the feasibility of automated ramp solutions. This should be completed with the view to the above work on platform raising ensuring that the goal of raised full length platforms are the norm. This work must be completed within 12 months.
3. Pending results of the project in b), all future rail stock should be procured with an automated ramp solution alongside full length raised station platforms.

Further NITAN statement on Equal Access Report

Again NITAN rejects the ARA members knowledge and experience of providing true equivalent access provisions and recommends a full equivalent access process is undertaken by each member in accordance with AHRC guidelines on the principle.

Conclusion

NITAN restates:

It is hoped that through this submission NITAN has illustrated that the time for blindly rolling over exemptions has concluded. We must hold the transport industry to more rigorous standards. In terms of action, in terms of reporting and in terms of engagement. The disabled community has the right to this and it is incumbent on the AHRC to play their part in enforcing these rights.

The Australian disability policy landscape is changing. Rightfully alongside this, the expectations of the disabled community and their community inclusion is also changing. With a modernised DSAPT and a renewed National Disability Strategy transport must play a part as a valuable enabler of community inclusivity. NITAN looks forward to playing a role in driving this work forward and forming the narrative on behalf of and alongside the disabled community.

NITAN further concludes:

Whilst NITAN understands the need for the AHRC to gain technical understanding from an access consultancy on certain matters it does not feel the professional was best placed to be providing input in the conditions relating to matters such as equivalent access and provision of strategies for implementation. NITAN firmly believes these conditions are better developed in consultation with the disabled community advocacy community in a codesign manner. The matter of compliance reporting (a strategy to move to compliance through a temporary exemption being a subset of this) and further development of a reporting structure for equivalent access provisions must be a feature of a modernised DSAPT.