

Submission No 116a

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AUSTRALASIAN RAILWAY ASSOCIATION INC

Association Number A03958 ABN 64 217 302 489

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BY: LACA

Mr Mark Dreyfus QC MP
Chair
Standing Committee on Legal and Constitutional Affairs
Parliament House
Canberra, ACT 2600

6 May 2009

Dear Mr Dreyfus

I refer to your letter of 23 April 2009 relating to questions you raised in relation to the Australasian Railway Association (ARA) submission to the Committee's Inquiry into the Draft Disability (Access to Premises) Standards.

We provide comment as per the questions you have posed.

Question 1

Considerable time and effort has been put into the exemptions granted under the Transport Standards already and whilst there might be a strong case for the same exemption to be made under the new regime, all previously granted exemptions given under the Transport Standard become invalid. This includes:

1. Exemptions currently granted under the Transport Standards, for items which are transferred to the Premises Standards. In order to have new exemptions made for the same items there are two potential administrative regimes and two potential areas of recourse at law.
 - a. under the Commonwealth DDA
 - b. under each State's BCA enabling Legislation

Some clarity is required about how this would work and could lead to some inconsistencies if not clarified.

2. Exemptions currently granted under the Transport Standards for items remaining in the Transport Standards. These areas include parts of the standard relating to Premises which aren't dealt with by the BCA including, information, furniture and fittings and the like; parts relating to infrastructure; and parts relating to conveyances. Where current exemptions are in place they would need to be made again under the Commonwealth DDA.

Some current exemptions run across both categories above and in this case two issues are perceived:

- * Exemptions need to be applied for relating to two pieces of legislation (duplicating administrative cost in doing so)

- * There is a potential for inconsistencies in any exemptions granted, whether under different jurisdictions or different enabling legislation. It should also be noted that BCA content, although generally uniform, does contain State variations which could affect interpretation from State to State.

The fact that any effort will need to be made to pursue the same exemptions, whether under the Premises Standards, the Transport Standards or both, for items which currently have exemptions, is a duplication and waste of publicly funded time and effort, if the intent is that the same exemptions would be granted.

Even if the exemptions were allowed to remain, the ARA believes that the potential administrative difficulties caused and lack of continuity between the elements of public transport, compared with the current regime, would not be in the public interest. Hence the ARA's position is that the Transport Standards remain outside the Premises Standards, there being little demonstrated benefit to the public to put them within the Premises Standards.

Question 2

A

A staff amenities upgrade may cost \$300,000 but an upgrade of the accessible path and principal entrance as required by the Premises Standards (which would in turn trigger the requirements of the Transport Standards) is typically around \$7million but anywhere up to \$50million for large complex stations with multiple entrances / platforms / concourses. The cost may vary from station to station depending on station configuration and size

B

The main issue is about the scope and purpose of a project related to the unique nature of rail and railway stations. There will generally only be limited entry to a station, and the path between the station entry, train boarding point and staff premises is shared, by both staff and the public. Typically a railway station entrance will be at a different level from the platform and the staff premises can be some considerable distance from the entry, commonly at platform level.

For access and egress purposes, the entrance to the staff premises is the entrance to the station. It does not make sense to have an accessible staff area without providing access to it from the railway station entry. That certainly appears to be the logic embodied in the Premises Standards. Hence an upgrade of a staff area would, under the proposed Premises Standards trigger the need to provide an accessible station entry and path to those staff premises. This would no doubt also benefit the public who would use the station. In turn the magnitude of this work would trigger the Transport Standards to upgrade all public areas of the station in accordance with that standard, and to the extent required by it. This raises a number of questions:

1. If the railway station in question were a low patronage station, is it in the public interest to bring the considerable cost of a full upgrade of the station under the Transport Standard forward (by up to say 15 years) because of a modest functional or operational staff need, to the detriment of other high patronage stations (given the limitation of public funds) where money could be spent to greater effect?

2. Whilst the prioritisation of work on the railway stations under the Transport Standards is flexible within the specified timeframe, the need to upgrade a staff facility will generally be a functional or operational one and often driven by immediate necessity. Is it therefore justifiable to lessen the effect of the proportionally much greater dollar spend on facilities for public use in order to facilitate modest, but necessary operational needs?
3. Could a case of unjustifiable hardship related to the public areas of a station under the Transport Standards be mounted in response to an upgrade triggered by and related to, staff premises and (at least initially) dealt with under the Premises Standards, keeping in mind that the argument made under the Transport Standards may be quite different from that made under the Premises Standards?

The ARA contends that in addition to not being in the public interest, these situations demonstrate an increase in the obligations of transport providers and they do not align to the intention expressed in the Guidelines to the Transport Standards (that upgrade work is specific to the element being upgraded) or Premises Standards (that no increase or decrease in obligation be effected by the transfer).

C

This point appears to advocate the effect of

1. the unjustifiable hardship provisions;
2. building upgrade plans and
3. action plans

as a means of managing the timing of building upgrades.

The ARA understands the point, but believes that each would be of relatively little effect and seldom used by members, related to rail premises. The overall size of state budgets would dilute the effect of claiming unjustifiable hardship in terms of dollars and the use of both building upgrade plans and Action Plans as a defence would hold limited legal weight in this context.

Question 3

The ARA was provided a presentation by the ABCB in Brisbane on the 2004 proposal. However, ARA has not been consulted on this 2009 proposal, which is quite different.

Question 4

Whilst the ARA accepts the possibility that some of its views may be misinterpretations, it believes that by and large its submission is based on a sound understanding of the situation and as such should be taken seriously.

The ARA asserts that the potential for confusion derives from:

1. the way the transfer of the Transport Standards' requirements for premises have been split from infrastructure and conveyances;

2. the multiple locations that the premises parts of the Transport Standards information has been distributed in the Premises Standards and Transport Standards with (albeit small) changes to terminology and methods of cross referencing
3. the standards required of Premises, other than Public Transport Premises, which are different, are now clearly juxtaposed.

If the Rail Industry has found interpretation difficult, it is very likely that so will others, including project managers, architects and access consultants, with the commensurate increased cost in education and administration, to say nothing of legal wrangling, in order to ensure a proper interpretation is applied in individual projects.

In relation to the notion of meeting key Government stakeholders, Industry welcomes the idea. However, rather than wait until just prior to the introduction of the standards, Industry believes it is important that this meeting occur as soon as possible to provide clarity as to impact not only for the Rail Industry but also to Government agencies.

To this end, the ARA believes a meeting *prior to finalising the Premises Standards* is essential as soon as possible. The ARA proposes a meeting in Sydney associated with a station visit, which could illustrate more clearly some of the points being made.

The Rail Industry remains very committed to providing accessibility to Public Transport and fully supports the thrust of the legislation. However it believes that its effectiveness, in its current form is in question and that a small delay, in order to clearly articulate the legislation is vital to serve the interest of all affected parties.

Yours sincerely

Phil sochon
Deputy Chief Executive Officer and Manager Government Relations