

**ARA SUBMISSION ON THE DRAFT REPORT OF THE FIVE YEAR REVIEW  
OF THE DISABILITY STANDARDS FOR ACCESSIBLE PUBLIC TRANSPORT (DSAPT)**

**EXECUTIVE SUMMARY**

The Australasian Railways Association (ARA) makes this submission on the draft report of the Five Year Review of the Disability Standards for Accessible Public Transport (DSAPT) on behalf of all public passenger operators as well as all relevant manufacturers in the Australian rail industry.

The ARA believes that the draft recommendations made by Allen Consulting Group (ACG) reflect a lack of appreciation of the complexity of rail industry issues relating to provision of accessible services and the work done to date to resolve these issues with the disability sector at national level.

Any recommendations must incorporate support for the following key issues:

**1. Co-regulatory framework and industry Code of Practice**

The ARA strongly advocates the establishment of a co-regulatory framework and recognition of mode-specific Codes of Practice as the best way of resolving key issues with the DSAPT in the rail sector. The ARA questions the validity of those conclusions and recommendations made by ACG (about efficiency, effectiveness and regulatory structure, and specifically the rejection of a co-regulatory framework) which have been made without a comprehensive review of current costs, net benefits and successful industry co-regulatory models.

ACG assert (p.83) that "a co-regulatory approach is not suited to the Transport Standards, given the characteristics of the activities regulated" without justifying how this conclusion is arrived at. There are already established and successful precedents for the incorporation of a Code of Practice in a co-regulatory framework that have not been adequately explored as part of this review

The Productivity Commission, page XLVI of their report of 30 April 2004 on the Disability Discrimination Act (DDA), recommended co-regulation as a way forward for service providers. Further, their recommendation 14.5 on p. L1V supports changes to the legislation to allow HREOC to certify formal co-regulatory arrangements with service providers.

The rail industry already successfully functions in a co-regulatory environment with respect to rail safety where Regulators assess the competency and capacity of operators and then monitor performance accordingly. This scenario has recently been enhanced by the establishment of the National Model Rail Safety Bill and Regulations by the Australian Transport Council of Ministers (ATC). Further the Privacy Act and the Media and Telecommunications industry successfully incorporate co-regulation and codes of practice.

All the criteria for successful co-regulation of DSAPT responsibilities are met by the rail industry. The ARA has already initiated the development of an Accessible Rail Services Code of Practice for adoption by the rail industry. The Standing Committee for the Accessible Rail Code of Practice has representation from rail operators, rail manufacturers and the Australian Federation of Disability Organisations (AFDO) and the Human Rights and Equal Opportunity Commission (HREOC) sits as an observer on the Code Committee.

The code is being developed using the rigorous Standards Australia accredited procedures for standards development by the Rail Industry Safety Standards Board (RISSB). This process includes a two stage public comment and review procedure and regular subsequent reviews after accreditation. Details of the Code process and procedures can be found at Appendix A or accessed online at [http://www.rissb.com.au/site/Standards Development Procedure.php](http://www.rissb.com.au/site/Standards%20Development%20Procedure.php). It should be noted that the RISSB is now Australia's second largest standard maker, second to Standards Australia.

The Accessible Rail Services Code of Practice will provide the following benefits:

- An open, transparent and rigorous process between the disability sector and the rail industry
- A cooperative approach to achieve practical and sustainable access solutions in the rail environment
- Discussion and clear guidance on equivalent access and unjustifiable hardship issues
- Consistent national approach to accessible service delivery in the rail industry
- Remove the need for complex and lengthy exemption applications

A Code of Practice will greatly assist the elimination of barriers preventing access to Australia's rail network and provide the certainty and clarity sought by operators and manufacturers for the continued substantial investment in improving accessibility.

As a means to provide the legal mechanism necessary for the proposed Industry Code of Practice, ARA requests that section 34 of the Federal Disability Discrimination Act 1992 be amended to recognize mode specific industry codes of practice within a co-regulatory framework as an additional compliance mechanism.

This aligns with the majority view of the February 2008 Accessible Public Transport Advisory Committee (APTAC).

## **2 Consultative framework**

The ARA is concerned with the changes proposed by ACG to the consultative framework for accessible transport. The current structure has been shown to be ineffective in advancing the needs of industry in obtaining certainty of obligation or indeed, any substantive amendment to the Transport Standards to address technical and operational issues. In keeping with the view that a co-regulatory framework will deliver the best outcome for all stakeholders in the rail industry, the ARA requests that ACG consider a consultative framework that recognises industry Code of Practice regulatory and reporting structures, industry groups to determine technical issues and disability sector involvement.

## **3. Formal recognition of ARA exemption outcomes**

ARA requests that the 35 exemptions approved by the Human Rights and Equal Opportunity Commission (HREOC) be incorporated in the DSAPT. This is essential to underpin the certainty that industry needs to facilitate the huge investments in rail rolling stock and infrastructure which are currently in progress. Failure to achieve this certainty will most likely lead to significant under-investment in rail at a time when it is critical to the nation.

## **4. Proposed amendments to the DSAPT**

Recommendations made by ACG for amendments to DSAPT clauses should first be subject to wider review with the relevant transport industry technical group and that the scope of amendments to the DSAPT not be limited to those made by ACG.

## **5. Role of HREOC**

The proposed changes to the role of HREOC threaten its neutral status and loss of this status would severely compromise trust in negotiation established over the last seven years. Other mechanisms need to be found to address the issue of complainant costs for federal court applications.

## **6. Compliance timeframes**

Compliance timeframes need be reviewed as part of this 5 year review. The current DSAPT Schedule of Compliance fails to match realistic safety, operational and asset maintenance cycles for rail stations, trains and service delivery.

The ARA has been an active player for many years in trying to improve the outcomes delivered through the operation of the DSAPT, but it has been frustrated at the lack of response in addressing

the many issues that have been identified with the practical and technical limitations of the standards. The ARA is ready and willing to further discuss the proposed co-regulatory model with key stakeholders.

A broader critique of the draft Review of the DSAPT follows in the attached submission. It was disappointing that much of the analysis was derived from qualitative input rather than a rigorous assessment of progress and net benefit. This must surely invalidate some of the draft Review's conclusions and recommendations. In particular analysis of cost and recommendations regarding efficiency are invalid. No adequate costing was done by ACG for this 5 year review. Costs are very high, estimated at several billion dollars, for the rail industry.

ARA urges the Department of Infrastructure, Transport, Regional Development and Local Government (DITRDLG) to take these comments into account and make the necessary changes to the legislation to reflect Industry's needs and to build on the good work already undertaken by the rail industry to improve accessible services and resolve access issues over the last seven years.

## 1 Response to the ACG recommendations.

Briefly, the recommendations can be addressed as follows:

- In relation to recommendations 1, 4 and 9:

These recommendations can best be addressed for the rail industry by an Industry Code of Practice as the basis for the regulatory framework.

A technical group for rail, established under the auspices of the Rail Industry Safety and Standards Board (RISSB), will be ideally placed to address the relevant technical, safety and operational issues for rail. Just such a technical group addressing accessibility issues in rail has already been formed and is currently developing the rail industry's Accessible Rail Code of Practice. This group involves all three manufacturers, all major rail operators, Australian Federation of Disability Organisations (AFDO) and HREOC.

If APTNAC is to continue, the ARA will require its own representative to continue to be a member of this group, on behalf of the rail industry.

- Recommendation 5 is supported in principle, but requires a broader approach to labelling and testing of mobility aids. It is particularly important to have a nationally agreed and resourced system for labelling mobility aids should a national 'one ticket for all transport modes' scheme be implemented.
- Recommendation 6 is not supported as HREOC's role in policy and as an impartial conciliator would be compromised. Further as acknowledged on p.6 of the ACG Draft Report, within the DDA and the Transport Standards, discrimination is determined "on a case by case basis depending on the individual circumstances of the person making a claim of discrimination, rather than at a system or region level". The subject is dealt with further in notes on Issue 4 below. HREOC is an observer in the Code of Practice development process and is invited on a regular basis to be part of the consultative and issue resolution process on key rail industry issues so that they are well informed on rail industry issues.
- Recommendation 7 is not supported. The ARA industry process to develop a Code of Practice will include an agreed and effective monitoring and reporting framework for accessible service provision in the rail industry. In addition, transport providers and State departments of transport already report on accessible service provision through a range of formats including action plans, annual reports and web sites. Accessibility rather than compliance must be the terms of reference for any reporting regime.
- Recommendation 8 is supported, but the questions should focus on accessibility for different types of disabilities rather than compliance.

## **2. Comments on the questions asked by the ACG draft report**

***Q1. Do you consider that this draft report has addressed the key issues of importance to the review? If not, what other issues do you consider are important to this review?***

Broadly speaking, the ARA believes that the draft report identifies the core problems with the practical operation of the DSAPT with the exception of the issues discussed below.

The draft report does not adequately address the implications of the requirements contained in the Schedule 1 – target dates for compliance. Compliance timeframes require review as at no time was the 35 year service life of rolling-stock recognized. A realistic compliance timeframe that meets asset maintenance cycles for rail stations and trains, similar to that proposed for buildings in the Disability Discrimination Act's draft Premises Standard, would greatly assist affordable implementation. As a further example of the lack of logic and consideration of rail feasibility applied to the compliance schedule, rail sleeper cars must be already 100% compliant but the access paths leading to them need not be 100% compliant until 2032. Also, warning Tactile Ground Surface Indicators (TGSIs) are an important safety feature on the edge of platforms for blind and vision impaired passengers, but need not be fully compliant until 2022. A thorough review of Schedule 1, in consultation with the rail industry technical group, should be identified as a recommendation of the review.

Secondly, access to, and the understanding of, the referenced Australian Standards were identified in the problems with the DSAPT, but none of the recommendations provide a remedy. The ARA, through the initial work on developing the Code of Practice has sought an indication of the likely cost of royalty payments that would be necessary to allow for the reproduction of copyright material in the code of practice. The annual royalty fee payable to Standards Australia is significant and cannot be justified in terms of the net benefit.

The Code of Practice will be developed taking into consideration all relevant existing Standards.

The Code will reflect the operation and technical requirements of the rail industry, and with regular review, this approach addresses the concerns over inappropriate, out of date or superseded references to Australian Standards and the additional significant issue of 'standards creep' when combined with a retrofit requirement.

***Q2. Are there options to address these problems that the review has not considered? If so, please provide details on these options and your assessment of their costs and benefits (including supporting evidence)***

The ARA is of the strong opinion that a co-regulatory framework with a properly developed mode-specific Code of Practice would be the best option for addressing the identified problems with Issue 1 – incorrect or inappropriate prescription in the DSAPT and Issue 2 – uncertainty around implementation and compliance. Further, a Code of Practice would also help to address Issue 3 – gaps in information for providers in operating accessible public transport and Issue 6 – lack of compliance reporting framework and data on patronage.

Updated tables 12.2, 12.3, 12.4 and 12.7 from the draft report are reproduced below to include assessment of the additional option of a co-regulatory approach.

**Table 12.2 COMPARATIVE ASSESSMENT OF OPTIONS — ISSUE 1**

<b>Assessment Criteria</b>	<b>Option 1A: Technical amendments</b>	<b>Option 1B: Option 1A plus inclusion of Australian Standards text in the Transport Standards</b>	<b>Option 1C: Co-regulatory approach and Accessible Rail Services Code of Practice</b>
Removal of discrimination	MODERATE (variable across specific amendments)	LOW	HIGH
Impact on certainty of obligations and rights	MODERATE	MODERATE	HIGH
Impact on consistency and compatibility of approach	LOW	MODERATE	HIGH
Establishment and administrative costs	LOW	HIGH	LOW (borne by Industry)
Compliance costs for providers	LOW	MODERATE	LOW
<b>Preferred option: 1C</b>			✓

**Table 12.3. COMPARATIVE ASSESSMENT OF OPTIONS — ISSUE 2**

<b>Assessment Criteria</b>	<b>Option 2A: Mode specific Guidelines</b>	<b>Option 2B: Advisory body</b>	<b>Option 2C: Certification of compliance</b>	<b>Option 2D Code of Practice</b>
Remove discrimination	MODERATE	MODERATE	MODERATE	HIGH
Impact on certainty of obligations and rights	MODERATE	MODERATE	MODERATE (due to risk of challenge on constitutional grounds)	HIGH
Impact on consistency and compatibility of approach	HIGH (within modes) MODERATE (between modes)	MODERATE	MODERATE	HIGH
Establishment and administrative costs	HIGH (establishment) MODERATE (administrative)	HIGH	HIGH	MODERATE/LOW
Compliance costs for providers	MODERATE	MODERATE	HIGH	MODERATE
<b>Preferred approach: 2D</b>				✓

Table 12.4. COMPARATIVE ASSESSMENT OF OPTIONS — ISSUE 3

Assessment Criteria	Option 3A: APTJC sub-committee to develop new labelling scheme for mobility aids and advise on assistance animals standards	Option 3B: National labelling and best practice function in research body	Option 3C: New body with broader role in information provision	Option 3D Option 3A and Code of Practice (best practice)
Remove discrimination	MODERATE	MODERATE	MODERATE	MODERATE
Impact on certainty of obligations and rights	MODERATE	MODERATE	HIGH	HIGH
Impact on consistency and compatibility of approach	MODERATE	HIGH	HIGH	HIGH
Establishment and administrative costs	LOW	MODERATE	HIGH	MODERATE
Compliance costs for providers	LOW	LOW	LOW	MODERATE
<b>Preferred approach: 3D</b>				✓

Table 12.7. COMPARATIVE ASSESSMENT OF OPTIONS — ISSUE 6

Assessment Criteria	Option 6A: Current approach	Option 6B: HREOC to develop voluntary reporting framework	Option 6C: APTJC to develop mandatory reporting framework	Option 6D: Patronage data collection	Option 6E: Option 6C and Option 6D	Option 6F Code of Practice (Reporting) and Option 6D
Remove discrimination	LOW	MODERATE	MODERATE	MODERATE /LOW	MODERATE	MODERATE
Impact on certainty of obligations and rights	LOW	LOW	MODERATE	LOW	MODERATE	HIGH
Impact on consistency and compatibility of approach	LOW	MODERATE	HIGH	LOW	HIGH	HIGH
Establishment and administrative costs	LOW	MODERATE	MODERATE	LOW	MODERATE	LOW
Compliance costs for providers	LOW	LOW	MODERATE	LOW	MODERATE	LOW
<b>Preferred approach: 6F</b>						✓

### Research

To advance the development of the Accessible Rail Services Code of Practice, the rail industry has identified several important areas where the DSAPT lacks detail or does not address the issue at all, for example, way-finding in large open areas such as railway stations. Including such complex items into the DSAPT will take a long time and may not generate 'real' outcomes for people with disabilities.

Under the code of practice these more complex areas can be considered and addressed relatively quickly. Where there is inadequate direction available within current literature and standards, research can be commissioned. The currently accepted lighting standard for railway stations is one such example of this approach.

The ARA, led by Queensland Rail, is currently in the process of initiating a research project through the CRC for Rail Innovation to conduct research into options to supplement the use of manual boarding ramps.

Other research initiatives will follow which will require the commitment of rail operators and the contribution of significant funding to help find solutions to these challenges. The rail industry is more likely to be supportive of these efforts when they are able to directly influence the outcomes in terms of the specifications, standards and implementation outcomes. This certainty would be provided where a Code of Practice is in operation.



## Reporting on accessibility

The ARA does not support uniform mandatory compliance reporting. All attempts to develop a suitable reporting framework have failed. Current reporting mechanisms provide a measure of information that is moderately useful, but is incapable of meeting the needs of regulators and the disability sector because the process of reporting compliance is fundamentally flawed. This flaw results because compliance cannot be absolutely determined – there is no compliance certification. This is effectively pointed out in the draft report on page 133 which states: *“The DDA, and thus the Transport Standards, are complaints-based legislation. Compliance is determined on a case-by-case basis in response to a complaint made by an aggrieved person. There is no means to give providers certainty that their planned investment complies with the Transport Standards prior to committing to the investment.”*

The practical outcome of this situation is that operators use their own judgement as to whether they are compliant or not. The reporting mechanism does not have any way of knowing if an operator is claiming compliance on the basis of equivalent access, or where the operator is non-compliant because they consider that they would be able to argue a case of unjustifiable hardship should they receive a complaint.

The ARA strongly advocates a new reporting regime based on accessibility of service provision rather than compliance. Rail operators rely on all avenues available to them under the DSAPT to meet compliance including strict compliance, equivalent access including direct assistance, exemption provisions and, in certain circumstances, unjustifiable hardship.

At present, every rail operator, as part of their customer service philosophy, makes accessibility information available to their customers through a variety of means. The ARA proposes that monitoring and reporting of agreed accessibility information be included in the Accessible Rail Services Code of Practice. The provision of this information would be considered a normal part of the supply of travel and journey related information.

***Q3. Do you have evidence to either support or refute the assessment of options in chapter 13 of this report? Evidence may include information on the relative magnitude of impacts between options.***

The assessment of options as presented within the report appears reasonable on the information presented within the report. The qualitative and subjective approach comes down to a judgement decision, and given the importance of the DSAPT to people with disabilities, and the impact that they have on capital investments by rail operators, this should not be considered good enough. Substantive research needs to be undertaken to properly assess and compare the options to ensure that in five years time we are not making comment on the negative impacts created by following the recommendations within the draft report, due to the lack of quantitative research.

***Q4. Do you consider that implementing the draft recommendations will involve costs to government or non-government organizations? If so, please provide any estimates of these costs.***

The cost of implementing further changes to meet the requirements of the DSAPT will be substantial. Industry estimates this will be several billion dollars in station and rolling-stock upgrades, and this will be on-going for a significant period of time. The ARA believes that these costs far exceed the 1999 Regulatory Impact Statement assessment estimates and these costs and net-benefits accruable should be re-assessed as part of the Five Year Review.

**Q5. Do you consider that the criteria used in the qualitative assessment of options are appropriate? Do you have suggested changes to these criteria?**

As per the comments provided in response to Question 3, the ARA is concerned that there was no endeavour to identify quantitative information on which to base the analysis of options for improving the DSAPT. Given that only qualitative measures were used to assess the relative merit of each option, the ARA is happy with the relevant assessment criteria, subject to the comments in this submission.

**Q6. Do you consider that the proposed framework is the best approach to implementing the recommendations from this review? If not, how could it be improved?**

The ARA has a number of concerns with the proposed consultative framework. Building on a structure that has had little impact on influencing improvements to the DSAPT over the first five years of operation does not give any confidence to the ARA that the situation will change, just by changing some of the roles and responsibilities of the various committees.

The Accessible Public Transport Jurisdictional Committee (APTJC) as the decision making body has not delivered decisions required to achieve changes to DSAPT that reflect Disability Sector and Industry needs. This is due to a lack of clear purpose and function, lack of resources to implement actions, and a lack of expertise that would be brought by representation from the Disability sector and Industry. ATPTNAC can only advise and as such has not been enabled to deliver the necessary change. The ARA believes the governance structure needs to be reviewed to establish a multi-faceted policy group comprising representatives of both government, Disability sector and Industry sectors. This group would need to be enabled to recommend changes to improve. ARA believes there is value in DITRDLG examining the model that has been shown to work effectively in the Rail Safety Reform area through the Rail Safety Package Steering Committee which reports to SCOT Rail Group.

The ARA has achieved greater certainty of obligation through the relationship established with HREOC and AFDO, initially as part of the negotiating the large exemption application and more recently in the work being undertaken in developing the Accessible Rail Services Code of Practice.

The ARA believes that any consultative structure must reflect the need for active and productive resolution of accessible transport issues. It must include the disability sector and industry technical groups and recognise the Code of Practice regulatory and reporting structures.

### **3 ARA response to the issues raised by ACG.**

#### **Issue 1. Incorrect or inappropriate prescription in the Transport Standards**

Despite the recommendations of ACG in the Draft Review, the ARA believes that a co-regulatory approach associated with a mode-specific industry Code of Practice can best address deficiencies identified in the Draft Review. Some of the issues raised by ACG will be considered below.

The suggestions in Table 12.1 will not all contribute to greater accessibility of the rail network. For example, removal of 1:4 boarding ramps is counterproductive, as this will disadvantage far more people than it would benefit. Apart from newer platforms, the bulk of rail platforms are low. While there is no uniform level difference between platform and carriage floor it would reasonably be in the vicinity of 300 mm. A 1:8 deployable ramp would need to be 2.4 metres long to bridge this level change. A ramp of this size is difficult to store on a train and is unworkably long for most platforms when deployed. If the 1540 mm dimension is used to allow circulation space at the base of the ramp, a rail car door requires almost four metres clear open space on the platform side to be accessible via a 1:8 ramp. This is not achievable in the majority of older locations. Improving technologies and more high platforms in the systems will address the issue of steep boarding ramps in the long term.

Another example from Table 12.1 is the recommendation to include TGSIs on conveyances. This proposal was discussed and rejected as unsafe on a rail conveyance in 2001 and DSAPT Amendment 2004 (No.1) removed conveyances from DSAPT Parts 18.1 and 18.2.

Neither of these proposals therefore should not be considered. A performance based Code focussing on accessibility has the flexibility to accommodate these changes whilst over-prescription halts development of better solutions.

The Draft Review fails to address difficulties associated with the Schedule of Compliance. Warning tactile tiles are an important safety feature on platform edges and stairs which are required to be 100% compliant by 2022. In contrast, elements that are not as safety critical such as waiting areas, symbols, signs, lighting, furniture and fittings including rail car sleepers are required to be compliant by the end of 2007. The access paths leading to these compliant facilities are on a separate compliance timeframes and are not required to be fully compliant until 2022. A performance based Code of Practice would allow facilities to be upgraded in coordinated way that reflects the rail operating environment and within a reasonable timeframe.

Few members of the public have any knowledge of the DSAPT's provisions or requirements. A campaign of public education as to passenger and provider rights and responsibilities in the public transport environment is needed and should be recommended. A recommendation for effective public education on level crossing safety is also required.

Level crossings are legitimate public paths of travel that, like street crossings, involve an element of risk from moving vehicles. The DSAPT is completely silent on level crossings, despite them being a public place within the rail environment. AS1742.7 (2007) has responsible accessibility requirements for level crossings. Unfortunately, this Australian Standard postdates the enactment of the DSAPT and would with difficulty be referenced in the DSAPT. By contrast the requirements of AS1742.7 (2007) can easily be caught in a Code of Practice.

Two options were presented by ACG as a means of addressing Issue 1. The third option, not deemed appropriate by it, is the Code and this must be reconsidered as a constructive instrument of change.

## **Issue 2. Uncertainty around implementation and compliance**

The DSAPT has generated a host of exemption applications. Most of these were to clarify elements of the DSAPT that were ambiguous, contradictory or unachievable. The Code of Practice is regarded as the most effective means to avoid the exemption process through clearly defining accessibility within the rail industry and how effective equivalent access might be achieved where full compliance with the DSAPT is unachievable. Since rail providers, disability sector representatives and HREOC are cooperatively developing the Code of Practice it will provide clarity and certainty. Further, the Code is a living document with provision for amendment via regular updates.

The Draft Review rightly identified the many references to difficult-to-access Australian Standards as an impediment to the public educating themselves as to their rights in the public transport environment. However, lack of access to Australian Standards is not discriminatory where lack of access to rail services is. The Code of Practice will stress accessibility. This is to be achieved through removing uncertainty and providing accessible performance based solutions where full compliance cannot be achieved. It is considered that a performance based approach can deliver excellent design outcomes under restricted or difficult circumstances. While some degree of prescription is always required, greater prescription in many cases decreases access through developing a 'compliance with the minimum standard is all that is required' culture. A Code of Practice that combines a prescriptive approach where necessary with a performance based approach would promote best practice, innovation by design and require designers to consider the needs of a passenger through the whole of the journey.

The best approach to removing uncertainty in the rail environment then is co-regulation and an industry Code of Practice.

## **Issue 3. Gaps in information for providers in operating accessible public transport**

Because the Code of Practice will have clear information on best practice it will effectively fill the identified information gaps. The AS1428 derived data on which the mobility aid requirements are based is outdated and manifestly inadequate in rolling-stock. By clearly defining access paths and other facilities the Code will give certainty to individuals as to the performance of their mobility aid in the rail environment. For example, individuals who have sports wheelchairs that lack pushing handles will understand that it is not possible to assist them on ramps due to the design of their chair. Also, scooter users will understand that three-wheel scooters are inherently unstable when subjected to centrifugal forces and that all scooters have turning circles in excess of that allowed for by DSAPT Guidelines for wheelchairs.

Labelling of mobility aids for DSAPT compliance is supported, but the process would only be fully effective if resourced at national level and if labelling were compulsory for all aids sold. Regrettably, it would not solve the problem of people with outsized, non-compliant aids seeking to board trains. Research to identify the manoeuvrability of a range of disability aids, and public education as to how those mobility aids perform in the rail environment, would be useful and could form part of the Code of Practice in future.

As the Code will give best practice outcomes it will function as a clearing house of information as requested by many parties during ACG's consultation.

## **Issue 4. Reliance on individual complaints process to ensure compliance**

The recommended referral of powers to HREOC will be unnecessary in a co-regulated environment that operates to a Code of Practice. Use of the Federal Court process is expensive, time consuming

and distracts the Court from other matters of importance. An option such as co-regulation would, while not diminishing public right of recourse to the judicial system, resolve most matters without need to lodge a complaint.

The proposed transfer of powers to HREOC would threaten the excellent working relationship that HREOC enjoys with the public transport industry. Currently, HREOC is regarded as impartial by all parties and thus enjoys their confidence. Should HREOC be perceived as adversarial or antagonistic, the current levels of cooperation will cease, much to the detriment of people who have disabilities and transport providers.

Few in industry would divulge information or feel free to discuss matters hypothetically if that information or discussion was likely to be used against them. To preserve the current collaborative approach to difficult issues it is imperative that HREOC remain a neutral player trusted by all parties, rather than have powers referred to them.

#### **Issue 6. Lack of standard compliance reporting framework and data on patronage**

A national reporting framework has failed due to lack of agreement on the interpretation of the DSAPT. There is no certification of compliance to validate compliance assessment. Further, inaccuracies and conflicts exist within the DSAPT that make assessment of compliance difficult. Industry groups, in consultation with the disability sector, are best placed to reach agreement on what is to be achieved.

Reporting against the DSAPT in terms of prescriptive compliance produces misleading results. Accessibility of a service supercedes prescriptive compliance and a facility considered non-compliant may actually be quite accessible to all users through direct assistance or equivalent access. For example, ticket window counters may not be at the correct height but tickets and change are exchanged easily when a staff member renders assistance. Further, reporting against compliance cannot account for unjustifiable hardship that legitimately prevents compliance.

Further data obtained by ABS on public transport use by people with disabilities would be useful. If this could be derived by ABS the ARA would welcome it.

## Appendix A:

### **Rail Industry Safety Standards Board (RISSB) approach to the development of an Accessible Rail Services Code of Practice**

#### **1. *What is the Code of Practice?***

The Accessible Rail Services Code of Practice will provide mode specific guidance on **how** the rail industry can practically meet the requirements of the DSAPT. The code will be predominately performance based and will only be prescriptive where absolutely necessary to achieve the desired outcome.

The code will be developed to provide operators with practical direction on how to meet the requirements of the DSAPT. The code will also provide practical examples of 'good practice' and will assist in standardising the travel experience of people with disabilities across Australia. The code will also provide operators with appropriate guidance on **how** to make decisions on equivalent access or where there would be grounds for unjustifiable hardship, further enhancing the consistency of application of the DSAPT. Research into possible solutions to barriers preventing access to services will also be a key component of the code.

#### **2. *The Accessible Rail Charter Committee; purpose and composition***

The Accessible Rail Charter Committee (ARCC) will direct the development of the Code. The ARCC has been established by the Rail Industry Safety and Standards Board (RISSB) to provide co-ordinated, expert advice to the RISSB's Operations and Management Standing Committee (OMSC) on disability issues within the Australian railway industry. The intended outcome is a co-ordinated and consistent industry approach to ensuring the needs of people with disability are met in the rail environment. This will be achieved through development of an industry Code of Practice meeting the intent of the DSAPT.

The ARCC has representatives from all the Rail operators and providers, rail industry and manufacturers and the Australian Federation of Disability Organisations, with the Human Rights and Equal Opportunity Commission as observers. Its first meeting was in September 2007, with subsequent meetings in November 2007 and February 2008. The ARCC has made good progress with Exemplars of the Code presented and accepted. Production of the first draft is now in progress.

#### **3. *Code Development is fully transparent and in the public domain***

The RISSB's process for developing Codes of Practice is rigorous and certified by Standards Australia. Code development involves an author, directed by a representative committee, producing a first draft for public comment. Public comment is a two-phase process:

- First Draft goes out nationally to the public for comment via the ARA, HREOC and AFDO Internet sites. Author responds to all comments and amends the draft where necessary.
- Second Draft goes out nationally to the public for comment via the ARA, HREOC and AFDO Internet sites. Author responds to all comments and amends the draft where necessary.

An independent technical validator then assesses the final draft. When validated, it is sent to the RISSB Board for approval via an advisory Board which ensures that due process has been followed. The technical content is certified by the ARCC and the OMSC. With the Board's approval the final draft is then published as a Code.

This rigorous process ensures that the Code of Practice is of the highest quality and that its development is fully transparent. Codes produced through this process give both industry and the

travelling public every confidence that all operational issues covered by the Code are thoroughly dealt with.

**4. Further Information on the RISSB Standards Development Process**

For further information on the accredited standards development process please refer to <http://www.rissb.com.au/site/Standards Development Procedure.php>.