



AUSTRALASIAN RAILWAY ASSOCIATION INC

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Submission to the House of Representatives Inquiry

Draft Disability (Access to Premises – Buildings) Standards 2009

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AUSTRALASIAN RAILWAY ASSOCIATION COMMENTS ON THE DRAFT DISABILITY (ACCESS TO PREMISES – BUILDINGS) STANDARDS 2009

1 Introduction

The Australasian Railway Association (ARA) makes this submission to the House of Representatives Standing Committee on Legal and Constitutional Affairs regarding its Inquiry into the draft Disability (Access to Premises – Buildings) Standards 2009 (“Premises Standards”) as tabled by the Federal Attorney General 2 December 2008.

2 Executive Summary

2.1 Key issues

This submission identifies significant legal, regulatory and practical issues that need to be addressed prior to adoption of the Premises Standards and the Access Code in the Building Code of Australia (BCA) to ensure more effective and achievable outcomes for rail passengers, operators and providers. Failure to address these issues will lead to significant impacts on the rail industry which could lead to difficulties in compliance and real implications on access for people with a disability.

These issues include:

- Increased obligations and cost for station compliance over and above the Disability Discrimination Act (DDA) requirements of the Transport Standards 2002
- Lack of recognition of unique industry issues within the Premises Standards, the Access Code and the Australian Building Codes Board (ABCB) Administrative Model including:
 - structural, technical, operational and safety constraints in the rail corridor
 - risks inherent in the interface between rail premises, infrastructure and trains
 - the interface of premises with infrastructure, conveyances and information in the provision of access to rail services for people with disabilities
- The limited and selective transfer of public transport premises requirements from the Transport Standards to the Premises Standards creates confusion in terms of legal obligation, scope and design compliance for rail premises which is exacerbated by:
 - need to cross reference between the Transport Standards, Premises Standards, BCA and conflicting Australian Standards for transport premises
 - disparity and ambiguity in the definitions and referenced standards between the Transport Standards, the Premises Standards and the BCA Access Code
- Lack of clear precedence of the Transport Standards for premises in the rail corridor within the Premises Standards, Access Code and the Guidelines
- Current rail exemptions to the Transport Standards will become invalid if the Transport Standards are amended

2.2 Key Recommendations

1. Maintain the Transport Standards in their current form ie make no amendment to the Transport Standards

- a) Refer to the Transport Standards in the Premises Standards and the BCA, while requiring their substance to be complied with under those codes
- b) Establish clear precedence of the Transport Standards for legal and regulatory clarity

- c) Align the definitions and scope of obligation for public transport buildings within the Premises Standards to reflect the current obligations under the Transport Standards
- d) Transport Standards to apply to all parts of transport premises in the rail corridor and remove the requirement for "affected part" for these premises
- e) The current rail exemptions to be recognised in assessing compliance of rail buildings and infrastructure; provision made for extension of these exemption where appropriate and a process be implemented to enable new industry specific exemptions in the future

2. Recognise (Rail) Industry Codes of Practice

- a) The DDA be amended to give legal effect to industry specific codes of practice for accessible service provision as alternative compliance mechanisms
- b) The ABCB give effect to industry specific codes of practice for accessible premises within the administrative protocol of the BCA
- c) Note that the ARA is currently developing an Accessible Rail Services Code of Practice that could be used as a model for other industries with specific constraints
- d) The Administrative Model for implementation of the Transport Standards and Premises Standards within the BCA:
 - i) enable industry specific sub-panels within the Access Panel / administrative protocol to assess industry specific performance solutions
 - ii) adopt certification categories specific to particular industries (if the Panel model is not adopted)

(Note – further more detailed recommendations are found in the detailed examination of key issues below.)

3 Background

3.1 Australasian Railway Association

The Australasian Railway Association (ARA) is a member based organisation which represents the interests of the rail sector in Australia and New Zealand. Members include all Australian urban and regional passenger rail operators both Government and privately owned. Additionally, ARA covers all major freight operators, rail track owners together with private sector industry providers of infrastructure construction and maintenance, signalling and communications equipment and rolling stock manufacturers and maintenance. It is fair to say the ARA speaks on behalf of the entire Australian Rail Industry.

ARA is committed to improving the accessibility of the passenger rail network for people with disabilities and supports the concept of ensuring the consistency and integrity of access provisions for all buildings and their integration into related legislation and the rail environment.

3.2 Disability Standards for Accessible Public Transport

The Disability Standards for Accessible Public Transport 2002 ("Transport Standards") under Section 31 of the *Disability Discrimination Act 1992* prescribe the current requirements for compliant access to transport premises, infrastructure, conveyances and information.

The ARA has been working closely with the Australian Federation of Disability Organisations (AFDO) and the Australian Human Rights Commission (AHRC) since 2001 to achieve rail standards that provide equitable access to passenger rail services for all customers while also taking into account the specific safety, technical and operational constraints of the rail environment.

As part of the current process to incorporate the requirements of the DDA into the Building Code of Australia (BCA), it is proposed to amend the Transport Standards to transfer all the requirements relating to rail premises used by passengers to access the rail service to the Premises Standards. Provisions relating to those parts of premises which are not subject to Building Code control, including infrastructure, rolling stock and information, are proposed to remain in the Transport Standards.

4 Detailed consideration of key elements of the Draft (Access to Premises – Buildings) Standards

Transfer of the Transport Standards to the Premises Standards and the BCA

The ARA recognises the benefits in having consistent, nationally applied access requirements for premises and for providing greater certainty for both industry and people with disabilities that compliance with the BCA is consistent with the objectives of the DDA.

The commitment given to the rail industry by both the Federal Attorney General and the Australian Buildings Code Board (ABCB) in 2004 was that the transfer of the rail requirements for premises would be done without any increase or decrease in the obligations of the Transport Standards. This commitment is reconfirmed in Part H2 of the draft Premises Standards Guidelines (p.24):

“All Access Code related requirements (ie within the scope of the Premises Standards) have been transferred from the Transport Standards to the Premises Standards without reducing or increasing the current requirements”.

However, there are a number of changes and conflicts in the drafting of the Premises Standards which will significantly increase the obligations for rail premises over and above the current legislated requirements under the Transport Standards. These errors of transfer are detailed below.

As the draft Premises Standards are in apparent conflict with the current requirements for transport premises ie the Transport Standards, and also in conflict with the stated intention of the draft Guidelines, the issues detailed in this submission need to be addressed prior to adoption of the Premises Standards and cannot wait for the 5 year review.

4.1 Definitions ambiguous

Building

The definition of ‘premises’ in s4 of the DDA is very broad and includes:

- existing buildings, including heritage buildings;
- proposed or new buildings;
- car parks;
- open air sports venues; and
- foot paths, public gardens and parks.

The Transport Standards (Clause 1.21) defines ‘premises’ as “structures, buildings or attached facilities that an operator provides for passenger use as part of a public transport service”.

There is no definition of ‘building’ or ‘premises’ in either Part 1.4 or Schedule 1 of the draft Premises Standards so the scope of inclusion of buildings in both the Premises Standards, Schedule 1 for inclusion in the BCA and Part H2 for transport is unclear.

Public transport building

It is also unclear what constitutes a building in the rail / transport environment for the purposes of these Standards. It is distinctly unclear whether associated facilities (covered or uncovered) such as platforms, stairs onto a platform, overhead footbridges, level crossings that form a pathway for passengers to a station and the like are included in the definition of premises for the purposes of the Premises Standards.

Part 2.1 (6) and Part H2 Note and H2.1 (1) refer to the requirements of public transport buildings that are class 9b buildings. Currently all passenger use transport buildings are captured under the Transport Standards regardless of the class of the building. Not all passenger use rail transport buildings are necessarily classified as 9b buildings under the BCA.

Without changes to recognise in H2 all parts of a public transport building (not just those classed 9b) used by a passenger to access the rail service, a modification such as the replacement of a small platform canopy or resurfacing of a platform will trigger the need to upgrade the station entrance and the accessible path to/from the entrance – effectively a whole station upgrade – as it would be captured under Part D3 [and the effect of part 2.1 (5)] and not Part H2 for public transport buildings.

Stations have as their principal function the provision of passenger access to the rail service (ie trains and trams). As part of the provision of this service, station premises may also include areas not accessible to passengers eg the booking office and staff amenity areas.

The current legal obligations under the DDA (ie the Transport Standards) do not require the station entrance and accessible paths to be upgraded when staff facilities are altered or replaced. Superimposing the requirements of the Premises Standards on railway stations will force the upgrade of whole stations when staff facilities are upgraded, in preference to the current strategic prioritisation of station upgrades based on risk and benefit to passengers within the rail network, and the timetable dictated by the Transport Standards.

Upgrade of the station entrance and accessible paths as a result of routine maintenance work, minor alterations and changes to staff facilities is not currently required under the Transport Standards.

The intention for station accessibility is clearly stated in Part 32.3 (2) of the DSAPT Guidelines 2004 which read:

“it is the particular upgrading, reconstruction or refurbishment that must comply with the Disability Standards and not the infrastructure as a whole. For instance, providers don't have to put in a lift if they are only upgrading their information system or constructing a waiting room”.

Limited financial and human resources will inevitably lead to less effective outcomes for the principal users of stations, ie passengers, under the Transport Standards when station upgrading is driven by the timetable of minor works and maintenance programs.

Premises Standards, by defining public transport buildings only in terms of passenger use areas, 9b classification and by referring in 2.1 (6) to “whole or part of the building”, are forcing a station to be classified in separable parts. This not only appears contradictory to clause H2.1 (4) which precludes classification in separable parts for public transport buildings such as stations, but also triggers a significant and costly increase to the current access obligations for rail premises.

What is an ‘existing building’?

The use of the terms “new” and “existing” are not clear in their application to the rail environment. Buildings outside the rail corridor are similar to other buildings in the common domain. However, premises in the rail corridor, whether they be stations for passenger use or otherwise, are subject to the existing constraints of the rail corridor in terms of the feasibility of increasing space for improved accessibility. These constraints include: defined corridor width;

adjoining and overhead property, infrastructure and topography; track configuration and signalling requirements; train gauge; overhead power lines; the interface with trains; requirements of other relevant legislation such as the Rail Safety Act; the age of the rail network and associated heritage issues.

Even when existing rail premises are replaced ie effectively built new, the above constraints apply to the achievable levels of accessibility. For this reason, the term “new” should only apply to rail premises (public use or otherwise) built outside the rail corridor or those built in completely new rail corridors. All premises within existing rail corridors must be considered as “existing”, even when largely rebuilt or replaced.

Recommendations

To ensure the same level of obligation under the Premises Standards as currently exists under the Transport Standards, the following changes need to be made prior to adoption of the Premises Standards:

1. Part 2.1 (6) – amend to read “An **existing public transport building** is a building (other than a new building) that an operator / transport provider provides for passenger use as part of a public transport service”.
2. Part H2 Note – delete words “Class 9b”
3. Part H2.1 (1) – amend to read “The Deemed-to-Satisfy Provisions of this Part apply to public transport buildings used by passengers as part of a public transport service”
4. Part H2.2 (9) – delete “Class 9b”
5. Part H2.3 (2) – delete “Class 9b”
6. Define “existing” as opposed to “new” for rail premises in terms of their location in an existing rail corridor.

Rail platform

Railway platforms are included as Infrastructure in the Transport Standards and the proposed Amendment to the Transport Standards does not include a change in this regard. Clauses 18.3, 18.4 and 18.5 of the Transport Standards refer specifically to bus stops, rail platforms and ferry wharves as infrastructure, not premises for the purposes of the Transport Standards. Yet platforms are integral to passenger access to the rail service and cannot be considered separately from other station elements in terms of passenger safety or accessibility.

Platforms act to constrain sometimes large numbers of the public and provide an interface to trains and the public on them. They have similar characteristics to buildings in that regard and share egress paths from any related buildings, whether covered or not. Questions of safety and egress are already covered under the building code and should be applied to platforms, bridges and stairs in a similar way to other publicly accessible areas in the Premises Standard.

Recommendations

1. Define ‘building’ and ‘transport building’
2. Clarify status of rail platforms (open, or covered) under the BCA

Accessway

The term “accessway” is used in the Premises Standards for the first time. It appears to be a similar term to “access path” used in the Australian Standards which are referred to in the proposed Part H of the Building Code of Australia. There needs to be a clear statement for the definition of an “accessway” being equivalent to an “access path” used in the Premises Standards. Given that the same Australian Standards are also referred to in the Transport Standards, if the terminology is changed there will be an inconsistency between those parts of the Premises Standards relating to transport premises and the clauses relating to premises

which have been left behind in the Transport Standards ie parts of premises which don't fit in the BCA, infrastructure, rolling stock and information. Consistency of terminology is required to clearly define the scope of accessible requirements and to avoid confusion.

Recommendation

Align the various references and definitions of access path, accessway, accessible path of travel in Premises Standards, Transport Standards, and associated referenced Standards.

4.2 Scope of Part H of the Premises Standards is unclear

The precedence of the Transport Standards and the application of this precedence to all rail premises used by passengers is not clear in the draft Premises Standards. In addition, the use of the definition for existing transport buildings in 2.1 (6) creates confusion as to whether Part H2 applies to new transport buildings. As the Transport Standards currently apply to both new and existing transport premises for passenger use, the assumption is that Part H2 applies to both new and existing public transport buildings. This is supported by the wording in Part H2 which does not limit the application of the part to existing public transport buildings. However, the wording of Part 2.1 (1) specifically refers to existing public transport buildings as does Part 2.1 (6).

It needs to be clear that Part H2 applies to:

- all new and existing public transport premises that function for passenger use as part of a public transport service
- all parts of rail stations where the principal function is to provide passenger access to the rail service (ie trains) including parts of the station that passengers are unable to access (ie staff only facilities like the booking office).

Recommendations

1. Delete note in part H2 stating that the provisions of H2 are "additional to those contained in Parts D3, E3 and F2" and clarify as necessary
2. State clearly that the previous requirements of the 2002 Transport Standards as amended, take precedence over any issues of content, interpretation, expression or the like.

4.3 Technical standards inconsistent

The duality of differing and separated technical requirements for public transport and non-public transport premises under the Premises Standards creates confusion for rail operators, providers, passengers, designers and architects in two ways:

1. Not all clauses relating to premises in the Transport Standards have been brought across to the Premises Standards for example fixtures and fittings such as seating and booking office counter heights not brought across.
2. The requirements and referenced standards are different between the Premises Standards and Part H2 for many of the elements that have been brought across.

For example the Transport Standards deliberately reference AS1428.4 1992 to define the DDA obligation for tactile surfaces on rail platforms. The Premises Standards references the proposed draft AS1428.4.1 which includes tactile configurations for rail platforms which are inappropriate for rail safety, rail operations and the access of people with mobility impairment in confined spaces near a known hazard.

This introduces disparate requirements for public transport and non-public transport premises, with the more onerous requirements falling on public transport premises where space available to achieve more generous standards is uniquely limited. In many cases the different

requirements are not consistent with the fundamental principles of accessibility. It is important that the principles behind the standards are consistent and clear, so that unique situations can be given consistent interpretation in the design process. This will forestall the likely extensive submission of issues for resolution to any administrative body.

A few areas of major technical disparity are discussed below.

Access paths

A significant disparity between Part H2 and the remainder of the Premises Standards is the referencing of AS1428.2 (1992) in H2 as the technical specification for access paths, ramps, manoeuvring and circulation space, whilst the proposed new AS1428.1 is referenced in the remainder of the Premises Standards for these areas. The new standard appears to be based on the 90th percentile wheelchair, but some dimensions in the new standard for other than public transport premises are less (eg the width of the accessway, ramp landings required at 9m instead of 6m intervals) than those in the AS1428.2 (1992), whilst some dimensions are greater (eg the dimensions of an accessible toilet etc).

This disparity presents considerable confusion when interpreting what requirements should be applied for particular (constrained) cases, where normally the designer would attempt to go back to first principles (ie either the 80th or 90th percentile wheelchair) in order to provide the best possible result. There needs to be a clear statement of the required performance criteria and the basis for trying to achieve it, in addition to a consistent basis in terms of the principles of accessibility for all the standards referred to.

The strongly linear construction of rail platforms imposes unavoidable space restrictions. Further, platform edges are a dynamic interface between the pedestrian and vehicular environment and are therefore restricted access areas except at times of boarding or alighting from carriages. This further reduces available space.

While not wishing to diminish the requirements of the Transport Standards, rail operators and providers have found that compliance with AS1428.2 on many existing rail platforms is unachievable. The granting of temporary exemptions to ARA recognised this, permitting specifications and outcomes relevant to specific sites to be used. The co-regulatory approach, with its associated code of practice, will allow full compliance with the Transport Standards where practicable and provide guidance on performance solutions where not. It offers a vastly more flexible approach to accessibility than indexing access against one Australian Standard or another.

Access path width

Transport Standards require an accessible path of 1200mm, whereas the Premises Standards require an accessible path of 1000mm, but with a number of associated requirements.

Frequency of landings on ramps

Frequency of landings on ramps at 1:14 are required to be every 6m by the Transport Standard but every 9m by the Premises Standard

Size of turning and manoeuvring space including size of accessible toilets

Generally for the 80th percentile wheelchair in the Transport Standards, but for the 90th percentile wheelchair in the Premises Standards. This means that circulation space where turns must take place, requirements each side of doors and space in WC's showers and the like is considerably greater in the Premises Standards.

Space to cross passages at the top and bottom of stairs and ramps

No requirement in the Transport Standards but space of up to 900mm additional is required in the Premises Standard.

Lighting

Disparity in illumination requirements will exist between public transport premises, which are included in the lighting requirements of Part H2.2 and premises that are not covered by Part H2. The lighting requirements for premises included in Part H2 (AS1428.2 (1992) Clause 19), such as rail platforms, are far higher than for those premises which are not associated with public transport. Compliance with AS1680.0 is required for premises covered by the BCA's Part F4.

Public nuisance due to excessive illumination for outdoor environments resulted in the ARA being granted exemption to meet the far less intrusive requirements of AS1680.2.1 and AS1158.3.1 on open rail platforms. This exemption will be lost in the transfer of rail premises to the Premises Standards.

Lifts

The Premises Standards offers far greater flexibility in which type of lift may be employed in premises. Lifts that meet the requirements of AS1735.1, .2, .3, .7, .8, .12, .14, .15 and .16 may be used in premises not associated with public transport. Part H2.6 permits only lifts complying with AS1735.12 to be used in rail premises. In a co-regulatory environment, a code of practice would allow flexible outcomes in lift provision when site constraints on existing platforms make full compliance with AS1735.12 unfeasible.

Signs

Signs in the Premises Standards have different specification than those in the Transport Standards and Part H2 for Braille and tactile characters. This undermines the access principle of consistency and predictability in way finding for people who are blind or have vision impairment.

Hearing augmentation

Hearing augmentation associated with public address systems is required by the Transport Standards and Part H2 to cover at least 10% of the range covered by the public address system. However, the Premises Standards requires hearing augmentation to cover 90% of a PA system's range.

Recommendations

1. Recognise current exemptions in Part H2 of the Premises Standards
2. Clarify process to apply for new exemptions under the Premises Standards
3. Separate the requirements to prevent confusion, promote the concept of consistency and ensure proper understanding of where they must apply
4. Rail does not believe that the proposed new AS1428.1 and the increased standards contained therein is an appropriate standard to be applied to the rail environment, given its particular nature and constraints

4.4 Information from the Transport Standards relevant to transport premises not transferred

Whilst those parts of the Transport Standards relating to Premises (but only those relevant to matters normally dealt with under the BCA) appear to have been transferred to the Premises Standards, an even lesser amount of information will apparently be included in the BCA (ie only that contained in Schedule 1 Access Code for Buildings).

This limited and selective transfer of requirements will present problems in the interpretation of requirements in the public transport context. Building Designers will need to look in the Transport Standards in addition to the BCA, Premises Standards and the referenced (and sometimes contradictory) Australian Standards to fully understand all the requirements relevant to transport building design.

This will result in confusion, design inefficiencies and additional costs to the industry.

Of particular concern are omissions of Parts 1 and Clauses 32, 33 and 37.7 and Guidelines Part 40 Assumptions which have either not been transferred and/or will not appear in Schedule 1 and the BCA

A large amount of the technical information relevant to transport building designers has been left in the Transport Standards and not transferred to the Premises Standards and the BCA. This includes requirements for furniture, fittings, equipment and information provision which are related to Premises and form an integral part of building design eg:

- 5 Resting points
- 7 Waiting areas
- 8.1 Boarding points and kerbs
- 9.1 Minimum size for allocated space
- 12.1 Doors on access paths
- 12.3 Weight activated doors
- 14.1 Stairs not to be the sole means of access
- 17.5 Electronic notices
- 22. Tables benches and counters
- 23 Street furniture
- 24 Gateways
- 25 Payment of fares
- 27 Information
- 29 Food and drink services

Recommendations

1. Include all requirements relevant to public transport building design in a single location in order to avoid confusion and the necessity for building designers to reference requirements in multiple locations
2. Simplify what has become an extremely complex set of requirements, whilst recognising the particular situations to which the requirements must be applied
3. Facilitate future changes to be easily made to legislated requirements in order to accommodate ongoing experience in applying requirements and the practical problems in doing so.

4.5 Omissions and minor changes

In addition to the abovementioned issues, the following omissions and minor changes (which appear to effect meaning) have been noted:

1. Clause 3.1 of the Transport Standard has been transferred to H2.2(6) of Schedule 1 of the Premises Standard but the wording has been changed from manoeuvring areas "must comply" to manoeuvring areas "that allow a 180 degree wheelchair turn must comply". The effect of this change is to only consider manoeuvring areas where a 180 degree wheelchair turn is contemplated.
2. References to clause numbers in AS1428.1(2001) in clause 14.2 of the Transport Standard do not appear to have been transposed correctly to H2.7 of Schedule 1 of the Premises Standards. This appears to be a drafting error which needs correction.
3. In H2.10(1) of Schedule 1 of the Premises Standards an "access path" is referred to. This is inconsistent with the term "accessway" used in the rest of the standard. This appears to need correction to be consistent.

4. Clause 18.1 of the Transport Standard has been largely omitted and wording changed by adding "must indicate changes of direction..." This is at odds with the reference to Australian Standard AS1428.4(1992) which does not show how changes of directions be achieved on railway platforms. Consequent ambiguity requires clarification as to whether it is intended that platforms are dealt with under the Premises Standard and the BCA.
5. Clause 33.7 of the Transport Standards has largely been transferred to the Premises Standards, with some changes eg references to "services" has been changed to "buildings" and references to "persons and organisations" have been changed to "persons". Similar wording applying to Premises should not appear in two places.

In addition the importance or otherwise of the following (but possibly significant) changes is unclear and needs further assessment:

6. Clause 2.2 of the Transport Standard "Continuous Accessibility" does not appear to have been transferred, including reference to AS1428.2(1992) clause 7 and has been effectively deleted.
7. Clause 17.1 of the Transport Standard refers to compliance with AS1428.2(1992) clauses 17.2 and 17.3. This reference has been omitted in the clause's transposition to H2.10(5).

Recommendation

Correct or clarify changes to provide meaning consistent with the original Transport Standards.

The effect of the Premises Standards

5.1 Increased obligations for public transport buildings

The introduction of the Premises Standard will also affect the requirements currently in place and proposed to be transferred to the Premises Standard for public transport buildings.

Triggers which initiate and determine the extent of work required for a particular project, differ between the public use areas of public transport buildings and other building types as noted above. Public areas of rail facilities are nearly always co-located with staff and other service areas of railway stations in order to provide an appropriate transport service. Within the rail corridor, they are nearly always constrained dimensionally due to the linear nature of the railway and railway stations.

The effect of these differing triggers associated with the extent of work required for non public use transport buildings, could mean that a simple upgrade of a staff or service area on a railway station as currently written, requires that the entire path from that area to the entry of the station (shared by public and the staff) would need to be upgraded, being an "affected part", this being an effective upgrade of most of the station. This would make the work required on railway stations to be considerably more extensive than contemplated by the timetable in the current transport standards

Recommendations

1. Delete para H2.1(4) which apparently prevents the use of multiple classifications under Part H and would allow an ancillary use to be part of the overall classification.
2. Change the requirements of Part H of Schedule 1 of the Premises Standards to include other than passenger use areas of Public Transport Buildings which are inside the rail corridor; or
3. Delete the requirement for "affected part" applying to other than passenger use areas of public transport buildings in the rail corridor.

5.2 Current rail exemptions become invalid

In 2007 the AHRC granted the ARA a range of temporary exemptions from the Transport Standards to recognise the unique safety, operational, technical and space configuration constraints of the rail environment. Without these exemptions both the rail industry and rail passengers with a disability faced continuing uncertainty as to the access requirements and their responsibilities under the Transport Standards. Implementing the accessibility requirements of the Transport Standards would cost the rail industry billions of dollars, so that uncertainty of any nature was unacceptable.

In the transfer of the various Parts of the Transport Standards to Part H2 of the Premises Standards, the granted temporary exemptions will become invalid. In its grant of temporary exemption the AHRC noted:

'If, following the Ministerial review, and during the exemption period, the DSAPT are re-made (by the Attorney-General with the approval of the Parliament), in an amended form on any point, the temporary exemptions now granted by the Commission will be displaced and become inoperative.'

Further, no opportunity to seek further exemption exists under the Premises Standards as the DDA Part 2, Division 5, Section 55 (1B), which is relevant to exemption, reads:

'An exemption granted under subsection (1A) must be in relation to a specified disability standard and only applies to the extent that the disability standard deals with the provision of public transportation services and facilities covered by paragraph 31(1)(d).' (The DDA Amendment Bill deletes 'covered by paragraph 31(1)(d)'.)

Access to Premises Standards are dealt with under paragraph 31(1)(f), so that transferring rail premises out of the Transport Standards makes them ineligible for exemptions.

The nature of the exemptions has largely been to achieve improved disability standards that recognise the confined space and practical limitations of the rail environment. This loss of granted exemptions and inability to seek new temporary exemptions:

- will reintroduce uncertainty for both the rail industry and the disability community
- significantly restrict the flexibility of achieving performance solutions on rail premises
- is contrary to the stated intention of the Guidelines that the transfer does not increase the current requirements for rail premises.

Recommendation

Recognition must be given in Part H2 of the Premises Standards that any valid exemptions carry over to the Premises Standards and the BCA.

5.3 Triggers for compliance for existing premises differ

Both the Transport Standards and the Premises Standards require full compliance for new premises at construction. However, while a strict schedule for compliance applies to existing rail premises, existing non-public transport premises in the draft Premises Standards have triggers for compliance based on approval of new work.

The prescriptive Schedule of Compliance for existing rail premises has transferred from the Transport Standards to Part 3.1(3) of the Premises Standards and is relevant to all material covered by Part H2 of the Premises Standards. This introduces a substantial financial inequity into the Premises Standards with owners of rail premises locked into an upgrade regime not tied to the natural maintenance and refurbishment cycle enjoyed by owners of other types of premises. Once again, the matter of upgrade of existing premises is best dealt with in a co-regulatory regime that recognises natural refurbishment cycles.

Recommendations

1. Make triggers for compliance coincide by changing the Premises Standard triggers (given the commitment that the Transport Standard would remain unchanged); or
2. Remove the compliance timeframe triggers for public transport premises and make them coincide with triggers under the Premises Standard

6. Amendment of the Transport Standards

There are a number of key issues that need to be further considered in amending the Transport Standards and selectively transferring some elements relating to transport buildings to the Premises Standards and the BCA:

- transport buildings have unique constraints, both dictated by the fact of their existing context (physical, historical etc) and by the linear nature of the rail corridor
- different base standards apply to public transport buildings used for passenger access to the transport service
- public transport buildings have a retrofit timeframe under the Transport Standards, and therefore most work undertaken pursuant to the Transport Standards will be on existing and not new buildings
- separation of premises, infrastructure and conveyances will affect the integrity and understanding of the transport requirements and the accessibility outcomes for people with disabilities
- there will be additional cost related to the identification and interpretation of the relevant standards and compliance with the DDA and BCA for transport buildings

The ARA recommends that:

1. no amendment be made to the Transport Standards; and
2. the Transport Standards be referred to in their entirety by the Premises Standards and the BCA; and
3. it be clearly stated in the Premises Standards and Part H2 of the Access Code (ie the BCA) that for any meaning or interpretation related to the BCA, that the whole of the Transport Standards will prevail.

This approach has the significant advantage that current exemptions to the Transport Standards remain valid when the Premises Standards and the Access Code are adopted.

7. Administrative model

7.1 Access panel

The ARA supports the principle of an authoritative body such as an Access Panel to assess alternative solutions, building upgrade plans and unjustifiable hardship considerations within the building approval process under the BCA.

The ARA also supports a Panel's involvement in assessing approval for the compliance of rail premises with both the Premises Standards and the BCA. It should be recognised that a compliant access solution related to transport premises also needs to achieve compliance consistent with other elements of the Transport Standards (infrastructure and rolling stock), along with consideration of interfaces between these elements and other related legislation.

It is also noted that currently, most states have in place a process of independent certification and a registration scheme for certifiers related to compliance with Building Regulations. The ARA recommendations below could easily also apply to a certification regime related to access, should it be adopted in lieu of an Access Panel (with a caveat that adoption of one scheme or the other universally, is desirable).

The ARA has concerns about the membership of the Access Panel related to transport specific issues, given current availability of appropriately experienced industry expertise related to access and the likely volume of work which will flow from the assessment of all building types now included in the Premises Standards and the BCA.

7.2 Assessment of industry-specific constraints

The ARA is concerned that the Premises Standards and the BCA, in their current proposed form, will not adequately address the significant legal, regulatory and interpretative issues outlined by the ARA in this submission.

The Protocol may “ensure that the application of the Access Code under the *Premises Standards* is consistent with the application of the BCA under building regulation” (p.4 *A Model Process to Administer Building Access for People with a Disability*), but in its current form, it may not achieve consistency with the current legal requirements and referenced standards for public transport premises (the Transport Standards) as well as the current exemptions granted to recognise the need for performance solutions to address specific rail industry constraints.

7.3 Industry sub-panels

The ARA recommends the inclusion of industry specific expertise in the administration process of BCA approval for alternative solutions. Where a Panel is established as the mechanism to administer this process, industry-specific sub-panels could be incorporated to provide industry-specific subject matter expertise. In the case of rail, a rail panel would ensure nationally consistent, performance based approaches to access constraints and solutions that are practical and achievable in the rail environment.

The input of an industry sub-panel also makes sense in improving access to the rail service as:

- over 90% of upgrades and maintenance work undertaken in the rail environment are to existing premises and infrastructure as opposed to new rail stations in new corridors;
- there are unique constraints within the rail industry including the strongly linear construction of rail platforms which imposes unavoidable space restrictions; platform edges are a dynamic interface between the pedestrian and vehicular environment and in most cases rail buildings require vertical separation from street level by the track infrastructure;
- due consideration is essential for operational requirements and relevant legislation particularly Rail Safety legislation; and
- the number of access consultants and certifiers with appropriate qualifications and experience in the rail industry is limited.

This approach is in line with the intent stated in Annex 1 Clause 1.3 that the Panel be broad based and have expertise relevant to the issues. Appropriate indemnification would need to be considered for sub-panel members depending on the governance structure and terms of reference adopted for their inclusion.

7.4 Co-regulatory framework

The ARA believes that a co-regulatory framework with associated industry specific codes of practice would provide the mechanism to align any inconsistencies and contradictions of the Premises Standards, the BCA and the Transport Standards. This approach is in line with the recommendation in the Productivity Commission Report of April 2004 (p.XLVI) that a:

“A co-regulatory approach should be introduced to encourage the private sector to take a greater role in tackling discrimination. Industries could develop codes of conduct, and those that meet minimum criteria could be registered with HREOC”.

Further on page LIV, the Report recommendation 14.5 states:

“The Australian Government should legislate to allow the Human Rights and Equal Opportunity Commission to certify formal co-regulatory arrangements with organisations to whom the Act applies.”

An ARA submission to the Senate Inquiry into the Disability Discrimination and Other Human Rights Legislation Amendment Bill 2008 strongly advocated the following amendment to Clause 58A of the DDA to recognise co-regulatory provisions:

“58A: Recognition of co-regulatory arrangements

1. This Part does not render it unlawful for a person to act in accordance with a code, standard, compliance plan or other instrument approved by the Commission for the purposes of this section.
2. The Commission may approve codes, standards, compliance plans and other instruments for the purposes of this section on matters, and in accordance with criteria, prescribed by the Regulations.
3. An approval by the Commission under subsection (2) is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

It is *essential* that proposed section 58A would have to be placed outside Division 5 of Part 2 of the DDA (since section 33 sub-section 2 states that division 5 does not apply in relation to disability standards) or section 33 sub-section 2 would need to be amended to refer to division 5 “other than section 58A”.

It proposed that compliance with an accredited industry code of practice would serve as an alternative means of compliance to the Standards (Transport and Premises Standards where relevant) for public transport premises, infrastructure, conveyances and information.

Industry Codes of Practice

The rail industry is currently developing a national Accessible Rail Services Code of Practice under the auspices of the Rail Industry Safety and Standards Board (RISSB) using expert industry input in close consultation with the AFDO and the AHRC. The RISSB process for developing industry standards for rail safety is already accredited with Standards Australia and is about to be formally recognised by the Australian Transport Council of Ministers.

The Code addresses the specific safety, technical, operational, configurational and geographic constraints inherent in the rail industry as well as the specific requirements of the Rail Safety Act and interface issues between passengers, premises, infrastructure and conveyances.

The Code provides clarification for rail passengers, operators, providers, designers and architects by documenting accessible service provision, equivalent access alternatives, good practice within the industry, the approved exemptions from the Transport Standards and areas of unjustifiable hardship.

The Code of Practice concept is relevant to any industry with specific constraints in relation to applying the Access Code of the Premises Standards to their environment for whatever reason. The rail industry code could serve as a template for other industries or government agencies wishing to develop a code of practice which recognises particular industry issues or constraints for compliance with the BCA or DDA.

Benefits of recognition of industry specific Codes of Practice

Application of accredited industry codes of practice to the BCA model for administration of access to premises, and potentially other areas covered by the BCA, has a number of significant benefits:

1. the concept is consistent with the regulatory approach of the current and proposed BCA approval process
2. provides one authoritative reference document to resolve the disparate requirements of related legislation, (in the case of rail, the Transport Standards) the Premises Standards and the BCA Access Code in their application to new and existing buildings

3. enables an easy means of verification of compliance for buildings with industry-specific constraints and provides industry-specific clarification in terms of the BCA classification and terminology
4. reduces the potential legal liability of Access Panel members (or certifiers, should that model be adopted) by providing a detailed, industry specific reference document
5. provides a nationally consistent approach to alternative solutions aligned to the objectives of both the Premises and Transport Standards in an industry specific environment
6. provides clear and practical guidelines for performance solutions in environments with unique constraints be they operational, safety, structural, legislative or technical in nature
7. reduces the administrative workload and level of interpretative expertise required and thus enables cost savings to be accrued from regulatory and administrative efficiency and timely provision of advice on alternative industry specific solutions and building upgrade plans
8. overcomes specific limitations inherent in the BCA related to the interpretation of requirements related to some building types, more effectively facilitating BCA objectives and specific industry objectives
9. removes the inherent inefficiency of 'reinventing the wheel' for industry specific performance based solutions (access or otherwise)
10. allows codification of current industry practice and translation of the inherent requirements and concepts of other relevant legislation (eg Rail Safety legislation)
11. includes all of the elements to be considered in provision of access to a service for people with a disability in one document. In rail, these include the interface between station entrances, buildings, platform, other infrastructure such as footbridges and stairs, the train-platform interface, train / tram and track
12. provides clarification and certainty about Guidelines provided in the Premises and Transport Standards

The intention is that compliance with an accredited industry specific Code of Practice would be the basis for compliance, by means of an alternative solution, with the BCA performance requirements and consequently compliance with the requirements of the DDA Standards appropriate to that industry.

Recommendations

1. The ABCB give effect to the industry specific codes of practice within the administrative protocol of the BCA
 2. The DDA be amended to give legal effect to industry specific codes of practice as compliance mechanisms
 3. The Administrative Model for implementation of the Transport Standards and Premises Standards in the BCA enable industry specific sub-panels within the Access Panel / administrative protocol to assess industry specific performance solutions.
 4. In the event that a certification model is adopted, (consistent with most states' current practice), that certification categories specific to particular industries be adopted
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