AUSTRALASIAN RAILWAY ASSOCIATION

Association Number A03958 | ABN 64 217 302 489

AUSTRALASIAN RAILWAY ASSOCIATION SUBMISSION

To

Senate Legal and Constitutional Affairs Committee

On

Exposure Draft of the Human Rights and Anti-Discrimination Bill 2012

The Australasian Railway Association (ARA) would like to thank the Senate Legal and Constitutional Affairs Committee for the opportunity to provide comment on the Exposure Draft of the *Human Rights and Anti-Discrimination Bill 2012*.

The Australasian Railway Association

The ARA represents passenger and freight rail operators, track owners and managers, rollingstock manufacturers and rail construction companies across Australasia. The ARA recognises the benefits of having consistent, nationally applied access requirements for rail services and facilities. It also recognises the benefits of providing greater certainty for both industry and people with disabilities.

Our Response

The ARA supports the overall aim of the *Human Rights and Anti-Discrimination Bill 2012* Exposure Draft and the Australian Government's commitment to embark upon this critical task. The ARA endorses the creation of a single consolidated Commonwealth anti-discrimination law that replaces the five existing anti-discrimination laws, including the *Disability Discrimination Act 1992* (DDA). In particular, the ARA strongly supports the Bill's co-regulatory approach.

The ARA also notes that the *Disability Standards for Accessible Public Transport 2002* (Transport Standards) and *Disability (Access to Premises-Buildings) Standards 2010* (Premises Standards) will continue in operation as standards under the new Bill, as stated on page 7 of the Exposure Draft Explanatory Notes.

Co-Regulatory Approach

The ARA strongly supports the co-regulatory approach taken in Part 3-1, Division 6 of the *Human Rights and Anti-Discrimination Bill 2012* Exposure Draft with relation to the use of compliance codes and the Australian Human Rights Commissions' (AHRC's) subsequent new powers to certify codes. The ARA also notes and supports the statement that *"*[i]*f made, compliance with a code would be a complete defence against discrimination",* as outlined in the Explanatory Notes on page 64.

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The ARA believes that a scheme of co-regulation will make obligations clearer for transport operators and providers to understand and apply within their particular industry environments. This will in turn allow for greater compliance with the law.

In the rail industry context, the current DDA regulatory regime governing access for people with disabilities to railway vehicles and facilities does not reflect the unique safety, technical, structural and operational requirements of passenger rail services. As indicated in the ARA's submission to the Attorney General's Department's *Consolidation of Commonwealth Anti-Discrimination Laws Discussion Paper*, some of the requirements outlined by the DDA instruments (Transport and Premises Standards) potentially hinder the rail industry's operation and could be argued to jeopardise the safety of rail staff and passengers. Some of the requirements referencing Australian Standards developed for premises in the public domain are unachievable on stations and trains. Moreover, some of the definitions and standards referenced in both the Transport and Premises Standards are also unachievable on stations and trains and are argued to be unclear and confusing. For example, in section 20.2 of the Transport Standards:

- (1) Any lighting provided must comply with minimum levels of maintenance illumination for various situations shown in the notes to AS1428.2 (1992) Clause 19.1, Illumination levels.
- (2) Lighting should be at least 150 lux at the entrance and at the point where a passenger pays his or her fare.

As another example, in section H2.2 (7) of the Premises Standards:

- A passing area must be provided at least every 6 metres along any two way accessway that is less than 1800 mm wide.

The Transport and Premises Standards do not consider the unique environment in which the Rail Industry operates. In particular, the Standards do not differentiate between lighting in external and open air stations, and the location of stairways in relation to accessway passing areas, respectively.

The Exposure Draft Explanatory Notes (p.7) also make reference to the particular requirements that the Railway industry faces:

"*The introduction of compliance codes will for the first time allow industry to develop voluntary codes specific to their industry. In industries with unusual or technically complex requirements, such as the railway industry, this mechanism will allow development of clear guidance on compliance with anti-discrimination*

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obligations taking into account the peculiar requirements of the industry. Compliance with a code will provide a defence to a claim of unlawful discrimination."

Accessible Rail Services Code of Practice

The Australian rail industry has developed the Accessible Rail Services Code of Practice (Code) (attached with this submission) for passenger rail services in an effort to develop practical and achievable solutions to the issues mentioned above within a co-regulatory approach to accessible service provision. The Code was developed on behalf of the industry by the Rail Industry Safety and Standards Board (RISSB), an accredited standards development organisation, in conjunction with the Australian Human Rights Commission (AHRC) and the Australian Federation of Disability Organisations (AFDO). The transparent and collaborative effort between the industry, the AHRC and AFDO ensures that the Code is able to be practically implemented, as it addresses the specific requirements and constraints of the rail industry. It also ensures that objectives of the Code are aligned with those of the current DDA.

The Code also aims to provide certainty in the application of the functional and performance requirements of the Transport and Premises Standards within the unique environment of the rail industry while at the same time continuing to improve access to rail services for people with disabilities.

The development process of the Code included an independent author (a person with a disability), two public consultations (six weeks per consultation with comments from the general public and organisations for people with a disability) as well as independent validation against the Standards. This process is more rigorous than the code development process of Standards Australia.

The development of the Code is now complete and published by the RISSB. The ARA has been seeking legal recognition of this Code as a compliance mechanism under the DDA, and will proceed with legal recognition once the *Human Rights and Anti-Discrimination Bill 2012* has been passed.

With relation to *Human Rights and Anti-Discrimination Bill 2012*, the Code is in line with subclause 75 (4) of the Exposure Draft in that users of the Code must comply with any relevant Commonwealth, State or Territory legislation; the Code has a customer complaints/feedback

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process; and the Code is to be reviewed every five years (nominally) from the date of publication.

As also cited in the ARA's submission to the *Discussion Paper*, recommendation 3 of the first review of the Transport Standards by the Allen Consulting Group (2011) outlined the need for:

"*A technical experts group be convened, with Standards Australia, to develop technical standards specifically suited to public transport conveyances and infrastructure. Once developed, these Standards should be referenced in the Transport Standards, and made available for public use*."

This recommendation called for the development of some form of industry code. There are significant and inherent differences between transport modes in the types of premises, infrastructure and conveyances used, and in the inherent safety, technical, and operational requirements, which determine that such a Code be modal specific.

As acknowledged by Graeme Innes AM, Disability Discrimination Commissioner, in his letter to the Australian Public Transport Jurisdictional Committee in June 2011:

"*I support the thrust of this recommendation, which requires the development of some form of subsidiary code. I am also of the view that such a code already exists in the form of the Accessible Rail Services Code of Practice*."

The ARA strongly supports certainty for the Rail Industry in the ability of the AHRC to certify compliance codes that will act as a full defence to claims of discrimination.

Going Forward

The ARA supports the overall aim of the Exposure Draft of the *Human Rights and Anti-Discrimination Bill 2012* and the work that has been put into developing the Exposure Draft legislation from the *Consolidation of Commonwealth Anti-Discrimination Laws: Discussion Paper*.

The ARA sees the Exposure Draft as an integral step in creating greater certainty for both industry and people with disabilities. The ARA also looks forward to the Senate Legal and Constitutional Affairs Committee's consultation phase and the opportunity to outline more of the Rail Industry's support for a co-regulatory approach and Accessible Rail Services Code of Conduct.

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Yours Sincerely

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