
AUSTRALASIAN RAILWAY ASSOCIATION SUBMISSION

To the

Australian Human Rights Commission

On the

Federal Guidelines:
Equivalent Access to Public Transport
Issues Paper



THE ARA

The Australasian Railway Association (**ARA**) is a not-for-profit member-based association that represents rail throughout Australia and New Zealand. Our members include rail operators, track owners and managers, manufacturers, construction companies and other firms contributing to the rail sector. We contribute to the development of industry and government policies in an effort to ensure Australia's passenger and freight transport systems are well represented and will continue to provide improved services for Australia's growing population.

The ARA thanks the Australian Human Rights Commission (**AHRC**) for the opportunity to provide this submission to *Federal Guidelines: Equivalent access to Public Transport*.

This submission has been developed in consultation with the ARA's Accessibility Working Group which is comprised of accessibility representatives from the following ARA members:

- Department of Planning, Transport and Infrastructure (**DPTI SA**)
- Metro Trains Melbourne (**MTM**)
- Public Transport Authority of Western Australia (**PTAWA**)
- Department of Transport, Victoria (**DoT**)
- Queensland Rail (**QR**)
- Sydney Trains / NSW Trains / Transport for New South Wales (**TfNSW**)
- V/Line
- Yarra Trams.

EQUIVALENT ACCESS

As a preliminary matter, it assists to identify the following relevant provisions of the *Disability Standards for Accessible Public Transport 2002 (Cth)* (**Transport Standards**) which relate to equivalent access:

A. Section 1.16 of the Transport Standards entitled 'Equivalent access' states:

- (1) Equivalent access is a process, often involving the provision of direct assistance, under which an operator or provider is permitted to vary the equipment or facilities that give access to a public transport service, so long as an equivalent standard of amenity, availability, comfort, convenience, dignity, price and safety is maintained.
- (2) Equivalent access does not include a segregated or parallel service.

B. Section 33.3 of the Transport Standards entitled 'Equivalent access' states:

- (1) Compliance with these Standards may be achieved by:
- a. Applying relevant specifications in these Standards before the target dates; or
 - b. Using methods, equipment and facilities that provide alternative means of access to the public transport service concerned (but not using separate or parallel services) with equivalence of amenity, availability, comfort, convenience, dignity, price and safety.
- (2) This may include direct assistance over and above that required simply to overcome discrimination.
- C. Section 33.4 of the Transport Standards entitled 'Consultation about proposals for equivalent access' states:
- The operator or provider of a public transport service must consult with passengers with disabilities who use the service, or with organisations representing people with disabilities, about any proposal for equivalent access.
- D. Clause 33.5 of the Transport Standards entitled 'Equivalent access without discrimination' states:
- Operators and providers must be able to demonstrate that equivalent access provides public transport without discrimination 'as far as possible'.

AHRC FOCUS QUESTIONS

1. Have you experienced challenges in providing, or receiving, equivalent access to public transport? If so, what were these challenges?

Save for providing direct assistance, the challenge in determining whether a proposal for equivalent access is actually a suitable alternative means of access to a public transport service requires an operator or provider to ensure that equivalence of amenity, availability, comfort, convenience, dignity, price and safety (**Seven Elements**) have all been met.

As each of the Seven Elements is vague and ambiguous, an operator or provider is at risk of a Court or Tribunal finding that the proposed equivalent access measure is deficient if any one of the Seven Elements is deemed to have not been adequately established. The lack of certainty, should a legal complaint be made, has led to operators or providers of public transport services being hesitant to enact the equivalent access provisions within the Transport Standards.

In addition to the lack of legal certainty, the challenges faced by operators or providers in providing equivalent access to public transport include:

- Ability to determine appropriate process for identifying equivalent access and verifying its validity.
- Knowing when and where equivalent access is best used rather than direct assistance.

- Distinguishing the difference between equivalent access and parallel services. For example, there is reluctance to develop on-demand services that could provide all passengers with greater access to public transport services while upgrade works are being undertaken, as such services could be considered to be a parallel service that is not permitted to be used as equivalent access under the Transport Standards.
- Defining what is considered "equitable" in practical terms.
- Existing legacy infrastructure and conveyances are difficult to modify and retrofit to meet requirements under the existing Transport Standards. In some cases, it is not practically achievable or cost effective. Without a true understanding of how equivalent access can be achieved (apart from direct assistance), little has been proposed.

Rail operators rely on funding allocations from State Governments to upgrade infrastructure and rolling stock to comply with the DSAPT. Like all Governments, State Governments have competing funding priorities which limit the funding made available for rail operators to invest in DSAPT-related improvements. Whilst the rail industry is experiencing once-in-a-generation levels of investment, much is for new stations, new rail lines and new rollingstock that whilst essential and built to be Transport Standards compliant, detract funding availability from existing infrastructure and rollingstock that requires retrofitting to be Transport Standards compliant.

2. What views, if any, do you have on how the terms equivalence, amenity, convenience and dignity should be defined when considering equivalent access under the Transport Standards?

The terms can be subjective and are interlinked. To decrease ambiguity, each of the Seven Elements must be better defined. The ARA recommends including examples to increase consistency in awareness and understanding of all terms. The ARA proposes:

- **Equivalence:** May be synonymous with 'alternative' but should be equal to or similar. It does not need to be the same process or requirement but should provide the same outcome.
- **Safety:** The state of being safe; freedom from injury or danger. Examples of design elements to consider include handrails, emergency call systems, hazard TGSIs, access to support, colour and luminance contrast, spatial dimensions, position of obstacles. The ARA also notes that safety must be consistent with the obligations of rail operators and providers under the Rail Safety National Law.
- **Amenity:** Agreeable features, circumstances, ways, etc; relates to the level of facility quality and availability for all; all features of public transport should provide a comfortable and pleasant experience to all passengers. Examples of design elements to consider include location and proximity of things like sanitary facilities and help points, ability to travel with companions, comfort, and enjoyment.
- **Availability:** The quality of being able to be used or obtained, at someone's disposal. Examples of design elements to consider include distances someone is required to travel, number and designation of priority seating and allocated spaces, the location of facilities relative to the accessible path of travel and the provision of information.
- **Comfort:** A state of ease, with freedom from pain and anxiety, and satisfaction of bodily wants. Examples of design elements to consider include unobstructed access paths, seating configuration, layouts allowing for ease of movement, temperature, location and the availability of sanitary facilities.

- **Convenience:** Public transport should be easy to use for all passengers; agreeable to needs or purpose; well-suited with respect to facility or ease in use; favourable, easy, or comfortable for use; the amount of time or effort that a user is required to engage with a service.
- **Dignity:** The right of a person to be valued and respected for their own sake, and to be treated ethically; may relate to both respect towards others but also through someone's perception; all passengers should have appropriate access to public transport so far as is reasonably practicable and be treated in a respectful way that places value on them as an individual; dignified access means a person can access a public transport service through good design and processes that are safe, comfortable and convenient. Examples of design elements to consider include appropriate movement for customers with disabilities, positioning of all facilities to promote inclusion, absence of segregated areas, means of space and seat designation (e.g. signage, floor markings), and the ability to travel with companions. Examples of process to consider include staff training, direct assistance provision and customer service.
- **Price:** The sum or amount of money or its equivalent for which anything is bought, sold, or offered for sale. For the purposes of equivalent access consultation, price should be interpreted from the customer's perspective, not as the difference in cost to the operator or provider between design options.

3. What information would you find useful in clarifying the meaning and application of equivalent access?

The rail industry proposes a number of elements that would be beneficial for all:

- **Terminology:** As mentioned above, the Seven Elements can be subjective. Establishing clear terms that include some sort of quantifier or examples in what equivalent access means would be helpful in creating larger awareness and understanding and therefore consistency of application. Specific examples of equivalent access solutions for the different parts of Transport Standards and clarity on the distinction between equivalent access and parallel services.
- **Framework:** Establishing a clear, practical framework or process that will help operators and providers to undertake adequate steps to ensure they have understood what makes an accessible and equitable journey, implemented an appropriate process to achieve equivalent access and gain certainty that an equivalent access proposal satisfies a provision of the Transport Standards.
- **Formal endorsement:** Provision of a formal endorsement when the framework or process has been followed would assist in providing certainty for all.
- **National register:** A register of recognised solutions in other jurisdictions would enable operators and providers to check if an alternative solution provides equivalent access, would assist in positive information sharing and increase understanding and consistent application.
- **Innovation and technology:** Clarity on how innovative technology can be utilised to provide the same intended outcome of a part of the Transport Standards that meet current customer usage trends.

4. What particular challenges face transport operators and providers in rural, regional and remote locations wishing to use equivalent access to achieve compliance with the Transport Standards?

Retrofitting existing infrastructure is costly and at times not possible within the station environment.

There is a responsibility and reputational consequence in the outputs of Government and Government expenditure which may sometimes result in a reluctance to commit large scale infrastructure in isolated and

extremely low patronage locations. In some instances, large scale infrastructure (e.g. lifts and bridges) would also be detrimental to the urban design context / community character of these remote places. As operators and providers are unable to provide para-transit services, there is reduced opportunity to provide improved accessibility.

5. Are you aware of examples of successful local or innovative arrangements for the provision of equivalent access?

The Queensland Department of Transport and Main Roads (**TMR**) have recently completed two equivalent access processes for the New Generation Rollingstock Train. Please contact TMR to confirm approval to use recent examples. Examples being (1) internal car layout and (2) internal car braille signage.

During major unplanned service disruptions, operators and providers utilise direct assistance to provide information. This is due to existing channels not being able to provide real time information/changes due to operational running. This means providing information in this format is required as an alternative to traditional channels.

Some operators are becoming accredited with the Communication Access Symbol. The process of becoming accredited with the Communication Access Symbol involves the development of communication tools, training of all frontline staff, a review of public facing documents and the development of passenger travel training tools to ensure that organisations and operators are able to provide an equivalent standard of customer service to passengers with communication disability.

On demand services are currently provided by many European and north American transport networks. For example, Toronto Transit Commission, provides equivalent access via an on-demand transport solution for all passengers providing step free journeys while they continue to work towards 100% compliance with accessibility legislation. In this way, no one is left behind.

The implementation of Bluetooth Beacon technology can be used to precisely locate users and provide audio instructions to support individuals with vision impairment navigate indoor and outdoor spaces. This technology could be applied to the broader public transport network to provide seamless door to door navigation for passengers with vision impairment.

6. Are you able to provide examples of local equivalent access arrangements for inclusion in the Guidelines? These can be de-identified if required.

See response to question five.

Through the ARA Accessibility Working Group, the rail industry was in the early stages of developing a 'Rail Industry Approach to achieving Equivalent Access'. The purpose of this document was to establish an agreed industry approach to provide Equivalent Access to provide functional outcomes for customers with disability where compliance with the Transport Standards cannot be achieved. This has been put on hold to contribute to the AHRC process and then pending the final document released by the AHRC, the ARA will recommence its process, building on the AHRC documentation.

7. As a transport operator or provider have you developed/considered developing a Disability Action Plan? Why/Why not?

Australian passenger rail services first began operating in Sydney, Melbourne and Adelaide in the mid-1850's, Brisbane in 1865 and Perth in 1881. As a result, Australian passenger train and tram networks include many heritage assets that were built a considerable time before the Transport Standards were introduced in 2002. Legacy rolling stock and infrastructure such as existing narrow, underground and curved platforms present significant challenges for operators and providers to meet the Transport Standards

Operators rely on funding allocations from State Governments to upgrade infrastructure and rolling stock to comply with the Transport Standards. Like all Governments, State Governments have competing funding priorities which limit the funding made available for rail operators to invest in Transport Standards related improvements.

Each ARA member has or service provider have or are in the process of developing a Disability Action Plan that outlines accessibility improvements, including infrastructure and rolling stock upgrades that are required to comply with the Transport Standards and/or provide functional access outcomes. Funding has been and continues to be a challenge for operators and providers to transition their extensive networks to compliance with the Transport Standards.

Specifically:

- **DPTI SA:** The DPTI Disability Access and Inclusion Plan is currently under development.
- **Department of Transport, Victoria:** The Accessible Public Transport Action Plan 2019 – 2023 is in the final stages of approval. This will replace the previous disability action plan.
- **MTM:** MTM has an Accessibility Action Plan with a three-year span that communicates MTM's program of works to increase network accessibility. This document is informed heavily by reviewing passenger feedback, engaging disability stakeholders and collaboration with wider Victorian operators and providers of public transport services.
- **PTAWA:** The PTA has an approved Disability Access and Inclusion Plan as required under the state's Disability Services Act (1993), the plan has an annual reporting requirement. The plan outlines strategy and task to meet seven outcomes so that:

People with disability have the same opportunities as other people to

- access services,
- access buildings and other facilities,
- receive information in a format that will enable them to understand the information,
- receive the same level and quality of service from staff,
- make complaints,
- participate in any public consultation,
- obtain and maintain employment.

- **QR:** has had an Accessibility Action Plan since 2007.
- **TfNSW:** is currently implementing its second Disability Inclusion Action Plan 2018-2022. This Plan sets the direction for the Transport Cluster in progressively removing the barriers experienced by people with disability in accessing services. The five strategic objectives of the Plan include:
 1. Deliver barrier – free end to end journeys for all customers
 2. To build accessibility into our business processes and systems
 3. To provide accessible planning and cutting-edge assistive technology
 4. To ensure people with disability influence the future of transport in NSW
 5. To establish the Transport cluster as an employer of choice for people with disability.
- **V/Line:** has had an Accessibility Action Plan (AAP) since 2012 and is set to release its next plan for 2019-2022 in the next month. These plans have been fundamental in guiding how V/Line supports our customers accessing our services and adherence to the Transport Standards.
- **Yarra Trams:** has had an active Accessibility Action Plan since 2013 to demonstrate their commitment to improving access for all passengers. An Easy English translation of the Accessibility Action Plan will also be available as a companion to this document.

8. What are your views on how public transport operators and providers should consult with passengers with disability and/or organisations representing people with disability on the provision of equivalent access?

Section 33.4 of the Transport Standards requires the operator or provider to consult with passengers with disabilities who use the service, or with organisations representing people with disabilities, about any proposal for equivalent access.

That aside, that rail industry views consultation with disability groups or individuals as vital to achieving any equivalent access proposal. Passengers with disability and organisations representing people with disability should be consulted as subject matter experts on the provision of equivalent access. Consultation should be sought as standard procedure and occur throughout the development and implementation of any new initiatives.

Consultation is absolutely essential to the development of any equivalent access arrangement. Operators and providers of public transport services would benefit from these guidelines providing information about how to assess/demonstrate that the arrangement proposed actually meets the requirements of equivalent access. Consultation with passengers with disability and/or organisations representing people with disability would be improved if the AHRC endorsed jurisdictional Accessibility Reference Groups to formalise an equivalent access proposal. Such endorsement by the AHRC of the consultation process with jurisdictional Accessibility Reference Groups would provide greater comfort to operators and providers of public transport services that an equivalent access proposal does satisfy the Seven Elements of equivalent access and meets the intent of the Transport Standards.

In addition, individual needs are required to be taken into consideration. The considerations of users and organisations representing these groups should be taken into account when developing an equivalent access

provision – but care needs to be taken to ensure a rounded view is used and that the ongoing implications are understood.

It is also important to consider these views but ensure that other factors such as workplace health and safety are considered as provision of equivalent access may have unforeseen impacts on other areas/operational systems, e.g. by providing direct assistance with a ramp need to consider the WHS implications, what this means to dwell management, and infrastructure constraints in deployment.

9. Are you aware of any cases of equivalent access being used to achieve compliance with the Transport Standards?

Apart from the provision of direct assistance, the rail industry is only aware of TMR's consultation process for their new train upgrades.

10. Are you able to contribute any case studies or scenarios for the purpose of inclusion in the Guidelines? These can be de-identified if necessary.

See response to question five.

11. What would be the most useful way to provide information to operators and providers about best-practice examples of equivalent access?

The Commonwealth Government's Whole of Journey Guideline was a useful way to demonstrate examples of good access. However, in relation to equivalent access, the establishment of a practical, clear framework or process that can be followed by operators and providers to provide equivalent access will be vital. Clear terminology will assist in ensuring consistent application.

Visibility of a national register of formalised or recognised equivalent access solutions, accessible online would benefit all and assist in greater take-up of equivalent access measures. This would also assist in the provision of information through a centralised location, (which could be via the AHRC website), that could be easily accessed by all operators and providers of public transport services.

12. Are there any other elements that you consider should be included in the Guidelines?

Most importantly, customers travel needs must be met. The establishment of an equivalent access guideline should provide operators and providers of public transport services with a clear, robust framework to follow and therefore have confidence that an equivalent access solution satisfies the provision of Transport Standards, allowing solutions to be identified outside the prescriptive nature of Transport Standards.

The AHRC should empower representatives, through Accessibility Reference Groups, to determine that a solution meets the criteria of equivalent access. This solution should then be communicated via a register for best practice learnings.

An equivalent access framework would be reinforced through formal endorsement. The establishment of a national independent body that could act as a third party, responsible for independently reviewing equivalent access processes to determine whether equivalent access has been met would benefit all stakeholders in achieving equivalent access.

In addition, it is important to note that the equivalent access provisions will potentially be similar and relatable to performance solutions under the National Construction Code (NCC) /Building Code Australia. As the modernisation process for stations continues, this should align with performance-based outcomes rather than prescriptive requirements.

As transport infrastructure is also governed under the requirements of the NCC/Access to Premises requirements, adopting a similar performance solutions process should be adopted to ensure synergies and alignment in differing requirements. The Guideline/Framework for Equivalent Access once finalised should be a key input to the modernised Transport Standards.