

1 February 2012

## Submission to the Attorney-General's Department in Response to the Consolidation of Commonwealth Anti-Discrimination Laws: Discussion Paper

### The Submission

1. This submission deals specifically with the *Complaints and Compliance Framework* section of the Discussion Paper.

### A Scheme of Co-Regulation

2. In the Discussion Paper, the Attorney-General's Department asserts that another mechanism that could achieve greater certainty for business is a scheme of co-regulation. Co-regulation is defined here as a form of self-regulation by an industry or organisation carried out in conjunction with Government. A co-regulatory approach would normally allow for industry codes or other mechanisms developed by industry bodies to supplement the law, and these codes and mechanisms may be monitored or validated by a government regulator.

### Our Policy Position

3. The Australasian Railway Association (ARA) strongly supports a co-regulatory approach in relation to compliance with Commonwealth anti-discrimination law. The ARA believes that a scheme of co-regulation will make obligations clearer for transport operators and providers to understand and apply within the particular industry environment. This will in turn allow for greater compliance with the law.
4. In the rail industry context, the current 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. 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 Transport and Premises Standards are argued to be unclear and confusing.

### Media Contact

Emma Woods  
+61 2 6270 4512  
+61 4 3820 9588  
ewoods@ara.net.au  
www.ara.net.au

## The Accessible Rail Services Code of Practice

5. In order to document practical and achievable solutions to these issues and pursue the co-regulatory approach to accessible service provision, the Australian rail industry has developed the Accessible Rail Services Code of Practice (Code) (attached). 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). This approach is in line with the Attorney-General's Department's view that a co-regulatory approach in the context of anti-discrimination law could involve an industry working with the AHRC and affected stakeholders to provide industry-specific detail to existing obligations.
6. The Code aims to provide certainty in the application of the functional and performance requirements of the 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.
7. 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 DDA.
8. 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.
9. The development of the Code is now complete and published by the RISSB. The ARA is in the process of seeking legal recognition of this Code as a compliance mechanism under the DDA.

## Support for a Co-Regulatory Approach in the Context of Compliance with Commonwealth Anti-Discrimination Law

10. It also should be noted that co-regulation approach in disability access provision is widely endorsed. The Productivity Commission's Review of the Disability Discrimination Act 1992, (provided to Government in May 2004) stated that:

### Media Contact

Emma Woods  
+61 2 6270 4512  
+61 4 3820 9588  
ewoods@ara.net.au  
www.ara.net.au

*“The benefits of co-regulation, particularly its flexibility to deal with a variety of different circumstances and changes over time, are compelling. The Commission is not suggesting that it be mandatory for industry organisations to formulate and implement codes of conduct, just that this form of regulation be an option.*

*The Commission considers that HREOC should be able to approve and register codes of conduct, including dispute resolution mechanisms, subject to criteria such as consistency with the objects of the DDA and adherence to good regulatory practice. Consultation is fundamental to developing good regulation, including codes of conduct. Codes of conduct should be certified only after organisations have consulted with stakeholders, including people with disabilities and relevant government departments and agencies.”*

11. More recently, Recommendation 3 of the recent review of the Transport Standards by Allen Consulting Group (2011) outlines 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 calls for the development of some form of an 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.”*

12. The Code only addresses passenger rail services. The ARA represents the key rail operators, providers and manufacturers throughout Australia. Significant commonality to support a co-regulatory approach by the rail industry has been demonstrated by the development and application of common rail standards in many areas including rail safety, railway operations and railway infrastructure.

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www.ara.net.au

## Co-Regulation in other areas of Law

13. It should also be noted that systems of co-regulation can be found in a number of other Commonwealth Laws including Privacy laws (*Privacy Act 1988*), Taxation Administration laws (*Taxation Administration Act 1953*) and the Broadcasting laws (*Broadcasting Services Act 1992*).

## Summary

14. The ARA is supportive of a co-regulatory approach when it comes to compliance with Commonwealth anti-discrimination law. The submission argues that a co-regulatory approach would allow rail operators and providers to achieve functional and performance based access solutions specific to and appropriate for the rail industry. The co-regulatory approach would also allow greater certainty for both passengers and the industry in terms of disability access provision.

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Emma Woods  
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