

AUSTRALIAN HUMAN RIGHTS COMMISSION

DISABILITY DISCRIMINATION ACT 1992 (Cth), Section 55

DISABILITY STANDARDS FOR ACCESSIBLE PUBLIC TRANSPORT 2002 (Cth), Section 33A.1

NOTICE OF DECISION ON APPLICATION FOR TEMPORARY EXEMPTION: TRANSPORT FOR NSW

The Australian Human Rights Commission gives notice of its decision regarding an application made by Transport for NSW (TfNSW) for a temporary exemption pursuant to s 55 of the *Disability Discrimination Act 1992* (Cth) (DDA) and s 33A.1 of the *Disability Standards for Accessible Public Transport 2002* (Cth) (Transport Standards).

1 DECISION ON APPLICATION FOR EXTENTION OF INITIAL NEGOTIATION PERIOD

- 1.1 TfNSW is an agency of the New South Wales Government and describes itself as 'the lead agency of the NSW Transport cluster'. The role of TfNSW is to 'lead the development of a safe, efficient, integrated transport system'.
- 1.2 On 3 November 2017, TfNSW sought a temporary exemption from compliance with the Transport Standards in relation to infrastructure at Birchgrove Ferry Wharf (Birchgrove Wharf). In particular, it sought a temporary exemption from compliance with ss 2.1 and 2.2 of the Transport Standards in relation to 'the access path connecting the landside from Louisa Road entrance to the Birchgrove Wharf landside shelter'. The access path from Louisa Road to Birchgrove Wharf runs through land owned by Inner West Council (IWC).
- 1.3 On 3 May 2018, the Commission decided to:
 - (a) Grant an initial exemption for 6 months without conditions, which may be extended by the Commission for a further period of up to 3 months, to allow TfNSW and IWC to continue to negotiate in relation to an appropriate solution that improves access to Birchgrove Wharf for people with disabilities.
 - (b) Grant a conditional exemption for a further 24 months, to allow the implementation of an agreed solution, on the conditions that:
 - i. TfNSW confirms in writing to the Commission during the initial negotiation period that agreement has been reached with IWC about how to improve access to Birchgrove Wharf for people with disabilities and describes the nature of the agreed solution; and
 - ii. the agreed solution would provide access in a way that is compliant with the DDA and the Transport Standards.
- 1.4 Prior to making this decision, the Commission:
 - 1.4.1 wrote to TfNSW and requested further information and documents

- 1.4.2 called for submissions about the application's merits and commenced a six-week public consultation period which involved:
- publishing the application and the further information and documents on its website, and calling for public submissions
 - writing to State and Territory anti-discrimination bodies, inviting them to make submissions
 - writing to a number of peak bodies representing people with disability, inviting them to make submissions, and
 - writing to APTJC inviting its members to make submissions
- 1.4.3 considered the submissions it received during the public consultation process and published copies of these submissions on the Commission's website
- 1.4.4 issued a preliminary view to the parties, provided a copy to the people and organisations that had made a submission in relation to the application, and published a copy on the Commission's website
- 1.4.5 considered the response by TfNSW to the preliminary view. The Commission did not receive any other responses to its preliminary view.
- 1.5 A copy of the Commission's decision was published in the Gazette. At the time the decision was made, the terms of the decision anticipated that the Commission would have the discretion to extend the initial exemption period by a further 3 months. No interested party has sought to challenge this decision by the Commission.
- 1.6 On 30 October 2018, TfNSW wrote to the Commission noting that it had engaged with IWC in the development of suitable options that meet requirements under the Transport Standards. TfNSW sought a further period of 3 months to continue discussions with IWC to reach agreement on a compliant solution. TfNSW said that it had been informed by IWC that a determination on options presented may not be reached until February 2019.
- 1.7 The initial exemption period expired on 3 November 2018. A 3 month extension would extend the initial exemption period to 3 February 2019.
- 1.8 As the Commission noted in its initial decision, it is clear, given the circumstances of the site, that an accessible solution can only be provided as a result of agreement between TfNSW and IWC.
- 1.9 In light of the request from TfNSW for an extension of the initial exemption period and its assurance that it has engaged with IWC in relation to the development of accessible solutions, the Commission is satisfied that it is appropriate to extend the initial exemption period by 3 months to 3 February 2019.
- 1.10 Pursuant to s 56 of the DDA and s 33A.4 of the Transport Standards, and subject to the *Administrative Appeals Tribunal Act 1975* (Cth), an application may be made to the Administrative Appeals Tribunal for a review of the decision to which this notice

relates by or on behalf of any person or persons whose interests are affected by the decision.

Emeritus Professor Rosalind Croucher AM
President
on behalf of the Commission

12 November 2018

SCHEDULE ONE

NOTICE OF GRANT OF TEMPORARY EXEMPTION

The Commission grants to Transport for NSW (TfNSW), on the terms and conditions set out in this schedule, a temporary exemption to ss 2.1 and 2.2 of the Transport Standards.

As well as the terms and conditions specified below, this exemption is granted subject to the condition that the Commission may, on its own motion, revoke the exemption if it becomes satisfied that the exemption is no longer justified.

The exemption is granted for an initial period until 3 February 2019 and then for a further period of 24 months if the conditions specified in the exemption are satisfied.

Pursuant to s 34.1(1) of the Transport Standards, the Transport Standards are subject to review every five years. If, at any time following this decision, the Transport Standards are remade in an amended form, any exemption granted from a section of the Standards that is amended will cease operation at the time the amendment comes into effect.

The relevant standards are reproduced below, followed by the exemption that is granted and the terms and conditions to which the grant is subject.

EXEMPTION FROM SECTIONS 2.1 and 2.2 OF THE TRANSPORT STANDARDS

2.1 Unhindered passage

- (1) An access path that allows unhindered passage must be provided along a walkway, ramp or landing.
- (2) An access path must comply with **AS1428.2 (1992) Clause 8.1**.

Premises
except premises to
which the Premises
Standards apply

Infrastructure
except airports that
do not accept regular
public transport
services

2.2 Continuous accessibility

An access path must comply with **AS1428.2 (1992) Clause 7**, *Continuous accessible path of travel*.

Premises
except premises to
which the Premises
Standards apply

Infrastructure
except airports that
do not accept regular
public transport
services

Temporary exemption: ferry infrastructure

Until 3 February 2019, TfNSW is exempt from compliance with ss 2.1 or 2.2 of the Transport Standards in relation to Birchgrove Wharf. This exemption is granted without conditions, to allow TfNSW and Inner West Council (IWC) to continue to negotiate in relation to an appropriate solution that improves access to Birchgrove Wharf for people with disabilities.

From the end of the initial negotiation period described above, TfNSW is exempt from compliance with ss 2.1 or 2.2 of the Transport Standards in relation to Birchgrove Wharf for a further period of 24 months, on condition that:

- (a) TfNSW confirms in writing to the Commission by the end of the negotiation period that agreement has been reached with IWC about how to improve access to Birchgrove Wharf for people with disabilities and describes the nature of the agreed solution; and
- (b) the agreed solution would provide access in a way that is compliant with the DDA and the Transport Standards.

EXEMPTIONS FROM THE DISABILITY DISCRIMINATION ACT

The Commission also grants to TfNSW an exemption from ss 23 and 24 of the DDA as follows:

If:

- a matter is regulated by ss 2.1 or 2.2 of the Transport Standards, and
- ss 2.1 or 2.2 of the Transport Standards are subject to an exemption granted by this instrument, and
- TfNSW complies with any conditions subject to which this exemption is granted

TfNSW is, with respect to that matter, exempt from the operation of ss 23 and 24 of the DDA.