

AUSTRALIAN HUMAN RIGHTS COMMISSION

DISABILITY DISCRIMINATION ACT 1992 (Cth), Section 55(1) DISABILITY STANDARDS FOR ACCESSIBLE PUBLIC TRANSPORT 2002 (Cth), Section 33A.1(2)

NOTICE OF DECISION ON APPLICATION FOR TEMPORARY EXEMPTIONS: AUSTRALASIAN RAILWAY ASSOCIATION

By this instrument, the Australian Human Rights Commission ('the Commission') gives notice of its decision in relation to an application made by the Australasian Railway Association ('the ARA') for temporary exemptions pursuant to section 55(1) of the *Disability Discrimination Act 1992* (Cth) ('DDA') and section 33A.1 of the *Disability Standards for Accessible Public Transport 2002* (Cth) ('DSAPT').

1 BACKGROUND

- 1.1 On 22 January 2007 and 5 November 2007, the Commission granted members of the ARA a number of exemptions from the DDA and the DSAPT pursuant to sections 55(1) and 55(1A) of the DDA ('the 2007 exemptions'). The decisions granting these exemptions ('the 2007 decisions') are available on the Commission website at <https://www.humanrights.gov.au/our-work/legal/exemptions/exemptions-under-disability-discrimination-act>.
- 1.2 The effect of the 2007 exemptions was extended by further exemptions granted by the Commission on 7 January 2010, 7 September 2010, and 1 February 2012.
- 1.3 The exemptions granted on 1 February 2012 will expire on 31 December 2013.

2 THE APPLICATION

- 2.1 The ARA has now made an application on behalf of its members ('members of the ARA'), for temporary exemptions from the DDA and the DSAPT:
 - 2.1.1 exempting members of the ARA from the operation of the DSAPT and certain obligations arising under the DDA for a period of five years, on the condition that they comply with a proposed National Code of Practice for Accessible Rail Services;
 - 2.1.2 in the alternative:
 - 2.1.2.1 extending the effect of the exemptions that are currently in force for a period of 5 years;

2.1.2.2 granting a number of exemptions previously applied for by the ARA, which the Commission decided not to grant on 22 January 2007; and

2.1.2.3 granting a new exemption relating to the provision of boarding devices at accessible entrances to trains;

(collectively, the 'primary application').

2.2 The Commission has advised the ARA that no decision in relation to the primary application will be made before 31 December 2013 when the exemptions granted on 1 February 2012 expire. That is because:

2.2.1 the Commission has requested that the ARA supply a substantial amount of supporting material. It will take the ARA time to collate and provide that information;

2.2.2 the Commission considers it desirable to conduct public consultations with respect to the primary application. On the basis of the Commission's experience in conducting public consultations prior to the grant of the 2007 exemptions, the Commission expects the consultation process will take some time.

2.3 Following the receipt of the Commission's advice, the ARA made a second application for temporary exemptions (the 'interim application'). In this application, the ARA has asked the Commission to grant new exemptions in the same form as the 2007 exemptions, to continue in force until such time as the Commission makes a decision with respect to the primary application.

2.4 For the reasons below, the Commission has decided to grant the exemptions sought in the interim application for a period of six months.

3 DECISION OF THE COMMISSION

3.1 The Commission has decided to grant to members of the ARA a number of temporary exemptions as follows:

3.1.1 Pursuant to section 55(1) of the DDA and section 33A.1(2) of the DSAPT, the Commission grants members of the ARA temporary exemptions from the operation of sections 23 and 24 of the DDA and from the DSAPT in the same terms as the exemptions set out in Schedule One of its decision dated 22 January 2007 (available at <https://www.humanrights.gov.au/australasian-railways-association>).

3.1.2 Pursuant to section 55(1) of the DDA and section 33A.1(2) of the DSAPT, the Commission grants members of the ARA temporary exemptions from the operation of sections 23 and 24 of the DDA

and from the DSAPT in the same terms as the exemptions set out in Schedule 1 of its decision dated 5 November 2007 (relating to “Carriage and Stowage of Mobility Aids”) (available at <https://www.humanrights.gov.au/australasian-railways-association-carriage-and-stowage-mobility-aids-and-transfer-and-mobility-aids>).

3.1.3 Pursuant to section 55(1) of the DDA and section 33A.1(2) of the DSAPT, the Commission grants members of the ARA a temporary exemption from the operation of sections 23 and 24 of the DDA and from the DSAPT in the same terms as the exemption set out in Schedule 1 of its decision dated 5 November 2007 (relating to “Direct Assistance in Ascending and Descending Boarding Ramps”) (available at <https://www.humanrights.gov.au/australasian-railways-association-direct-assistance-ascending-and-descending-boarding-ramps>).

3.1.4 Regardless of any time periods expressed in the 2007 decisions, the exemptions granted in this decision are granted for a period of six months, commencing on 1 January 2014 and expiring on 30 June 2014. However, in the event a decision is made with respect to the primary application prior to 30 June 2014, the exemptions granted in this decision will cease to have effect at that time.

4 CONSIDERATION AND REASONS

4.1 In making its decision, the Commission had regard to the following:

4.1.1 the terms and objects of the DDA;

4.1.2 the DSAPT; and

4.1.3 the Disability Standards for Accessible Public Transport Guidelines 2004 (No 3).

4.2 Pursuant to section 33A.1(4) of the DSAPT, the Commission has consulted the Accessible Public Transport Jurisdictional Committee about the interim application. On 12 December 2013, the Accessible Public Transport Jurisdictional Committee advised that it supports the grant of the exemptions sought in that application.

4.3 The Commission intends to undertake a comprehensive public consultation process with respect to the primary application. For that reason the Commission has determined that it is not necessary to conduct further consultations with respect to the interim application. In all the circumstances, the Commission considered that it was not reasonably practicable to do so.

- 4.4 The Commission notes that extensive consultations were conducted with respect to the 2007 exemptions, and relies on those consultations for the purposes of this interim application. Those consultations are described in:
- 4.4.1 Schedule 3 of the Commission's decision of 22 January 2007;
 - 4.4.2 Schedule 2 of the Commission's decision of 5 November 2007 (relating to "Direct Assistance in Ascending and Descending Boarding Ramps");
 - 4.4.3 Schedule 2 of the Commission's decision of 5 November 2007 (relating to "Direct Assistance in Ascending and Descending Boarding Ramps").
- 4.5 The Commission considers that the grant of the exemptions will provide increased certainty of obligations of members of the ARA pending the Commission's decision with respect to the primary application.

5 REVIEW OF DECISION

- 5.1 Subject to the *Administrative Appeals Tribunal Act 1975*, 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.

Dated this 19 day of December 2013

A handwritten signature in black ink, appearing to read "Gillian Triggs". The signature is fluid and cursive, with a long horizontal stroke at the bottom.

Signed by the President, Professor Gillian Triggs, on behalf of the Commission.