

## **Summary of the Australian Human Rights Commission's preliminary view on the application by Transport for NSW for a temporary exemption in relation to Birchgrove Ferry Wharf**

The Australian Human Rights Commission has today issued a preliminary view on the application by Transport for NSW (TfNSW) for a temporary exemption to the *Disability Discrimination Act 1992* (Cth) and the Disability Standards for Accessible Public Transport 2002 (Cth) (Transport Standards).

TfNSW seeks a temporary exemption from compliance with the Transport Standards in relation to infrastructure at Birchgrove Ferry Wharf (Birchgrove Wharf). In particular, it seeks a temporary exemption from compliance with sections 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'.

New infrastructure that is brought into use after the commencement of the Transport Standards must comply with the standards. This is an application for an exemption in relation to existing infrastructure (rather than new infrastructure). The Transport Standards provide that access paths for public transport infrastructure must be made compliant progressively, with full compliance required by 31 December 2022.

The access path from Louisa Road to Birchgrove Wharf runs through land owned by Inner West Council (IWC). TfNSW seeks an exemption for a period of five years for a number of reasons including to allow for further negotiation with IWC about an accessible solution.

In forming its preliminary view, the Commission considered the views contained in 12 submissions received from individuals, government agencies and disability advocacy organisations. A common theme through almost all of the submissions was the need for TfNSW and IWC to negotiate an accessible outcome as a matter of priority. Both parties have expressed a willingness to continue to negotiate. It is clear, given the circumstances of the site, that an accessible solution can only be provided as a result of agreement.

The Commission is of the preliminary view that it will:

- (a) Grant an initial exemption for 6 months without conditions, 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 18 months, to allow the implementation of an agreed solution, on the conditions that:
  - i. TfNSW confirms in writing to the Commission during the initial 6 month 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.

If agreement on an accessible solution is not reached within 6 months, then the further exemption period would not apply; and if the agreed solution was not

compliant with the Transport Standards then the further exemption period would not apply. In those circumstances, people with disability would retain their right to make a complaint, and TfNSW would retain the right to rely on equivalent access or unjustifiable hardship provisions if applicable.

Decisions about the timing and manner in which the access path from Louisa Road to Birchgrove Wharf is upgraded are matters for TfNSW and IWC. The Commission's role in the matter is to decide on whether the applicant should be exempt from the ordinary application of anti-discrimination law.

Interested parties have until 4 April 2018 to provide a response to the Commission's preliminary view. Submissions should preferably be made in electronic format, and emailed to [legal@humanrights.gov.au](mailto:legal@humanrights.gov.au).

21 March 2018

*Please note that this statement is not intended to be a substitute for the reasons of the Commission as set out in its preliminary view or to be used in any later consideration of the Commission's reasons.*