

**AUSTRALIAN HUMAN RIGHTS COMMISSION
DISABILITY DISCRIMINATION ACT 1992 (CTH), s 55(1)
DISABILITY STANDARDS FOR ACCESSIBLE PUBLIC TRANSPORT, s 33A.1
NOTICE OF GRANT OF A TEMPORARY EXEMPTION**

By this instrument, under section 55(1) of the *Disability Discrimination Act 1992* (Cth)(DDA) and section 33A.1 of the Disability Standards for Accessible Public Transport 2002 (Transport Standards), the Australian Human Rights Commission grants an exemption to Brisbane City Council from the operation of section 23 of the DDA and Part 11 of the Transport Standards as specified in the instrument.

The exemption is granted for a period of five years from the date of this instrument and is subject to the condition outlined below.

SUMMARY

Brisbane City Council operates Brisbane Transport (BT). BT provides a public transport service with a fleet of over 1225 buses.

BT requested that the Commission grant an exemption to it to allow it to provide a public transport service with a number of buses that do not comply with Part 11 of the Transport Standards in relation to handrails and grabrails.

The Commission has granted an exemption to BT from section 23 of the DDA and Part 11 of the Transport Standards as specified in this instrument. The exemption is granted for a period of five years.

The exemption is granted subject to the condition that BT retires the buses that do not comply with Part 11 of the Transport Standards in accordance with the schedule below. Further, within three months of the conclusion of the exemption period, BT is required to modify any of its buses with which it is providing a public transport service that do not comply with Part 11 of the Transport Standards.

BACKGROUND

BT advises that it provides a public transport service with a number of buses that do not comply with Part 11 of the Transport Standards relating to handrails and grabrails. BT advises that these are older buses that were manufactured before the commencement of the Transport Standards.

The Application

BT requested an exemption from section 23 of the DDA and Part 11 of the Transport Standards to allow it to continue to provide a public transport service with the buses that do not comply with Part 11 of the Transport Standards.

BT submits that the Commission should grant the exemption for several reasons. BT advises that the non-compliant buses are currently fitted with the required number of handrails and grabrails that are correctly positioned and orientated. BT advises that the non-compliance with the Transport Standards is technical in nature and relates to the minimum diameter of the handrail or grabrail and/or the minimum gap from an adjacent surface.

BT has provided the Commission with an Action Plan which outlines how it intends to limit the use of buses that do not comply with Part 11 of the Transport Standards. BT states that it will accelerate the retirement date of the non-compliant buses.

BT states that it has a practice of using its newer buses more frequently than its older buses. BT advises that all high volume and high frequency services are performed almost exclusively by late model low floor buses that are DDA compliant.

BT states that modification of the non-compliant buses to comply with Part 11 of the Transport Standards would require the replacement of all door grab rails and for some buses, the grab handle located at the pay point.

BT contends that it would incur a significant cost if it were required to make the non-compliant buses comply with Part 11 of the Transport Standards. BT states that new parts would be required as modification of existing components is not viable.

BT submits that granting the exemption would have little impact on people who are most in need of handrails and grabrails on buses. BT notes that handrails and grabrails are in fact present on the non-compliant buses and claims that passengers are not affected by the technical non-compliance of the buses in question. BT states that it has received no reports of injuries resulting from the non-compliant handrails and grabrails.

Submissions received by the Commission

BT's request for a temporary exemption was posted on the Commission's website and interested parties were invited to comment on the exemption. The Commission received three submissions in response to the Application.

The submission from the Anti-Discrimination Commission Queensland (ADCQ) did not express a view on the substance of the exemption application but expressed a view about the process that the Commission should follow in determining the application. ADCQ noted article 4 of the *United Nations Convention on the Rights of Persons with Disabilities* which provides that States will closely consult and actively involve persons with disabilities in the development and implementation of legislation and policies to implement the Convention and in other decision making processes concerning issues relating to persons with disabilities.

The ADCQ recommended that prior to the granting of the exemption, the Commission should require BT to establish a community reference group consisting of representatives from groups that represent persons who may be particularly impacted by the exemption. The ADCQ submitted that BT should consult with this group and the terms of any exemption granted by the Commission should reflect the views of this group.

The Commission received a submission from the Accessible Public Transport Jurisdictional Committee (APTJC). APTJC advises that its members concluded that the exemption sought by BT was 'a reasonable request'.

APTJC noted that non-compliance with Part 11 of the Transport Standards does not prevent passengers from entering or exiting the bus and that the existing handrails and grabrails offer a level of assistance for all customers including those with reduced or inhibited fine motor control and/or reduced ability to grip or grasp objects.

APTJC noted that the non-compliance with the Transport Standards in relation to the diameter of handrails is small, in most cases 10 millimetres.

APTJC noted that BT has proposed a retirement scheme for the non-compliant buses and that the non-compliant buses will progressively be removed from service. APTJC noted that the costs of modifying the buses would be significant but that the investment would not result in any material increase in the accessibility of the vehicles.

APTJC also recommended that BT directly consult with people with a disability and older people to determine whether the handrails and grabrails are posing a barrier to accessing public transport. APTJC stated that its support for BT's application is on the basis that such consultation is conducted.

The Spinal Injuries Association of Australia (SIAA) also made a submission on BT's application. SIAA supported the granting of the exemption because the existing diameter of the handrails and grabrails and stand-off gap is not likely to prevent a person from accessing BT's service.

Further information from BT

In February 2013 the Commission sought further information from BT. The Commission asked BT how it formed the view that people with a disability would not be impacted by the non-compliance of some of its buses with Part 11 of the Transport Standards. The Commission asked what, if any, consultation BT conducted with people with a disability in order to form this view.

BT advised that it consulted with Council's Access and Disability Coordinator about the exemption application. BT advised that based on the assessment of the Access and Disability Coordinator and the fact that the non-complying buses do in fact have handrails and will soon be retired, it did not consider that further consultation was necessary.

BT advised that there are a number of ways that individuals can provide feedback to BT about its public transport service and that it has never received a complaint about non-complying handrails or grabrails.

BT stated that if any of the buses that do not comply with Part 11 of the Transport Standards were required after the conclusion of the exemption period, BT would either modify the buses to comply with Part 11 of the Transport Standards or reassess whether the buses were essential to operations. BT advised that it is highly likely that it will retire all buses in question within the five year period.

BT stated that in addition to bus retirements, it is putting into service approximately 360 buses over four years. BT advises that these buses are fully compliant with the Transport Standards and will further reduce BT's average bus age.

BT advised that it is committed to DDA compliance and advised that it will retire all high floor buses by 2016 which is at least six years ahead of the time required by the DDA.

RELEVANT LAW

Disability Discrimination Act 1992 (Cth)

The Commission may grant exemptions from the provisions of Division 1 or 2 of the DDA.¹ An exemption may be granted subject to terms and conditions and may be expressed to apply only in particular circumstances or to particular activities.² Exemptions are to be granted for a specified period not exceeding five years.³ It is not unlawful for a person to act in accordance with an exemption.⁴

It is unlawful to discriminate on the ground of disability in access to premises.⁵ Section 23 of the DDA is located in Division 2 of Part 2 of the DDA. It is also unlawful under the DDA to contravene a disability standard.⁶

Transport Standards

The DDA empowers the Minister to make disability standards.⁷ The purpose of the Transport Standards is to enable public transport operators and providers to remove discrimination from public transport services.⁸ The Transport Standards apply to operators and providers of conveyances. A conveyance includes a bus.⁹

The Commission may grant an exemption from compliance with some or all of the Transport Standards.¹⁰ Before granting an exemption from the Transport Standards the Commission must consult with APTJC and may consult with any other body or person that the Commission considers appropriate to consult.¹¹

An exemption granted by the Commission from the Transport Standards may not be granted for a period of more than five years.¹² A person does not contravene the Transport Standards if the person's failure to comply with the Transport Standards is in accordance with an exemption.¹³

The Transport Standards state that operators and providers must comply with the Transport Standards in relation to new conveyances from the date on which the Transport Standards came into effect.¹⁴ The Transport Standards came into effect on 23 October 2002.

For conveyances that were in use when the Transport Standards commenced and remain in use, operators and providers must become compliant with the Transport Standards in accordance with Schedule 1 of the Transport Standards.¹⁵

Part 11 of the Transport Standards outlines the requirements for handrails and grabrails. Sections 11.3 to 11.7 of the Transport Standards require that handrails and grabrails in conveyances comply with the specified Australian Standard. Standards are published documents setting out specifications and procedures designed to ensure products, services and systems are safe, reliable and consistently perform the way they were intended to.

Section 2.2 of Schedule 1 of the Transport Standards required full compliance with the relevant standard relating to handrails and grabrails for conveyances that were in use when the Transport Standards commenced by 31 December 2012.

REASONS FOR DECISION

The Commission has considered all of the material that has been placed before it, together with the Commission's Guidelines on Temporary Exemptions under the DDA, and has decided to grant the Application for a period of five years, subject to the condition that BT retires the buses that do not comply with Part 11 of the Transport Standards in accordance with the following schedule.

Bus Type	Number possessed	Year of retirement
Volvo B10m Metroliner	125	2015
Volvo B10L	59	2016
Scania Gas L94UB	122	2018
Total	306	

Since lodging its application for an exemption with the Commission, BT has retired 15 buses which did not comply with Part 11 of the Transport Standards. BT advises that as at April 2013 it operates 346 buses that do not comply with Part 11 of the Transport Standards.

In addition to the buses referred to in the schedule above, BT also operates 40 Mercedes 500LE buses. BT proposes to retire these buses in 2019. It is a further condition of this exemption that within three months of the conclusion of this exemption, BT will modify any of its buses that do not comply with Part 11 of the Transport Standards to comply with Part 11 of the Transport Standards.

The Commission considers that it is reasonable to grant an exemption to Brisbane City Council for the following reasons.

The Commission notes that handrails and grabrails are in fact present in the buses that do not comply with Part 11 of the Transport Standards. The non-compliance with the Transport Standard is technical and relates to either the diameter of the handrail or grabrail or distance between the handrail or grabrail and the adjacent surface. The Commission notes that in the majority of the non-compliant buses, the handrail and grabrails are non-compliant with the relevant Australian Standard by a matter of 10 millimetres. The Commission notes that BT would incur a significant cost if it were required to modify the buses to remedy the non-compliance with Part 11 of the Transport Standards.

The submissions from ADCQ and APTJC state that BT should engage in further consultation with groups that represent persons who most need handrails and grabrails in buses.

The Commission notes that BT consulted with Council's Access and Disability Coordinator before lodging its application with the Commission. The Commission

notes BT's advice that it amended its submission in response to feedback from the Access and Disability Coordinator.

The Commission notes that there are a number of ways that individuals can raise concerns with BT about the service that it operates. The Commission notes BT's advice that it has received no complaints about handrails or grabrails.

The Commission placed BT's exemption application on its website and invited interested individuals to make a submission on the application. Further, the Commission directly contacted a number of disability peak bodies and invited them to make a submission in relation to the application.

There is no information before the Commission to suggest that the handrails and grabrails that are present in the buses that do not comply with Part 11 of the Transport Standards are impacting on the ability of people with a disability to access BT's service. Given the information currently before the Commission, the Commission does not consider that further consultation is necessary before granting an exemption to BT.

APPLICATION FOR REVIEW

Subject to the *Administrative Appeals Tribunal Act 1975* (Cth), any person whose interests are affected by this decision may apply to the Administrative Appeals Tribunal for a review of the decision.

Dated this 16 day of April 2013.

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

¹ Section 55(1) DDA.

² Section 55(3)(a) and (b) DDA.

³ Section 55(3)(c) DDA.

⁴ Section 58 DDA.

⁵ Section 23 DDA.

⁶ Section 32 DDA.

⁷ Section 31(1) DDA.

⁸ Section 1.2(2) Transport Standards.

⁹ Section 1.12(b) Transport Standards.

¹⁰ Section 33A.1(2) Transport Standards.

¹¹ Section 33A.1(4) Transport Standards.

¹² Section 33A.1(5) Transport Standards.

¹³ Section 33A.3 Transport Standards.

¹⁴ Section 33.1 of the Transport Standards.

¹⁵ Section 33.2 Transport Standards.