



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, 1 February 2012 and 19 December 2013. The decision of 19 December is available on the Commission website at <http://www.humanrights.gov.au/our-work/legal/exemptions/exemption-applications-under-disability-discrimination-act-1992-cth>.
- 1.3 The exemptions granted on 19 December 2013 will expire on 30 June 2014. The ARA has now applied for further exemptions, in effect extending the exemptions granted on 19 December 2013.
- 1.4 The exemptions granted on 19 December 2013 were granted for a relatively short period of six months, to allow the ARA time to provide the Commission with further submissions and supporting materials in relation to a more substantial application for exemptions (collectively, the 'primary application'). The primary application is described in the Commission's decision of 19 December 2013.
- 1.5 Since 19 December 2013, discussions have been held between the ARA and the Commission about the provision of further materials. The ARA has provided

significant further materials. The ARA states that the complexity of the application, and the need to obtain advice on certain technical matters, meant that a significant amount of time was needed to supply these materials.

- 1.6 The ARA has sought further exemptions extending the effect of the decision of 19 December 2013 to allow for the Commission to conduct a public consultation about the primary application and to assess the application.
- 1.7 For the reasons below, the Commission has decided to grant the exemptions sought for a period of six months.

2 DECISION OF THE COMMISSION

- 2.1 The Commission has decided to grant to members of the ARA a number of temporary exemptions as follows:
 - 2.1.1 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>).
 - 2.1.2 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>).
 - 2.1.3 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>).
 - 2.1.4 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 July 2014 and expiring on 31 December 2014. However, in the event a decision is made with respect to the primary application prior to 31 December 2014, the exemptions granted in this decision will cease to have effect at that time.

3 CONSIDERATION AND REASONS

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

3.1.1 the terms and objects of the DDA;

3.1.2 the DSAPT;

3.1.3 the Disability Standards for Accessible Public Transport Guidelines 2004 (No 3); and

3.1.4 the submissions received from the ARA.

3.2 Pursuant to section 33A.1(4) of the DSAPT, the Commission has consulted the Accessible Public Transport Jurisdictional Committee about the application. On 25 June 2014, the Accessible Public Transport Jurisdictional Committee advised that it supports the grant of the exemptions sought in that application.

3.3 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.

3.4 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:

3.4.1 Schedule 3 of the Commission's decision of 22 January 2007;

3.4.2 Schedule 2 of the Commission's decision of 5 November 2007 (relating to "Direct Assistance in Ascending and Descending Boarding Ramps");

3.4.3 Schedule 2 of the Commission's decision of 5 November 2007 (relating to "Direct Assistance in Ascending and Descending Boarding Ramps").

3.5 The Commission is satisfied that the ARA required longer than initially anticipated to collect and provide the additional materials sought by the Commission in regard to the primary application. The Commission notes that in the process of responding to the Commission's requests, the ARA has reduced the scope of the exemptions it has applied for.

- 3.6 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.
- 3.7 The ARA had requested that the Commission grant exemptions that would remain in force until such time as a decision is made with respect to the primary application. The Commission has decided that it is more appropriate to grant a more limited exemption, for a period of 6 months.

4 REVIEW OF DECISION

- 4.1 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 26 day of June 2014

A handwritten signature in black ink, appearing to read 'Gillian Triggs', with a long horizontal flourish underneath.

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