

HUMAN RIGHTS AND EQUAL OPPORTUNITY COMMISSION

DISABILITY DISCRIMINATION ACT 1992 (Cth), Sections 55(1) and 55(1A)

NOTICE OF DECISION ON APPLICATION FOR TEMPORARY EXEMPTION: AUSTRALASIAN RAILWAYS ASSOCIATION: DIRECT ASSISTANCE IN ASCENDING AND DESCENDING BOARDING RAMPS

By this instrument, the Human Rights and Equal Opportunity Commission ('HREOC') grants an application by the Australasian Railways Association ('the ARA') for a temporary exemption pursuant to sections 55(1) and 55(1A) of the *Disability Discrimination Act 1992* (Cth) ('DDA') in relation to direct assistance to passengers.

This decision is further to a number of separate exemptions granted by HREOC to the ARA on 22 January 2007. These previous exemptions are available on HREOC's website at: http://www.humanrights.gov.au/disability_rights/exemptions/ara/dec.htm

THE APPLICATION

The ARA has made an application, on behalf of its members ('members of the ARA'), for a number of temporary exemptions from the DDA and from the Disability Standards for Accessible Public Transport 2002 ('DSAPT').

DECISION OF HREOC

HREOC hereby grants to ARA Operators (as defined in clause 1 of Schedule One) a temporary exemption pursuant to sections 55(1) and 55(1A) of the DDA in the terms set out in Schedule One.

CONSIDERATION AND REASONS

In making its decision, HREOC relied upon the following:

- The documents referred to in its exemptions granted to the ARA on 22 January 2007. As noted above, these exemptions are available on HREOC's website at http://www.humanrights.gov.au/disability_rights/exemptions/ara/dec.htm
- Further consultation with the Australasian Railways Association and the Australian Federation of Disability Organisations, as set out in Schedule 2 to this decision.

In making its decision, HREOC had regard to the following:

- the terms and objects of the DDA;
- the DSAPT; and
- the Disability Standards for Accessible Public Transport Guidelines 2004 (No 3) .

The process by which HREOC considered the ARA's application and the reasons for HREOC's decision are set out in Schedule Two.

MEANING OF IMPORTANT TERMS

For the purposes of this decision, **rail** means trains and light rail.

Unless the contrary intention appears, any term used in this decision and in the DSAPT has the same meaning in this decision as it has in the DSAPT.

Unless the contrary intention appears, any term used in this decision and in the DDA has the same meaning in this decision as it has in the DDA.

REVIEW OF DECISION

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 5th day of November 2007

Signed by Commissioner Graeme Innes AM, on behalf of HREOC.

SCHEDULE ONE

1 GRANT OF TEMPORARY EXEMPTION

1.1 This exemption applies to members of the ARA who are operators of rail conveyances, infrastructure, or premises that are the subject of the DSAPT ('ARA Operators').

1.2 HREOC grants ARA Operators a temporary exemption as specified below from the operation of:

- sections 23 and 24 of the DDA; and
- section 32 of the DDA in relation to the DSAPT.

2 EXEMPTION PERIOD

2.1 The Commission has decided to grant to ARA operators an exemption in relation to assistance in descending or ascending ramps for a period of six months from the date of this decision ('the exemption period').

2.2 In accordance with clause 34 of the DSAPT, the Minister for Transport and Regional Services, in consultation with the Attorney-General, is to review the DSAPT within five years after they take effect ('the Ministerial review').

2.3 If, following the Ministerial review, and during the exemption period, the DSAPT are re-made (by the Attorney-General with the approval of the Parliament), in an amended form on any point, the temporary exemption now granted by the Commission will be displaced and become inoperative.

3 EXEMPTION GRANTED

Relevant DSAPT provisions

3.1 The relevant provisions of the DSAPT to which this exemption relates are as follows:

6.4 Slope of external boarding ramps

The slope of an external boarding ramp must not exceed:

(a) 1 in 14 for unassisted access (**AS/NZS3856.1 (1998) Clause 2.1.8 (e)** (including the notes)); and

(b) 1 in 8 for unassisted access where the ramp length is less than 1520 mm (**AS1428.2 (1992) Clause 8.4.2 (a)** and **AS1428.1 (2001) Figure 8**); and

(c) 1 in 4 for assisted access (**AS/NZS3856.1 (1998) Clause 2.1.8 (e)**).

Conveyances

except dedicated school
buses and small aircraft

4 Exemption granted

3.2 During the exemption period, and in relation to the provisions of the DSAPT appearing above, HREOC hereby grants an exemption such that where the slope of an external board ramp is greater than 1 in 8, ARA Operators are not required to provide staff assistance in ascending or descending the ramp.

3.3 This exemption is granted on the condition that each ARA Operator concerned report to HREOC within the exemption period on:

- the number of locations where boarding ramp slopes of 1 in 8 or better cannot currently be achieved;
- measures to be taken to increase the number of locations where external boarding ramp slopes of 1 in 8 or better will be achieved;
- any factors affecting the operator's ability to achieve external boarding ramp slopes of 1 in 8 or better in the number of locations indicated by the target proportions and dates specified for accessible boarding in the DSAPT; and
- results of examination by the operator of alternative methods for achieving accessible boarding.

SCHEDULE 2: HREOC'S CONSIDERATION OF THE EXEMPTION APPLICATION AND THE REASONS FOR ITS DECISION

THE APPLICATION

On 29 July 2005, the ARA made an application to HREOC on behalf of its members for a number of temporary exemptions from the DDA and the DSAPT, on the condition that members of the ARA comply with a revised set of obligations.

On 2 August 2005, HREOC published a public Notice of Inquiry in relation to ARA's application. In response to that Notice of Inquiry, HREOC received a number of submissions from interested individuals and groups.

On 24 February 2006, the ARA submitted a revised application to take into account a number of matters raised in the submissions responding to the Notice of Inquiry. This revised application included a request for an exemption to limit operator responsibilities to provide direct assistance. ARA members raised concerns regarding occupational health and safety risks presented by staff pushing passengers' wheelchairs or scooters up ramps at slopes at or approaching 1 in 4.

CONSIDERATION OF THE APPLICATION

2.1 On 22 January 2007, HREOC published its decision in relation to the ARA's application. In that decision, HREOC granted certain exemptions and deferred its decision in relation to other exemptions, including the present. In relation to the present exemption, HREOC deferred its decision because it formed the view that further consultation was required between the ARA and interested parties, represented by the Australian Federation of Disability Organisations ("AFDO"), on the extent of limitations which might be placed on obligations to provide direct assistance.

FURTHER CONSULTATION

3.1 On 9 May 2007 a further meeting was held between representatives of ARA, AFDO and HREOC to discuss an exemption regarding direct assistance. At that meeting, At that meeting:

- ARA members raised concerns regarding occupational health and safety risks presented by staff pushing passengers' wheelchairs or scooters up ramps at slopes at or approaching 1 in 4, which the DSAPT permits as a means of compliance with requirements for accessible boarding.
- One ARA operator, Queensland Rail, advised that they were currently subject to an order from occupational health and safety authorities which prevented staff pushing any mobility aids up boarding ramps.
- AFDO argued that if accessible boarding could not safely be achieved by one means permitted by the DSAPT (assistance up 1 in 4 sloped ramps) then it should be achieved by other means permitted (such as raising platforms to reduce required ramp slopes).
- ARA members however noted time and cost issues in achieving access by this means, as well as technical barriers in many locations. Specifically, on curved platforms used by non-stopping passenger or freight trains, the need for superelevation of curved track means that raising platform height would further increase the horizontal gap from train to platform, and present access and safety issues on this basis.

3.2 On 23 May 2007, HREOC circulated to the ARA and AFDO a revised proposal for the exemption.

3.3 On 26 September 2007, representatives of ARA and AFDO met in Adelaide and agreed to HREOC's revised proposal for the exemption. This revised proposal was further discussed at a meeting between representatives of ARA, AFDO, HREOC and Workplace Health and Safety Queensland in Brisbane on 17 September 2007, and was then agreed to by AFDO and ARA at a further meeting in Adelaide on 26 September 2007.