

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, 19 December 2013 and 26 June 2014. The decisions of 19 December 2013 and 26 June 2014 are 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 26 June 2014 will expire on 31 December 2014. The ARA has now applied for further exemptions, in effect extending the exemptions granted on 26 June 2014.
- 1.4 The exemptions granted on 19 December 2013 and on 26 June 2014 were in each case granted for relatively short periods of six months. These exemptions were granted 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'), and for the primary application to be assessed by the Commission. 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. These discussions have been ongoing. 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 Following the receipt of these materials, further discussions have led to the ARA amending its primary application. That amendment has significantly reduced its complexity. The ARA now wishes to make further submissions in support of the revised primary application.
- 1.7 The ARA has applied for further exemptions extending the effect of the decision of 26 June 2014 to allow time for it to provide further materials, and for the Commission to conduct a public consultation about the primary application and to assess it.
- 1.8 For the reasons below, the Commission has decided to grant the exemptions sought for a period of nine months, or until such time as a decision is made with respect to the primary application, whichever is sooner.

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 nine months, commencing on 1 January 2015 and expiring on 30 September 2015. However, in the event a decision is made with respect to the primary application prior to 30 September 2015, 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 current application. On 10 December 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 the discussions between the ARA and the Commission have significantly reduced the scope and complexity of the primary application.
- 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 has requested that the Commission grant exemptions for a period of nine months to allow it to provide further materials, for a public consultation to be conducted, and for the Commission to assess the revised application. The ARA has submitted a proposed timetable for the completion of these tasks. The Commission has decided that owing to the complexity of the application, it is appropriate to grant the requested exemption for a period of nine months. This decision however does not constitute an acceptance or endorsement of the timetable proposed by the ARA.

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 18th day of December 2014

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

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