

**AUSTRALIAN HUMAN RIGHTS COMMISSION  
DISABILITY DISCRIMINATION ACT 1992 (CTH), section 55(1)**

**NOTICE OF REFUSAL OF A TEMPORARY EXEMPTION**

By this instrument, the Australian Human Rights Commission has refused the application from Tasmanian Redline Coaches Pty Ltd trading as Tasmania's Own Redline Buses (Redline) for an exemption pursuant to Part 33A of the Disability Standards for Accessible Public Transport 2002 (Transport Standards).

**SUMMARY**

The Applicant requested a temporary exemption from the Transport Standards to enable it to provide a public transport service using vehicles which do not comply with the Transport Standards. The Applicant claimed that it would impose a 'capital hardship' on it to make the vehicles in question comply with the Transport Standards.

Having regard to the lack of accessible public transport services in Tasmania and the amount of time that the Applicants have been aware of the requirements of the Transport Standards, the Commission is of the view that the reason advanced by the Applicant in favour of granting the exemption is outweighed by the reasons against granting the exemption.

**BACKGROUND**

The Applicant operates bus services between the main cities in Tasmania and some urban fringe areas.

**Nature of Application**

The Applicant seeks a temporary exemption from the Transport Standards so that it may provide a public transport service with 11 buses purchased in 2010 which do not comply with the Transport Standards.

The Applicant seeks an exemption until February 2019.<sup>1</sup>

**Applicant's reasons for requesting an exemption**

The Applicant seeks an exemption because it claims that it would impose a financial hardship upon it to make the 11 inaccessible buses comply with the Transport Standards.

The Applicant states that the buses in question were purchased in 2010 to provide a dedicated school bus service. Conveyances that are used to provide dedicated school bus services are not required to comply with the Transport Standards. However, the Applicant advises that it now wishes to provide a public transport service with the 11 inaccessible buses in that it wishes to use these buses as backup on public transport routes in times of peak demand.

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<sup>1</sup> It should be noted that an exemption granted by the Commission must not be granted for a period of more than 5 years: section 33A.1(5) Transport Standards.

The Applicant notes the requirement of the Transport Standards that conveyances that were in use for public transport service when the Transport Standards commenced and were still in use on 31 December 2007 were required, at that time, to be 25% compliant with respect to physical access. The Applicant states that it currently exceeds this requirement.

The Applicant notes the requirement of the Transport Standards that conveyances that were in use for public transport service when the Transport Standards commenced and are still in use on 31 December 2012 are required to be 55% compliant with respect to physical access. The Applicant claims that it will meet or exceed this requirement by the target date.

### **Submissions received by the Commission**

The Applicant'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 five [submissions](#) in response to the Application: three submissions did not support the Commission granting the exemption and two submissions did not express a view about whether the Commission should grant the exemption.

#### *Public Interest Advocacy Centre*

The Public Interest Advocacy Centre (PIAC) submits that the Commission should refuse Redline's application for an exemption. PIAC submits that exemptions should not be granted on the basis that, in substance, compliance with the Transport Standards would impose an unjustifiable hardship upon the Applicant. PIAC notes that unjustifiable hardship is a defence under the *Disability Discrimination Act 1992* (Cth)(DDA) and the Transport Standards. PIAC notes that the existence of financial hardship is just one factor among many factors relevant to an assessment of unjustifiable hardship. PIAC submits that, consistent with earlier decisions of the Commission, the exemption process under the Transport Standards or the DDA should not be used to 'certify' the existence of unjustifiable hardship.

PIAC further states that it is an important requirement of the Transport Standards that all new conveyances and conveyances coming into use to provide a public transport service after the commencement of the Transport Standards comply with the Standards. PIAC notes that beyond stating that it will comply with the Transport Standards with respect to vehicles that were providing a public transport service when the Transport Standards commenced, the Applicant has made no commitments to improve the accessibility of its fleet.

PIAC also states that there has been a low level of compliance with the Transport Standards by the bus and coach industry. PIAC submits that if the Commission were to grant an exemption to the Applicant, it would add to the already low levels of compliance with the Transport Standards in the bus and coach industry.

#### *Office of the Anti-Discrimination Commissioner, Tasmania*

The Office of the Anti-Discrimination Commissioner, Tasmania (ADC) also contends that the Commission should not grant an exemption to the Applicant.

The ADC notes that there are limited public transport options in Tasmania for people with a mobility disability. The ADC states that there are 61 wheelchair accessible taxis in Tasmania but that these taxis are restricted to operating in particular areas. Individuals who live outside of the areas in which wheelchair accessible taxis operate are forced to rely on private cars or on buses. The ADC notes that even where a person with a mobility disability could catch a wheelchair accessible taxi, these taxis are much more expensive than buses.

The ADC states that the Commission is in effect being asked to endorse a claim of unjustifiable hardship rather than to offer protection from a complaint on the basis that the Applicant is making progressive moves to achieving compliance with the DDA and the Transport Standards. The ADC notes that whether compliance with the DDA or the Transport Standards would impose unjustifiable hardship is ultimately a question for the court. The ADC states that it is not appropriate for the Commission to exercise its power to grant an exemption to simply confirm the availability of the defence of unjustifiable hardship and thereby authorise non-compliance with a disability standard.

#### *ParaQuad Association of Tasmania Inc and Others*

Paraquad Association of Tasmania Inc, Cerebral Palsy Tasmania and the Post Polio Network Tasmania made a combined submission to the Commission requesting that it not grant an exemption to the Applicant. The submission notes that as there is no railway system in Tasmania, the bus system is particularly important. The submission notes that there is a higher percentage of people with a disability living in Tasmania than in other states.

#### *Ms Jane Wardlaw*

Ms Wardlaw is a member of the public who uses a wheelchair. She did not express a view on whether the Commission should grant the exemption. Ms Wardlaw provides a personal perspective on the difficulties of accessing public transport in Tasmania. Ms Wardlaw advises that it is very expensive to use wheelchair accessible taxis so an accessible bus service is important.

Ms Wardlaw states that she recently travelled to Hobart on a Redline coach and that the customer service was very good. However, Ms Wardlaw notes that as there are limited accessible services from Launceston to Hobart, she is restricted in her departure and arrival times and her booking must be made at least a week in advance.

#### *Department of Infrastructure, Energy and Resources*

The Department of Infrastructure, Energy and Resources (DIER) did not express a view on whether the Commission should grant the exemption. DIER advises that there are contracts between the Transport Commission and providers of public bus services. DIER advises that it is a condition of these contracts that providers lodge an action plan with the Australian Human Rights Commission describing the steps that the provider is taking to comply with the requirements of the Transport Standards. DIER advises that remuneration to providers includes a capital component based on quotes from bus building companies for the supply of vehicles which comply with the Transport Standards.

## 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 refuse the Application. In assessing the application, the Commission has weighed up the nature and extent of the discriminatory effect of granting an exemption against the reasons advanced in favour of the exemption.

The Transport Standards impose two distinct obligations on operators and providers of public transport services in relation to time for compliance with the Transport Standards.

Operators and providers must comply with the Transport Standards for conveyances that were in use when the Transport Standards commenced and are still in use for public transport at the target dates specified in Schedule 1 of the Standards.<sup>2</sup> Part 2 of Schedule 1 of the Standards requires that at 31 December 2012, conveyances must be 55% compliant with the Transport Standards with respect to, amongst other features, ramps and boarding. The Applicant advises that it will meet this target.

Operators and providers must also comply with the Transport Standards for all conveyances brought into use for public transport service on and from the date that the Transport Standards came into effect.<sup>3</sup> The Transport Standards came into effect on 23 October 2002. Without an exemption from the Commission, it would breach section 33.1 of the Transport Standards for the Applicant to now bring the 11 inaccessible buses purchased in 2010 into use for public transport service.

The Applicant states that the Commission should grant the exemption because it claims that it would impose financial hardship upon it to make the non-compliant buses accessible. The Applicant claims that the cost of fitting a wheelchair lift is in excess of \$38 000. The Applicant has not provided any further information about the financial status of its business.

The entities that submitted that the Commission should refuse the exemption noted the limited accessible public transport options that are available in Tasmania. There is no railway service. There are relatively few wheelchair accessible taxis and these taxis are much more expensive than buses and operate in restricted areas. The submissions indicated that given these circumstances, an accessible bus service is particularly important.

The purpose of the Transport Standards is to enable public transport operators and providers to remove discrimination from public transport services.<sup>4</sup> The requirement that new conveyances and conveyances entering public transport service after the commencement of the Transport Standards are compliant with the Standards is important in achieving this purpose and has been a requirement of the Transport Standards since the Standards commenced.

The Applicant seeks that the Commission grant an exemption to it without conditions. The fact that the Applicant has not outlined a plan for moving towards compliance

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<sup>2</sup> Section 33.1 Transport Standards.

<sup>3</sup> Section 32.1(a)(ii) and section 33.2 Transport Standards.

<sup>4</sup> Section 1.2(2) Transport Standards.

with the Transport Standards during the period of the exemption is a further factor weighing against the granting of the exemption.

The Transport Standards provide that it is not unlawful to fail to comply with a requirement of the Transport Standards if it would impose an unjustifiable hardship on any person or organisation.<sup>5</sup> The cost that would be incurred by, or is reasonably likely to result from, compliance with the relevant requirement of the Transport Standards is one factor that is relevant to an assessment of unjustifiable hardship.<sup>6</sup>

If the Applicant claims that it would impose an unjustifiable hardship upon it to comply with the requirement that all buses brought into public transport service after the commencement of the Transport Standards comply with the Transport Standards, it is open to it to rely on this defence in the event that a complaint is made against it.

The Commission notes that public transport in Tasmania is relatively limited. The failure to increase accessible public transport in accordance with the Transport Standards has a particularly negative impact on individuals who are reliant on accessible public transport.

Balancing the reasons in favour of granting the exemption and the reasons against granting the exemption, the Commission considers that it would be unreasonable to grant the exemption.

#### **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        day of August 2012

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

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<sup>5</sup> Section 33.7 Transport Standards.

<sup>6</sup> Section 33.7(3)(a) Transport Standards.