

**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 to Moxamu Pty Limited trading as Lawrence Bus Service (the Applicant) an exemption from the operation of sections 23 and 24 of the DDA and the requirements of the Transport Standards.

The exemption is granted for a period of six months from the date of this instrument and is granted subject to the conditions outlined below.

SUMMARY

The Commission has granted to the Applicant an exemption from compliance with sections 23 and 24 of the DDA and Transport Standards for a period of six months. The exemption is granted in relation to the Applicant's three public transport route services.

The exemption is granted subject to the condition that at the conclusion of the exemption period, the Applicant will provide all of its public transport services with a bus that complies with the Transport Standards.

The Commission has granted a short exemption to allow the Applicant time to purchase an accessible new bus or to purchase a second hand bus and make any necessary modifications to this bus so that it complies with the Transport Standards. Despite affording low weight to the reasons advanced by the Applicant in favour of the exemption, the Commission considers that it is reasonable to grant the exemption. The Commission is of the view that the Applicant provides an important service to a community with few public transport services.

BACKGROUND

The Applicant operates three public transport services using two buses. The Applicant operates two services per week between the towns of Lawrence and Grafton and one service per week between Lawrence and the town of Maclean. Both of the buses used by the Applicant to provide a public transport service are 57 seater buses. One bus was purchased in 2001 and the other was purchased in 2010. Neither bus is wheelchair accessible. The Applicant has not advised whether the buses are otherwise compliant with the Transport Standards.

In addition to providing transportation, the Applicant advises that it provides additional services to its passengers. The Applicant provides passengers with assistance with taking groceries on and off the bus, delivers passengers directly to their door by driving 'off route', leaves the bus open when it is in Grafton or Maclean so that passengers can put their groceries in the bus and waits while passengers collect their mail from the post office.

The Application

The Applicant requests an exemption so that it may continue to provide a public transport service with its two existing buses.

The Applicant contends that the Commission should grant an exemption to it for a number of reasons. The Applicant states that in order to travel between Lawrence and Maclean, it must use the Bluff Point vehicle ferry to cross the Clarence River. Lawrence claims that if it were to make its buses wheelchair accessible by lowering the floor of the buses, the buses would not be able to access the ferry. The Applicant advises that it has already had to modify its buses so that they may access the ferry. The applicant states that it is not feasible for it to take an alternative route because an alternative route would add approximately 260 kilometres to the round trip. The Applicant states that whilst only the Lawrence Maclean service uses the Bluff Point ferry, both buses must be able to use the ferry in case one bus breaks down and the other one is required to be used.

The Applicant also states that the roads in Lawrence, Maclean and Grafton are of poor quality. Lawrence states that there are no footpaths in the town of Lawrence and only one street has curb and guttering. The Applicant states that roads in Maclean and Grafton are narrow and badly formed. The Applicant claims that even if it modified its buses to make them wheelchair accessible, a person using a wheelchair would not be able to enter or exit the bus because of the poor quality of the roads on which the buses travel. The Applicant states that it could not modify its routes to make use of better roads or footpaths because there are no better roads or footpaths.

The Applicant states that it would impose financial hardship on it to make its buses accessible and notes that it receives a relatively small return from its public transport services compared to the labour cost of providing the service. The Applicant estimates that it would cost \$40,000 to modify one of its buses to make it wheelchair accessible. The Applicant states that it charges concession fares of \$3.50 each way for the Lawrence Grafton route and \$3.00 each way for the Lawrence Maclean route. The Applicant advises that it offers a \$2.50 all day ticket for pensioners on both routes. Against this, the Applicant advises that the trip between Lawrence and Grafton has a labour cost of five hours and the trip between Lawrence and Maclean has a labour cost of three and a half hours.

The Applicant also contends that there is little prejudice involved in its service being inaccessible. The Applicant states that because there are no medical or related facilities in Lawrence and it is a significant distance from both Maclean and Grafton, people with disabilities or medical conditions tend to live in these bigger towns.

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 Application. The Commission received one submission in response to the Application from the Accessible Public Transport Jurisdictional Committee (APTJC).

The members of APTJC were divided as to whether they supported the exemption. Three members opposed the Application, one member supported it and two

members offered no view on whether the exemption should be granted but provided their comments.

The APTJC member who supports the Application does not provide a reason for its view.

The APTJC members who oppose the Application note that the Transport Standards require that all buses brought into service to provide a public transport service after the commencement of the Transport Standards in 2002 are required to be fully compliant with the Transport Standards. The APTJC members note that the Applicant purchased one of its buses in 2010 and that this bus is required to be fully compliant with the Transport Standards.

With regard to the argument that the Applicant could not operate an accessible service because of the poor condition of the roads that it uses, the members of APTJC who oppose the Application contend that the failure of council to comply with the law should not justify further non-compliance with the law. The APTJC members also state that mobility aid lifts do not require a curb. The members of APTJC state that granting an exemption on such grounds would have a significant flow on effect for the provision of accessible rural and regional bus services.

The APTJC members who oppose the Application further state that the fact that no one has complained about not having an accessible bus service is not evidence that the service does not need to be accessible. APTJC notes that a person with a disability could move into the area, or could be visiting family and friends or could be a tourist visiting the region.

The APTJC members who offer no view on whether the exemption should be granted note that the Clarence Valley Council, in which the towns of Lawrence and Maclean are located, is a relatively low socio-economic local government area with poor public transport. These members note that Council has identified transport as a major issue in the health and wellbeing of residents. The APTJC members note that Council's Social Plan 2006-2009 states that accessible public transport in the region is inadequate, especially for less mobile people, and affordability of transport is prohibitive for many disadvantaged groups.

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 premises⁵ and in the provision of goods, services and facilities⁶. The relevant provisions are located in Division 2 of Part 2 of the DDA. It is also unlawful under the DDA to contravene a disability standard.⁷

Transport Standards

The DDA empowers the Minister to make disability standards.⁸ The purpose of the Transport Standards is to enable public transport operators and providers to remove discrimination from public transport services.⁹ The Transport Standards apply to operators and providers of conveyances. A conveyance includes a bus.¹⁰

The Commission may grant an exemption from compliance with some or all of the Transport Standards.¹¹ 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.¹²

An exemption granted by the Commission from the Transport Standards may not be granted for a period longer than five years.¹³ 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.¹⁴

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.¹⁵ The Transport Standards came into effect on 23 October 2002.

Conveyances that were in use for public transport service must become compliant with the Transport Standards in accordance with Schedule 1 of the Transport Standards.¹⁶

Schedule 1 of the Transport Standards states that by 31 December 2012, operators and providers of conveyances must fully comply with the Transport Standards in relation to vending machines, surfaces and handrails and grabrails.¹⁷

Schedule 1 of the Transport Standards further states that operators and providers of conveyances must comply with the Transport Standards by 55% of each type of service in relation to many aspects of accessibility including: resting points, boarding, allocated space, street furniture, ramps, lifts and doorways and doors.¹⁸

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 6 months, subject to the condition outlined below.

During the course of discussions with the Commission about the exemption Application, the Applicant proposed that it purchase a mini bus that complies with the Transport Standards and provide all of its public transport services with this mini bus.

The exemption is granted on the condition that at the conclusion of the exemption period, the Applicant will provide all of its public transport services with a bus that fully complies with the Transport Standards.

An exemption is granted to the Applicant for a period of six months to allow the Applicant time to purchase the accessible bus and to make any modifications to the bus that are necessary to ensure that the bus complies with the Transport Standards.

The Applicant claimed that it cannot provide its service with a wheelchair accessible bus because a low floor bus cannot access the Bluff Point ferry. The Commission has not obtained advice on the types of vehicles that can access the Bluff Point ferry and thus makes no conclusion on this issue. However, the Commission notes that a bus may be made wheelchair accessible without lowering of the floor of the bus.

The Applicant claims that even if its buses were wheelchair accessible, a person who uses a wheelchair would not be able to enter or exit the bus because of the poor quality of all of the roads and footpaths on both the routes on which the Applicant operates. The DDA applies to the provision of roads and footpaths. Possible non-compliance with the law by one party should not provide justification for another party to not comply with the law.

The Applicant claims that it would be expensive to modify its buses so that they comply with the Transport Standards. The Applicants advise that it charges a low fare compared to the labour cost of providing the service.

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.¹⁹ The cost that would be incurred by, or is reasonably likely to result from, compliance with the relevant requirement of the Transport Standards and the extent to which the service concerned operates on a commercial or cost recovery basis are factors that are relevant to an assessment of unjustifiable hardship.²⁰

If the Applicant claims that it would impose an unjustifiable hardship upon it to 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.

Finally, the Applicant argued that people with disability are unlikely to want to access its service because people with a disability or medical condition are likely to live in larger towns where they can access services. The Commission notes that populations change over time, even in regional areas. The fact that a person with a physical disability has not sought to access the Applicant's service in the past is no indicator that a person with a disability will not wish to access the service in the future.

The Commission is required to balance the reasons advanced in favour of the exemption with the reasons that weigh against granting the exemption and determine whether it is reasonable to grant the exemption.

The Commission has accorded low weight to the reasons advanced by the Applicant in favour of granting the exemption. Despite this, the Commission considers that it is reasonable to grant a short exemption to the Applicant on the condition that it meets certain commitments to improve the accessibility of its service. The Applicant provides an important service to the Lawrence community in an area where public transport services are limited. The Commission considers that a short exemption will provide the Applicant with time to make the arrangements necessary for it to comply with the Transport Standards.

Accordingly, the Commission grants the applicant an exemption from sections 23 and 24 of the DDA and requirements of the Transport Standards for a period of six months subject to the condition that at the conclusion of the exemption period, the

Applicant will provide all of its public transport services with a bus that fully complies with the Transport Standards.

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 fourteenth day of March 2013.



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

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- 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 24 DDA.
 - ⁷ Section 32 DDA.
 - ⁸ Section 31(1) DDA.
 - ⁹ Section 1.2(2) Transport Standards.
 - ¹⁰ Section 1.12(b) Transport Standards.
 - ¹¹ Section 33A.1(2) Transport Standards.
 - ¹² Section 33A.1(4) Transport Standards.
 - ¹³ Section 33A.1(5) Transport Standards.
 - ¹⁴ Section 33A.3 Transport Standards.
 - ¹⁵ Section 33.1 of the Transport Standards.
 - ¹⁶ Section 33.2 Transport Standards.
 - ¹⁷ Sections 2.1 and 2.2 of Schedule 1 Transport Standards.
 - ¹⁸ Section 2.4 and 2.5 of Schedule 1 Transport Standards.
 - ¹⁹ Section 33.7 Transport Standards.
 - ²⁰ Section 33.7(3)(a) and (c) Transport Standards.