



Mr Graeme Edgerton
Deputy Director
Legal Section
Australian Human Rights Commission
Level 3, 175 Pitt Street
SYDNEY NSW 2000

Dear Mr Edgerton

I refer to the Australian Human Rights Commission preliminary view dated 21 March 2018 in relation to Transport for NSW's application for a temporary exemption from compliance with Section 2.1 Unhindered Passage and Section 2.2 Continuous Accessibility under the *Disability Standards for Accessible Public Transport 2002 (Cth)* (Transport Standards) for the land side components of Birchgrove ferry wharf.

In response to the preliminary view, Transport for NSW wishes to make a submission to the Commission's preliminary view as set out in Attachment A – Submission to Preliminary View.

Transport for NSW understands that this information may be published and publicly available as part of the exemption process.

If you have any further questions, Ms Gail Le Bransky, Director Transport Social Policy, would be pleased to take your call on [REDACTED] or alternatively please email [REDACTED].

Yours sincerely,

Elizabeth Mildwater
A/ Deputy Secretary Freight Strategy and Planning
Encl.

Attachment A – Submission to Preliminary View

2 PRELIMINARY VIEW OF THE COMMISSION

2.1 The Commission is of the preliminary view that it will:

- (a) Grant an initial exemption for 6 months without conditions, to allow TfNSW and IWC to continue to negotiate in relation to an appropriate solution that improves access to Birchgrove Wharf for people with disabilities.
- (b) Grant a conditional exemption for a further 18 months, to allow the implementation of an agreed solution, on the conditions that:
 - i. TfNSW confirms in writing to the Commission during the initial 6 month period that agreement has been reached with IWC about how to improve access to Birchgrove Wharf for people with disabilities and describes the nature of the agreed solution; and
 - ii. the agreed solution would provide access in a way that is compliant with the DDA and the Transport Standards.

2.2 For the avoidance of doubt, if agreement on an accessible solution is not reached within 6 months, then the further exemption period would not apply; and if the agreed solution was not compliant with the Transport Standards then the further exemption period would not apply. In those circumstances, people with disability would retain their right to make a complaint, and TfNSW would retain the right to rely on equivalent access or unjustifiable hardship provisions if applicable.

Timeframes for temporary exemption periods

The Commission's preliminary view contains timeframes dating from 21 March 2018 resulting in an initial exemption until 21 September 2018 and a potential extension to 21 March 2020. These dates are calculated from the date of the Commission's preliminary view. It is submitted that the timeframes should be calculated from the date of the Commission's final decision. The 6 month initial exemption period in particular, if it remains dated to 21 September 2018, significantly shortens the time available to Transport for NSW and Inner West Council (IWC) to conclude negotiations.

Negotiations with Inner West Council

Transport for NSW will endeavour to collaborate with IWC over the six month initial exemption period to negotiate a solution that meets the DDA and Transport Standards.

As this process might not be completed within six months, Transport for NSW submits that the Commission's decision should contain a provision enabling a relatively short extension if approved by the Commission to the following effect:

- "Grant an initial exemption for 6 months without conditions which may be extended by the Commission but may not exceed 9 months, to allow..."

Subject to any timeframe set by the Commission, before the expiry of the initial six month period, if more time up to an additional 3 months is sought to refine the solution or a solution cannot be reached, Transport for NSW would write to the Commission seeking its approval.

Subject to the submission above Transport for NSW acknowledges the view prescribed in section 2.2 of the preliminary decision should a decision not be reached.

Planning, Approval and Construction Considerations

Transport for NSW agrees that it is feasible to construct a solution within an 18 month timeframe. However this timeframe is sufficient only for the construction element; it does not take into consideration the planning and approval stages required for this type of project.

Typically, for a project of this scale the planning and approval process generally takes around six months prior to the start of construction activities, and is subject to factors such as community consultation, planning and internal approvals and funding allocations.

As part of the planning process, public consultation may also have impacts on construction timeframes and overall project dates.

The period of construction may not immediately follow the initial negotiation period with IWC and is subject to the completion of the planning and approval process.

The timing of any construction activities by Transport for NSW must be aligned with other planned capital works and to minimise impacts to customers using Birchgrove Wharf and local residents.

As a result, Transport for NSW also submits that the Commission consider an extension of 12 months to the proposed 18 month construction timeframe to allow necessary consultation and planning approvals to take place.