

Summary of the Australian Human Rights Commission’s decision on the application by Transport for NSW for a temporary exemption in relation to Birchgrove Ferry Wharf

The Australian Human Rights Commission has today given notice of its decision on the application by Transport for NSW (TfNSW) for a temporary exemption to the *Disability Discrimination Act 1992* (Cth) (DDA) and the Disability Standards for Accessible Public Transport 2002 (Cth) (Transport Standards).

TfNSW seeks a temporary exemption from compliance with the Transport Standards in relation to infrastructure at Birchgrove Ferry Wharf (Birchgrove Wharf). In particular, it seeks a temporary exemption from compliance with sections 2.1 and 2.2 of the Transport Standards in relation to ‘the access path connecting the landside from Louisa Road entrance to the Birchgrove Wharf landside shelter’.

New infrastructure that is brought into use after the commencement of the Transport Standards must comply with the standards. This is an application for an exemption in relation to existing infrastructure (rather than new infrastructure). The Transport Standards provide that access paths for public transport infrastructure must be made compliant progressively, with full compliance required by 31 December 2022.

The access path from Louisa Road to Birchgrove Wharf runs through land owned by Inner West Council (IWC). TfNSW initially sought an exemption for a period of five years for a number of reasons including to allow for further negotiation with IWC about an accessible solution.

In forming its preliminary view, the Commission considered the views contained in 12 submissions received from individuals, government agencies and disability advocacy organisations. A common theme through almost all of the submissions was the need for TfNSW and IWC to negotiate an accessible outcome as a matter of priority. Both parties have expressed a willingness to continue to negotiate. It is clear, given the circumstances of the site, that an accessible solution can only be provided as a result of agreement.

The Commission has decided that it will:

- (a) Grant an initial exemption for 6 months without conditions, which may be extended by the Commission for a further period of up to 3 months, 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 24 months, to allow the implementation of an agreed solution, on the conditions that:
 - i. TfNSW confirms in writing to the Commission during the initial negotiation 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.

If agreement on an accessible solution is not reached within the initial negotiation period described in paragraph (a), then the further exemption period will not apply; and if the agreed solution is not compliant with the Transport Standards then the further exemption period will 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.

Decisions about the timing and manner in which the access path from Louisa Road to Birchgrove Wharf is upgraded are matters for TfNSW and IWC. The Commission's role in the matter is to decide on whether the applicant should be exempt from the ordinary application of anti-discrimination law.

Pursuant to s 56 of the DDA and s 33A.4 of the Transport Standards, and subject to the *Administrative Appeals Tribunal Act 1975* (Cth), an 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.

3 May 2018

Please note that this statement is not intended to be a substitute for the reasons of the Commission as set out in its decision or to be used in any later consideration of the Commission's reasons.