



**Australian Federation of
Disability Organisations**



**Joint Submission on
Application for Exemption
by
City of Ryde**

May 2022

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About AFDO

Since 2003, the Australian Federation of Disability Organisations (AFDO), a Disabled People's Organisation (DPO) and Disability Representative Organisation (DRO), has been the recognised national peak organisation in the disability sector, along with its disability specific members, representing people with disability. AFDO's mission is to champion the rights of people with disability in Australia and support them to participate fully in Australian life.

Our member organisations represent disability specific communities with a total reach of over 3.8 million Australians.

AFDO continues to provide a strong, trusted, independent voice for the disability sector on national policy, inquiries, submissions, systemic advocacy and advisory on government initiatives with the Federal and State/Territory governments.

We work to develop a community where people with disability can participate in all aspects of social, economic, political and cultural life. This includes genuine participation in mainstream community life, the development of respectful and valued relationships, social and economic participation, and the opportunity to contribute as valued citizens.

Our vision

That all people with disabilities must be involved equally in all aspects of social, economic, political and cultural life.

Our mission

Using the strength of our membership-based organisations to harness the collective power of uniting people with disability to change society into a community where everyone is equal.

Our strategic objectives

To represent the united voice of our members and people with disability in national initiatives and policy debate.

To enhance the profile, respect and reputation for AFDO through our members.

To build the capacity and sustainability of AFDO and our members.

To foster strong collaboration and engagement between our members and stakeholders.

To enhance AFDO's connection and influence in international disability initiatives, particularly in the Asia Pacific region, through policy, advocacy and engagement.

Our members

Full members:

- Arts Access Australia
- Autism Aspergers Advocacy Australia
- Blind Citizens Australia
- Brain Injury Australia
- Deaf Australia
- Deafblind Australia
- Deafness Forum of Australia
- Down Syndrome Australia
- Disability Advocacy Network Australia
- Disability Justice Australia
- Disability Resources Centre
- Enhanced Lifestyles
- National Mental Health Consumer and Carer Forum
- Multiple Sclerosis Australia
- People with Disability WA
- Advocacy For Inclusion
- Polio Australia
- Physical Disability Australia
- Women with Disabilities Victoria
- Women with Disabilities ACT

Associate members:

- AED Legal Centre
- All Means All
- Amaze
- Aspergers Victoria
- Disability Advocacy and Complaints Service of South Australia
- Disability Law Queensland
- Leadership Plus
- National Organisation for Fetal Alcohol Spectrum Disorder
- Star Victoria
- TASC National Limited
- YDAS – Youth Disability Advocacy Service





About NITAN

The National Inclusive Transport Advocacy Network (NITAN) represents a national voice of people with disability advocating for accessible and inclusive public transport systems across Australia.

<http://www.nitan.org.au/>

Background

NITAN was established and is under the auspice of the Australian Federation of Disability Organisations (AFDO). However, NITAN operates independently; it is an unfunded group of people who share a specific interest in public transport matters.

Members

NITAN was established with a core working group of members from the following organisations:

- All Aboard Network
- Australian Federation of Disability Organisations
- Council for Intellectual Disability
- Disability Justice Australia
- Disability Resources Centre
- First Peoples Disability Network
- Inclusion Moves
- National Ethnic Disability Alliance
- People with Disability Australia
- Physical Disability Council of NSW
- Victorian Legal Aid

NITAN has since grown to also be supported by other state-based advocacy organisations and individuals with expertise in legal, transport, and disability rights. Our focus is unashamedly on disabled people having access to the same transport options as the wider community, spanning the full spectrum from active transport to public transport and the ability to self-drive.

Purpose

We aim to be a voice of people with disability on transport matters; however, we recognise the disability community is made up of a diverse range of people with differing needs and priorities. We understand that to be effective, we need to engage with experts in their field. We are open to ideas on how this can occur and look forward to shaping our voice with the disabled communities' assistance.

Our Objectives:

1. Community Inclusion

Promote the ethos that full, equal community integration of people with disability is not possible without a completely accessible 'whole of journey' public transport system Australia-wide, and advocate this position to all governments, industry, and community stakeholders.

2. Influence

Ensure that the voices of people with disability are heard in the design and shaping of public transport systems across Australia and in their day-to-day operations. Support others with requisite experience and qualifications as they advocate on public transport issues encompassing a "nothing about us without us" approach.

3. Alliances

Build a strong network of allies and rally the many voices of people with disability to speak as one national voice.

What does NITAN do?

NITAN aligns itself fully with the goals of Australia's Disability Strategy.

We provide a national voice and connection for people with disability and associated organisations that advocate for accessible and inclusive transport.

We work to educate people with disability on their transport rights. We also raise awareness of public transport issues facing people with disability.

We make sure that state and territory-based transport advocacy groups can feed into a national advocacy network that is independent and non-partisan.

Submission - City of Ryde request for Exemption

The Australian Federation of Disability Organisations (AFDO) along with the National Inclusive Transport Advocacy Network (NITAN) do not support this exemption in whole or in part.

We fundamentally disagree with the assertion from Morris Goding Access Consulting that the objects of the DDA would be upheld by this exemption.

For the consultants to advance that “Priority Planning, an Updated Disability Inclusion Action Plan and improved communications and feedback mechanisms” is an excuse or some form of replacement for good quality compliant infrastructure is nonsensical and should be rejected. The reasoning being used by the City of Ryde to further defer their compliance to DSAPT is somewhat offensive to people with disability, the disabled community, their families, supporters and the Ryde community. A COVID environment has only existed since March 2020 and not for the entire period of their infrastructure non-compliance.

Further, council amalgamations should have played no bearing in relation to this matter as, no matter which council was the eventual owner of the non-compliant infrastructure, they have obligations under DSAPT. The progress of other jurisdictions is also of no relevant concern to this issue for the City of Ryde and finally.

An audit could and should have been undertaken by this council without guidance of the state being needed as council has ownership of the infrastructure.

We are dismayed that these reasons have been advanced as a defence for what is at its crux, poor planning and prioritisation by the City of Ryde.

AFDO and NITAN question the expertise and standing within the disabled community of the consultants utilised by council due to these errors and must question whether this is what the intended function of access consultants should be?

The Disability Discrimination Act and its associated standards (DSAPT included) must be seen as the legal determinants and are explicit for this issue, they cannot be piecemealed to suit a particular line of argument. A failure to adhere to one part of the standard should be seen as outright avoidance to the very legal instrument meant to aid inclusion and reduce discrimination. This conduct should then be taken into consideration in any further exemption application.

With the current DSAPT being in effect for 18 years, the failure to enact required solutions to this issue is frankly one of neglect, demonstrating a lack of management leadership in planning, budget and risk management. It also demonstrates a complete lack of any consideration for people with disability trying to utilise and engage with the Ryde community or beyond who comprise at least twenty percent of their community.

Eighteen years should have been plenty of time to rectify matters of infrastructure to ensure compliance had the work been given any priority early enough. Costed and funded business plans for bus stops and upgrades have simply not been completed.

It is our view that the AHRC should not be placed in the position of bailing out infrastructure owners and operators that have not adequately budgeted and program managed DSAPT required compliance works.

Concern over City of Ryde request and general exemption landscape

An issue that has been repeatedly raised in the five-yearly reviews of the DSAPT is that of rolling exemptions with absolutely no progress being made on any form of compliance at any stage.

Our understanding is that under Section 55 of the DDA, the AHRC has the power to grant **temporary exemptions** from certain provisions of the Act. These exemptions may be granted for up to five years at a time, with the effect that discrimination covered by the exemption is not unlawful under the Act so long as the exemption remains in force.¹

The original intent of these exemptions was to allow an operator or provider “breathing space” when required under specific and limited circumstances.

For example, Brisbane City Council was granted a temporary exemption in 2011 after flooding caused extensive damage to its ferry terminals. The Council acted in good faith and the temporary exemption has now lapsed, with the Council back on track to meet its compliance targets.² Unfortunately, these exemptions are often used in bad faith in a manner contrary to their original purpose, with some providers and operators being granted repeated exemptions, rendering their “temporary” status moot.

We submit, that by granting multiple rolling extensions, the AHRC has unwittingly allowed these exemptions to have permanency, causing progress towards accessible public transport to stagnate.³ This ultimately undermines the DDA and as such constitutes institutional neglect of people with disability.

In respect of the questions put forward to the AHRC by the City of Ryde, we submit that by the very nature of putting these forward the applicant has shown they and or their consultants are not familiar with the concept of equivalent access. This is a basic tenet required to understand how to comply with the standards.

These questions, even if genuine, could have been solved through a proper use of this mechanism. Given this they must be seen as nothing more than a stalling tactic meant to muddy the waters of AHRC functions and powers.

¹ DDA 1992 (Cth), s. 55.

² Mcpherson 2018, 41.

³ Mcpherson 2018.

Concern over engagement by the City of Ryde.

We hold great concern with the engagement mechanism used and the interpretation of the themes gathered. "Consulting" by excluding any disabled people and only with their service/support provider does not meet even the most basic of definitions of good engagement.

The concern of consulting with those who provide services to disabled people without having lived experience themselves is of course centered on whether they have the requisite experience and knowledge of the DSAPT and DDA instruments to make informed consent on behalf of their community. Enquiries should be made of the quality of the engagement with these groups and of their experience and knowledge independent of the council to ensure the disabled community can have faith in them as a function.

For example, to state in relation to frequency of service and the coverage of routes 'People that raised the above issues noted that the design of the stops, and any apparent deficiencies, were not a major concern and did not impact on their use of the transport service.' must be seen as a furphy. There must surely be an undeniable link between route coverage, frequency and bus stop accessibility. Given the frequency a bus arrives at an accessible stop is undoubtedly a determining factor on whether someone with disability could catch this transport.

Conclusion

It is hoped that through this submission we have illustrated that the time for rolling over exemptions must cease and that the disability community will no longer accept this as fair or just outcome. We must hold the transport industry to more rigorous standards.

The City of Ryde knew its responsibility, or at least ought to have, its submission is nonsensical, only serving to break trust rather than build it with the disabled community.

The application for exemption by the City of Ryde must be refused and a suitable time limited strategy put into place to enforce compliance with the standards.

In terms of action, in terms of reporting and in terms of engagement, the disabled community has the right to this and it is incumbent on the AHRC to consider and enforce these rights.

The Australian disability policy landscape is changing. Rightfully alongside this, the expectations of the disabled community and their community inclusion is also changing. With a modernised DSAPT and a renewed Australia Disability Strategy, transport, which includes compliance measures for accessibility of which Ryde City Council would certainly fail, must play a part as a valuable enabler of community inclusivity.

AFDO and NITAN look forward to playing a role in driving this work forward and forming the narrative on behalf of and alongside the disabled community.

International & Domestic Human Rights & Legislative Obligations

We would also reinforce with the AHRC and outline to the City of Ryde the broader picture that they are a part of in terms of compliance with these.

“Accessibility is related to groups, whereas reasonable accommodation is related to individuals. This means that the duty to provide accessibility is an ex-ante duty. States parties therefore have the duty to provide accessibility before receiving an individual request to enter or use a place or service.”⁴

While the Convention on the Rights of Persons with Disabilities (CRPD) does not explicitly define inclusion, the Committee on the Rights of Persons with Disabilities has stated that accessible transport is a precondition for the social inclusion of people with disability in their communities.⁵ Further, the Committee defines being part of the community as “living a full social life and having access to all services offered to the public”⁶ and “having access to all measures and events of political and cultural life in the community,”⁷ both of which necessarily include accessible transport. Having ratified the Convention, the Australian Government recognises that accessible transport is a precondition for inclusion and independent living and is thus legally obliged to ensure its provision.

The issue of inclusive and accessible transport falls under multiple different articles within the CRPD, with Article 9: Accessibility being the most relevant:

Article 9/1:

“To enable persons with disabilities to live independently and participate fully in all aspects of life, States Parties shall take appropriate measures to ensure to persons with disabilities access, on an equal basis with others, to the physical environment, to transportation, to information and communications, including information and communications technologies and systems, and to other facilities and services open or provided to the public, both in urban and in rural areas. These measures, which shall include the identification and elimination of obstacles and barriers to accessibility, shall apply to, inter alia:

*(a) Buildings, roads, **transportation** and other indoor and outdoor facilities, including schools, housing, medical facilities and workplaces;”⁸*

Article 9/2:

“States Parties shall also take appropriate measures to:

(a) Develop, promulgate and monitor the implementation of minimum standards and guidelines for the accessibility of facilities and services open or provided to the public;”⁹

Other CRPD rights pertaining to accessible public transport include:

- Article 5 – Equality and non-discrimination.
- Article 12 – Equal recognition before the law.
- Article 13 – Access to justice.
- Article 19 – Living independently and being included in the community.
- Article 20 – Personal mobility.¹⁰

The right to inclusion is enshrined in Article 19, which recognises the “equal right of all persons with disabilities to live in the community, with choices equal to others.”¹¹ The Convention further states that people with disability should have access to services “necessary to support living and inclusion in the

⁴ United Nations Committee on the Rights of Persons with Disabilities 2014, s. 22, 7.

⁵ Ibid., s. 1, 2

⁶ United Nations Committee on the Rights of Persons with Disabilities 2017a, II. A. (b), 4.

⁷ Ibid

⁸ United Nations 2006, art. 9, emphasis added

⁹ Ibid

¹⁰ United Nations 2006, art. 5, 12, 13, 19, 20.

¹¹ United Nations 2006, art. 19.

community, and to prevent isolation or segregation from the community”¹², and that community services and facilities for the general population must be “available on an equal basis to persons with disability and are responsive to their needs”¹³, both of which require access to inclusive transport.

General comment no. 5 (2017) on living independently and being included in the community explicitly defines what “being included in the community” means:

*“The right to be included in the community relates to the principle of full and effective inclusion and participation in society as enshrined in, among others, article 3 (c) of the Convention. It includes living a full social life and **having access to all services offered to the public** and to support services offered to persons with disabilities to enable them to be fully included and participate in all spheres of social life. These services can relate, among others, to housing, **transport**, shopping, education, employment, recreational activities and all other facilities and services offered to the public, including social media. The right also includes having access to all measures and events of political and cultural life in the community, among others, public meetings, sports events, cultural and religious festivals and any other activity in which the person with disability wishes to participate.”¹⁴*

The CRPD Committee reviewed Australia’s compliance with Article 9 in 2013 and 2019. Their concerns and recommendations regarding Article 9 were the same in both the 2013 and the 2019 reports.¹⁵ The CRPD Committee was concerned that:

“The lack of a national framework for reporting compliance with the Disability Standards for Accessible Public Transport 2002, the Disability (Access to Premises – Buildings) Standards 2010 and the National Standards for Disability Services;”¹⁶

And recommended:

“Establish and enact a national framework for reporting compliance with the Disability Standards for Accessible Public Transport 2002, the Disability (Access to Premises – Buildings) Standards 2010 and the National Standards for Disability Services;”¹⁷

Again, we see a pattern of persistent neglect emerge, demonstrating a lack of progress so stark that even the CRPD Committee is concerned and echoes the recommendations from previous reviews. It is this pattern of evidence that we believe constitutes the institutional neglect embedded in the very fabric of the Transport Standards

In addition to ratifying the CRPD, the Australian Government has further enshrined its commitment to inclusion in the *Australian Human Rights Commission Act 1986*. This federal law prohibits discrimination on a number of grounds, including “impairment, mental, intellectual or psychiatric disability, [and] physical disability”¹⁸. Established alongside the *Act*, the Australian Human Rights Commission (AHRC) is the national human rights body of Australia and is responsible for investigating claims of discrimination.

In relation to disability, the AHRC investigates alleged infringements under the federal *Disability Discrimination Act 1991 (Cth) (DDA)*, which prohibits discrimination on the basis of:

“... physical, intellectual, psychiatric, sensory, neurological or learning disability, physical disfigurement, disorder, illness or disease that affects thought processes, perception of reality, emotions or judgement, or results in disturbed behaviour, and presence in body of organisms causing or capable of causing disease or illness...”¹⁹

¹² United Nations 2006, art. 19. (b).

¹³ Ibid (c).

¹⁴ United Nations Committee on the Rights of Persons with Disabilities 2017a, II. A. (b), 4, emphases added.

¹⁵ United Nations Committee on the Rights of Persons with Disabilities 2013; United Nations Committee on the Rights of Persons with Disabilities 2019.

¹⁶ United Nations Committee on the Rights of Persons with Disabilities 2019, III. B. 17.(a), 5.

¹⁷ United Nations Committee on the Rights of Persons with Disabilities 2019, III. B. 18.(a), 5.

¹⁸ AHRC 2014.

¹⁹ Ibid
