



National Inclusive Transport Advocacy Network

To the Australian Human Rights Commission,

Submission on the application by the City of Ryde for temporary exemptions from the Disability Standards for Accessible Public Transport (DSAPT)

Who are we?

The National Inclusive Transport Advocacy Network (NITAN), born from a discussion on transport issues jointly led by the Australian Federation of Disabled Organisations (AFDO) and the Australian Human Rights Commission, was subsequently established by AFDO and has worked during its formation 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,

Along with other state-based advocacy organisations and individuals with expertise in legal, transport and disability rights.

We aim to be the 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 Purpose

The National Inclusive Transport Advocacy Network seeks to represent a national voice of people with disability advocating for accessible and inclusive public transport systems across Australia.

Our Objectives

1. Community Inclusion

Promote the ethos that full, equal community integration of people with a 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.

In order to achieve its purpose and objectives NITAN will:

- Align itself fully with the goals of the National Disability Strategy.
- Develop a national strategic disability transport plan and discussion paper on national disability transport issues.
- Provide a national voice and connection for people with disability and associated organisations who conduct transport advocacy.
- Educate people with disability and advocates on their transport rights as well as national/international best practice for public transport services.
- Ensure that state and territory based transport advocacy groups can feed into a national advocacy network that is independent and non-partisan.
- Share ideas between transport advocates across states and territories and between disability transport advocates and the Federal government.
- Use traditional and emerging media to raise public awareness of public transport issues facing people with disability
- Act as a collection and distribution point for the stories of people with disability which can be used by transport advocates and others to consider possible legal test cases.
- Raise to public prominence individual issues and cases concerning public transport via digital petitions and other mediums

- Provide advice or training to members on how to effectively engage on transport issues with Ministers and shadow/cross bench parliamentary members of all levels of government.
- Enable information exchange between NITAN and state based transport advocacy groups.
- Lend its expertise to collegiate organisations who are advocating for goals that are in alignment with NITAN.
- Act as a repository of transport related information that can be freely accessed and shared with disability advocates.
- Source best practice examples of services, practices and designs from Australia and internationally to use as benchmarks in advocacy/negotiations with governments and/or public transport providers.
- Encourage members of NITAN to become members of local, state and national accessibility reference groups. Seek members on these groups to ensure that, as much as possible, they are created and operating in a user focused, co-design framework.

NITAN does not support this exemption in whole or in part. It fundamentally disagrees with the assertion from Morris Goding Access Consulting that the objects of the DDA would be upheld by this exemption. To state that, Priority planning, an Updated Disability Inclusion Action Plan and Improved communications and feedback mechanisms somehow replace good quality compliant infrastructure is laughable in the extreme.

The reasons being used by the City of Ryde are an insult to the disabled community. A COVID environment has existed for the past few years. But not 18. Council amalgamations should have played no bearing as no matter which council was the eventual owner they still had obligations under DSAPT. The progress of other jurisdictions is of no concern to the City of Ryde and finally an audit could and should have been done by THIS COUNCIL without the guidance of the state given it is their ownership of the infrastructure. These are truly terrible reasons for what is at its crux, poor planning and prioritization.

NITAN questions the expertise and standing within the disabled community of the consultants due to this egregious error 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 sacrosanct and are to be taken in full not piecemeal. A failure to adhere to one part of the standard should be seen as an insult 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 a solution to this issue is frankly one of a lack of willpower, budget foresight and management.

18 years should have been plenty of time to rectify matters of infrastructure to ensure compliance had the work been given priority early enough. Costed and funded business plans for bus stops have simply not been completed. It is NITANs view that the AHRC should not be in the business of bailing out infrastructure owners and operators that have not adequately budgeted and program managed this work.

Concern over this particular exemption and the general exemption landscape

An issue that has been repeatedly raised in the five-yearly reviews of the DSAPT is that of exemptions. NITAN understands 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.

NITAN submit, that by granting multiple ongoing extensions, the AHRC has ipso facto allowed these exemptions to become effectively permanent, causing progress towards accessible public transport to stagnate.³ This ultimately undermines the DDA and as such constitutes institutional neglect of people with disability.

With regard to the questions put forward to the AHRC by the City of Ryde. NITAN submits 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. A basic tenant of 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. One meant to muddy the waters of AHRC functions and powers.

Concern over engagement.

NITAN holds great concern with the engagement mechanism used and the interpretation of the themes gathered. Consulting with not disabled people themselves but their service 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 as it will be on behalf of their community. Enquiries should be made of the quality of the engagement with these groups and of their experience and knowledge

¹ DDA 1992 (Cth), s. 55.

² Mcpherson 2018, 41.

³ Mcpherson 2018.

independent of the council to ensure the disabled community can have faith in them as a function.

To state for example 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 and frequency and bus stop access. 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 NITAN has illustrated that the time for blindly rolling over exemptions has concluded. The City of Ryde knew its responsibility, or at least ought to have. This application is of the poorest form. Its submission is nonsensical, only serving to break trust with the disabled community rather than build it. We must hold the transport industry to more rigorous 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 play their part in enforcing 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 National 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. NITAN looks forward to playing a role in driving this work forward and forming the narrative on behalf of and alongside the disabled community.

NITAN reminds the AHRC and Ryde city council of the broader picture that they are a part of.

International & Domestic Human Rights & Legislative Obligations

*"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

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

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

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.

Convention further states that people with disability should have access to services “necessary to support living and inclusion in the 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 2019.¹⁵ Their concerns and recommendations regarding Article 9 were the same in both the 2013 and the 2019 reports. 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

¹² Ibid., (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.

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

¹⁸ AHRC 2014.

¹⁹ AHRC 2014.