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Friday 29 April 2022

Dr Ben Gauntlett
Disability Discrimination Commissioner, Australian Human Rights Commission
GPO Box 5218
Sydney NSW 2001

RE: The City of Ryde's Application for a Temporary Exemption under the *Disability Standards for Accessible Public Transport 2002* regarding their bus stops.

Dear Dr Gauntlett

Thank you for the invitation to provide a submission regarding the City of Ryde's (the City's) application for an exemption of 5 years to relevant sections of the *Disability Standards for Accessible Public Transport 2002* (DSAPT) as they relate to bus stops.

What follows are Physical Disability Australia's (PDA's) views on such exemptions in general, and that requested by the City in this instance.

Generally speaking, PDA is opposed to the granting of any exemptions to the DSAPT or any other Disability Standard.

It is a regrettable feature of the Australian system that human rights legislation is reactive rather than proactive. There is no policing of compliance with the DSAPT (nor any other disability standards) and breakers of the *Disability Discrimination Act's* statutes are only held accountable when a complaint is made and then successfully prosecuted. In this context, exemptions provide miscreants with a get-out-of-jail-free permit when there is no enforcement and few consequences for continuing breaking the law in the first place. This situation provides little incentive for compliance generally and any exemptions effectively excuse a lack of commitment to the accessibility needs of people with disability.

The DSAPT has been part of Australian law for almost 20 years now and includes many generous and easy-to-comply-with timetables for vehicle and infrastructure modification. From our perspective, there is no excuse for well-funded government entities (such as the City¹) not to meet past and future compliance deadlines. Your website's *Guidelines for promoting compliance of bus stops with the DSAPT 2002*² points out that the expectation is for 25% bus stop compliance with the

¹ Despite having a 4 year 'Special Infrastructure Renewal' Budget of over \$50M, only \$200k (<0.4%) was allocated to Bus Stop DDA Compliance. (2018-2022 Four Year Delivery Plan, p 96 available at <https://www.ryde.nsw.gov.au/files/assets/public/publications/fyd/four-year-delivery-plan-2018-2022.pdf>)

² <https://humanrights.gov.au/our-work/disability-rights/publications/guideline-promoting-compliance-bus-stops-disability>

DSAPT by the end of 2007; 55% by 2012; 90% by 2017; and complete bus stop compliance by the end of 2022.

The fact that this schedule allows the glacial progress in making public transport infrastructure accessible to commuters with disability means that the City has been effectively already been provided with a 20 year exemption from the need to obey these important laws already. In general terms, We see no pressing need for this Local Government entity to be granted an exemption from complaint and the need to respond should a commuter with disability choose to make one.

With regard to the City's specific pleas for leniency noted in their application (the Application)³, PDA is not inclined to believe they provide any justification for the granting of an exemption.

Existing topography and Legacy infrastructure

The Application notes that some of its bus stops are in located in steep areas and that rendering these DSAPT compliant requires a lot more work than those located in flatter terrains. The City argues that these sites' requirements for excavation, changing the grade of the roadway and kerb, and rebuilding the stop would represent an 'unjustifiable hardship', and that they looked forward to a revised version of the DSAPT that will make allowances for topographical issues that render the provision of 'firm and level bus stops less than absolute'. This casts the City's stated aim to achieve full bus stop compliance in doubt and that they would rather take advantage of any topographical exemption where existing bus stops are located in difficult-to-alter landscapes.

The Application also notes that many of the City's bus stops were built long before the DSAPT became part of Australian law and that making them compliant with the standards has necessitated "modifying [this] existing infrastructure in a piecemeal fashion" instead of "adopting the sound and considered planning principles of [the] TfNSW Guidelines for Public Transport Capable Infrastructure in Greenfield Sites".

PDA is confused by this excuse as bus stops are typically small *ad-hoc* structures that could be easily demolished to make way for 'capable infrastructure'. Is city claiming that some of these bus stops have heritage value? If not, this argument should be summarily dismissed.

Coordination and Direction from State authorities

Page 17 of the Application notes some issues liaising with NSW State Government transport authorities, however, we do not understand how this would impact on Council's ability to get on with the job of making all its bus stops DSAPT compliant given it has had almost 20 years to complete this task. Yes, the City is does not have the final word on bus routes through their jurisdiction and that these would be negotiated with the State's public transport regulator, but that does not mean it can't get on with the job of making its existing infrastructure fit-for-purpose.

³ https://humanrights.gov.au/sites/default/files/city_of_ryde_access_report_-_application_for_temporary_exemption_from_dsapt_for_bus_stops_redacted_0.pdf

Council amalgamations

The prospect of local government amalgamations in 2015-16 is also cited as a reason for the delay in bus stop upgrades and while PDA understands that these issues created some uncertainty with regard to the future of the City as a corporate entity, we do not think it provides a valid excuse to implement “an 18-month delay” to scheduling and completing capital works of this nature. Presumably, services such as garbage collection and park maintenance continued in this period and we imagine urgent repairs to infrastructure such as sewer mains and roads were also completed. We feel this event of seven years ago is a poor justification for delayed compliance and, like with the hoped-for revisions to the DSAPT, it seems Council wanted the need for 100% bus stop DSAPT compliance to be taken from them.

Covid-19 pandemic

The City’s application also notes that its revenue and workforce was impacted by the Covid-19 pandemic from a period starting in early 2020. And that the resulting shortage of construction contractors and the means to pay them has impacted on their compliance activities. PDA acknowledges that the economic turmoil of the last 2 years will have impacted the City’s infrastructure program, but this, again is a question of priorities. We point out, again, that the need for 100% DSAPT compliance with regards to bus stops has been part of Australian law for almost 20 years. Two years of difficulty should not excuse not getting the work done in the previous 18 years provided for the task.

Progress of other Agencies and Jurisdictions

In an argument that seems to be offered by the City’s contractor, *Morris Goding Access Consulting*, the argument is made that the City should be given the requested exemption because it is the first infrastructure provider to ask for one and that in the contractor’s “cursory assessment of bus stops Australia wide” there are hundreds of responsible entities in Australia that are behind schedule in making 100% of their bus stops DSAPT compliant by the end of this year.

Our reading of this section is that the City believes they should be offered the exemption because they are the first to ask for one and that many other local government authorities are not meeting their DSAPT compliance requirements anyway.

With respect, this argument is equivalent to a shoplifter asking for immunity from prosecution on the basis that he promises to stop stealing in the next 5 years and in any case, there are many other shoplifters at large in the community. It is totally without merit.

In Summary

As noted in the introduction of this submission, PDA opposes the granting of exemptions to these provisions of the *Disability Discrimination Act 1992* and the DSAPT generally, and opposed to granting one to the City of Ryde in this instance. The Standards have provided a generous timetable for compliance and documents on the City’s website confirm they have the necessary financial resources to have complied on schedule if they put their mind to it. The reasons provided in the City’s application are not compelling.

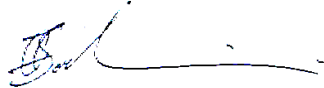
We hope this submission informs your deliberations.

About Us

Physical Disability Australia (PDA) is a national peak membership-based representative organisation run by people with physical disability for people with physical disability. PDA was founded 25 years ago and we have over 1,000 members from all Australian States and Territories. Our purpose is to:

- Remove barriers through systematic advocacy to all levels of government to enable every Australian living with a physical disability opportunities to realise their full potential;
- Proactively embrace and promote difference and diversity for an inclusive society; and
- Actively promote of the rights, responsibilities, issues and participation of Australians with physical disability.

Yours Sincerely



Andrew Fairbairn
President and Director (WA)
Physical Disability Australia



Simon Burchill
General Manager
Physical Disability Australia