

Explanatory Statement

Disability Standards for Accessible Public Transport Amendment 2009 (No. 1)

Issued by the Authority of the Attorney-General

Authority

1. The *Disability Standards for Accessible Public Transport 2002* (Transport Standards) are formulated under section 31 of the *Disability Discrimination Act 1992* (DDA). Subsection 31(1) provides that the Minister may, by legislative instrument, formulate standards in relation to any area in which it is unlawful to discriminate against another person on the ground of a disability of the other person under Part 2 of the Act. Subparagraph 31(2)(a)(iv) of the DDA allows for the insertion in disability standards of exemptions or a power for the Australian Human Rights Commission to make exemptions.

Consultation

2. The Australian Human Rights Commission was consulted on the form of these amendments.
3. Broader consultation on the changes occurred in the process of making the *Disability Discrimination and Other Human Rights Legislation Amendment Act 2009*. Item 103 of Schedule 2 of the Act provided for the repeal of subsections 55(1A) to 55(1D), which set out provision for the granting of exemptions by the Australian Human Rights Commission from disability standards that deal with public transport. The Senate Standing Committee on Legal and Constitutional Affairs held public hearings and considered public submissions. Thirty-eight submissions were received. No issues were raised in these submissions or the public hearings about the proposed amendments. The Office of the Anti-Discrimination Commissioner (Tasmania) supported the change.

Provisions

Section 1 Name of Standards

4. Section 1 provides that this legislative instrument is to be known as the *Disability Standards for Accessible Public Transport Amendment 2009 (No. 1)*.

Section 2 When these Standards take effect

5. Section 2 provides that the *Disability Standards for Accessible Public Transport Amendment 2009 (No. 1)* take effect in accordance with section 31(4) of the DDA. That section provides that a legislative instrument made under the section do not take effect before the end of the period in which it could be disallowed in either House of Parliament. In short, this is after the expiration of 15 sitting days of both Houses of Parliament if there is no motion of disallowance during this time.

Section 3 ***Amendment of the Disability Standards for Accessible Public Transport 2002***

6. This section provides that the *Disability Standards for Accessible Public Transport 2002* are amended as set out in Schedule 1.

Item 1 of Schedule 1

7. Item 1 of Schedule 1 amends the Transport Standards by inserting new Part 33A comprising new sections 33A.1 to 33A.5. The amendments in this new Part provide the Australian Human Rights Commission with the power to grant exemptions from the Transport Standards. The part of the Explanatory Memorandum dealing with item 103 of Schedule 2 of the *Disability Discrimination and Other Human Rights Legislation Amendment Act 2009* states:

Table Item 5 provides for commencement of Items 103 to 105 as being the earlier of a date proclaimed or six months from the Act receiving the Royal Assent. This delay is to allow time to make provisions in the disability standards on Accessible Public Transport under the *Disability Discrimination Act 1992*.

8. The provisions also replicate publication requirements and review rights otherwise applicable to the Australian Human Rights Commission powers to grant exemptions to the DDA under sections 56 and 57 of the DDA.

New Section 33A.1

9. Subsection 33A.1(1) allows a person to apply for an exemption in relation to the Transport Standards. The applicant can apply either on their own behalf, on their own behalf and on behalf of others, or only on behalf of others. Allowance is made in subparagraph (b) for multiple parties to apply jointly.
10. Subsection 33A.1(2) provides for the Commission to grant an exemption from compliance with all or some of the Transport Standards.
11. Subsection 33A.1(3) provides for a person to whom an exemption relates under subsection 33A.1(2) to apply to seek a further exemption. The application must be made within the period before expiry of the operating exemption. The Commission may decide whether to grant a further exemption, which cannot be for a period of more than five years.
12. Subparagraph 33A.1(4)(a) provides for mandatory consultation by the Commission with the Accessible Public Transport Jurisdictional Committee. The Committee is comprised of representatives of the Australian Government and State and Territory transport or equivalent departments. The Committee secretariat is administered by the Department of Infrastructure, Transport, Regional Development and Local Government. Subparagraph (b) of the same section empowers the Commission to consult more widely at its discretion.
13. Subsection 33A.1(5) provides that an exemption granted under subsections 33A.1(2) or (3) cannot be for a period of more than five years.

New Section 33A.2

14. Section 33A.2 provides for the content and scope of an exemption granted by the Commission under section 33A.1(1). This includes a requirement for the decision to be in writing; to state if the exemption is for all or some of the Transport Standards, and if it is for some of the Standards, specify which parts. The section provides that the Commission must specify the period of the exemption; and if applicable, any terms and conditions subject to which the

exemption is granted; any conduct which is specifically exempt; and to state if the exemption is a further exemption under subsection 33A.1(2).

New Section 33A.3

15. Section 33A.3 provides that in relation to the person on whose behalf an applicable exemption operates, or those employed by them or under their direction and control, there is no contravention of the Transport Standards for their failure to comply the Transport Standards, if an exemption is applicable. Contravention of the Transport Standards would otherwise be unlawful under section 32 of the DDA.

New Section 33A.4

16. Section 33A.4 provides that a person may apply to the Administrative Appeals Tribunal (AAT) if they are dissatisfied with the Commission's decision under section 33A.1. The *Administrative Appeals Tribunal Act 1975* contains provisions relating to AAT's jurisdiction.

New Section 33A.5

17. Section 33A.5 obliges the Commission to publish the reasons for its decisions made under section 33A.1. It stipulates that decision records should be published within one month in the *Gazette*. The provision requires that the Commission state in the publication its findings on material questions of fact; the evidence on which those findings were based; and set out its reasons. This clause also requires the Commission to produce a statement outlining appeal rights to the AAT.