

15 SEP 2003

Human Rights  
Commission

Te Kāhui Tika Tangata

8 September 2003

Dave Watson  
Divisional Manager Transport  
Greater Wellington Regional Council  
PO Box 11646  
WELLINGTON

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Referred to	Date/Int
Watson	

Dear Dave

### National Inquiry into Accessible Public Land Transport for people with disabilities

Thank you for providing the Human Rights Commission with comments on the draft Terms of Reference and guidelines for the conduct of the National Inquiry into Accessible Public Land Transport for people with disabilities. The Commission has considered all submissions and has decided to proceed with the inquiry.

Enclosed please find a booklet outlining the Terms of Reference for the inquiry, the inquiry method and timetable and an outline of the legal basis for the inquiry.

The Commission looks forward to your continued positive involvement in the inquiry process. If you have any queries or comments please contact the undersigned at phone (03) 353 0952 or email [brucec@hrc.co.nz](mailto:brucec@hrc.co.nz).

Yours sincerely

**Bruce Coleman**  
PROJECT MANAGER  
*Kaiwhakahaere Kaupapa*



# Human Rights Commission

*Te Kāhui Tika Tangata*

## Commission Offices

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### TĀMAKI MAKĀURAU – AUCKLAND

10th Floor, Tower Centre, Cnr Queen and Custom Streets  
PO Box 6751, Wellesley Street, *Tāmaki Makaurau* Auckland

*Waea* Telephone: (09) 309 0874

*Waea Whakāhua* Fax: (09) 377 3593

### TE WHANGANUI Ā TARA – WELLINGTON

Level 8, Vogel Building, 8 Aitken Street  
PO Box 12411, Thorndon, *Te Whanganui ā Tara* Wellington

*Waea* Telephone: (04) 473 9981

*Waea Whakāhua* Fax: (04) 471 6759

### OTAUTAHI – CHRISTCHURCH

Ground Floor, KPMG at Cranmer, 30-34 Cranmer Square  
PO Box 1578, *Otautahi* Christchurch

*Waea* Telephone: (03) 379 2015,

*Waea Whakāhua* Fax: (03) 353 0959

<http://www.hrc.co.nz>

Phone: 0800 4 YOUR RIGHTS

0800 496 877 (toll free)

TTY (teletypewriter) 0800 150 111

Fax: (09) 377 3593 (attn. InfoLine)

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September 2003

## 1. TERMS OF REFERENCE

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The Human Rights Commission has resolved to conduct a national Inquiry into Accessible Public Land Transport for people with disabilities.

The Inquiry will be conducted under the powers granted to the Human Rights Commission and specifically under section 5(2)(h) of the Human Rights Act 1993:

*“to inquire generally into any matter, including any enactment or law, or any practice, or any procedure, whether governmental or non-governmental, if it appears to the Commission that the matter involves, or may involve, the infringement of human rights”.*

Terms of Reference for the Inquiry are:

I. The Human Rights Commission will inquire into the provision of public land transport in New Zealand, using the Otago Region and the Wellington Region as case studies, with reference to:

- (i) The availability, accessibility and affordability of public land transport services for people with disabilities;
- (ii) The quality and safety of public land transport services for users and service providers;
- (iii) The economics of providing accessible public land transport for people with disabilities;
- (iv) Whether the public land transport services available to people with disabilities comply with human rights standards;
- (v) The adequacy of the technical and engineering standards that are used in the design and construction of conveyances, premises and infrastructure;
- (vi) The operational policies of service providers, the contractual arrangements between funders and service providers and the safety rules and regulations that apply to public land transport services;
- (vii) The particular needs of those people living in the rural and provincial areas of New Zealand.

II. To consider, as a result of the Inquiry, whether to make recommendations on:

- (i) Changes to legislation, regulations, policies and procedures and funding arrangements;
- (ii) The value of promulgating national standards and a timetable for the implementation to ensure the provision of accessible public land transport services to people with disabilities;
- (iii) The need for national standards of training for public land transport workers working with people with disabilities.

## 2. DEFINITIONS

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For the purposes of this Inquiry, public land transport services will include all conveyances, premises, infrastructure and service information associated with transport services and provided to the public in general.

**Conveyances** shall include the following to the extent they provide a public land transport service: buses and coaches; taxis; trains, trams and light rail whether privately or publicly owned and/or operated and whether subject to public funding or not. Conveyances shall include inter-city bus and rail services and school transport but will not include chauffeur driven hire cars or self-drive hire cars.

**Premises** are structures, buildings or facilities that an operator provides for passenger use as part of a public land transport service. For example, bus shelters, transport interchanges, land transport terminals and the like.

**Infrastructure** is any structure or facility that is used by passengers in conjunction with travelling on a public land transport service. For example, footpaths and roads, intersection and curb design, lighting and signs.

**Service information** is any information provided about public land transport services. This could include timetable, route and other service information, provided generally, along the route(s) or while the service is in progress.

For the purposes of this Inquiry people with disabilities shall have the meaning contained in section 21(1)h of the Human Rights Act 1993.

“Disability, which means –

- (i) Physical disability or impairment:
- (ii) Physical illness:
- (iii) Psychiatric illness:
- (iv) Intellectual or *psychological* disability or impairment:
- (v) Any other loss or abnormality of psychological, physiological, or anatomical structure or function:
- (vi) Reliance on a guide dog, *wheelchair*, or other remedial means:
- (vii) The presence in the body of organisms capable of causing illness:”

### 3. INQUIRY PROCESS

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The Inquiry will be conducted in three phases.

#### Phase One

- Consultation with interested groups to establish the current situation and desirable outcomes. Consultation will include Ministers of the Crown, relevant government departments and crown entities, regional authorities, territorial local authorities, transport service providers and their representatives, and individuals and groups within the disability sectors;
- Research into international best practice;
- Identification of the issues for the various public land transport user groups covered by the Inquiry;
- Identification of the issues for the various public land transport providers;
- Identification of the issues for the public land transport regulators and funders;
- Publication of a summary report and discussion document based on the consultations and research;
- Consultation with relevant professional bodies.

#### Phase Two

- Invite submissions from all interested groups and individuals in all regions;
- Conduct public hearings in Otago and Wellington and in other locations as appropriate;
- Publish a draft report on the submissions and hearings, together with any recommendations, inviting further comments.

#### Phase Three

- Publish a final report.

Following publication of the final report the Human Rights Commission would undertake monitoring of the implementation of the Inquiry recommendations.

#### 4. TIMING OF THE INQUIRY

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The Commission will use its best endeavours to conduct the Inquiry according to the following timeframe:

- (i) July – December 2003: Consultation and research;
- (ii) February 2004: Publication of the initial report;
- (iii) April – June 2004: Submissions and hearings;
- (iv) August 2004: Draft final report circulated for comment;
- (v) October 2004: Final report published.

## 5. CIVIL PROCEEDINGS

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- (i) The Commission has instituted the Inquiry to assess the extent to which public land transport services are appropriate for people with disabilities;
- (ii) The Inquiry will identify any barriers to accessing public land transport services for people with disabilities and develop constructive proposals to eliminate the barriers identified;
- (iii) The Human Rights Act 1993 provides in section 92E that if the Commission considers that an Inquiry by it has disclosed or may have disclosed a breach of the HRA it may bring civil proceedings before the Human Rights Review Tribunal;
- (iv) Given the purpose of this Inquiry, the Commission is not actively seeking to exercise the power given to it by section 92E of the Human Rights Act.



## 6. STYLE OF INQUIRY

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The Commission is committed to an Inquiry that consults widely in ways that respect the dignity of all those involved. People will be able to make their views known by:

- Oral submissions at the hearings;
- Taped submissions sent to the Inquiry, including emailed or faxed submissions;
- Hand-written or typed submissions.

The hearings will be public meetings, open to any member of the public and chaired by the Inquiry chairperson, Chief Commissioner Rosslyn Noonan. Questioning will aim to clarify statements being offered. Procedures will be designed to ensure that all those who want to contribute have a fair opportunity to do so.

The Inquiry will receive confidential evidence if this is necessary, for instance, to protect personal privacy or commercially sensitive information. Every reasonable step will be taken to ensure such evidence remains confidential. Confidential information given to the Inquiry will not be passed onto the Human Rights Commission and will only be used for the purposes of the Inquiry.

Written submissions to the Inquiry can be made in either of New Zealand's official languages, Maori or English. Oral submissions to the hearings can be made in any one of Maori, English or New Zealand Sign Language.

## 7. BACKGROUND

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The Human Rights Commission is an independent Crown entity whose primary functions are set out in the Human Rights Act 1993 as:

- (a) to advocate and promote respect for, and an understanding and appreciation of, human rights in New Zealand society; and
- (b) to encourage the maintenance and development of harmonious relations between individuals and among the diverse groups in New Zealand society

Since 1994 discrimination against people with disabilities has been unlawful in a number of areas including access by the public to places, vehicles and facilities and in the provision of goods and services.

Many people with disabilities rely on public land transport as their only means of transport. The lack of an accessible public land transport system is often a significant barrier to full participation in employment, education, recreation, community activities and other activities that the non-disabled community take for granted.

The Commission has received a significant number of complaints, inquiries and representations that suggest some elements of the public land transport system may not be accessible to people with disabilities. The Commission has been able to resolve some of these issues using the disputes resolution processes contained in the Human Rights Act 1993. However, many of the issues brought to the Commission require a systemic approach to facilitate nationwide access to public land transport services for people with disabilities.

Many government policy documents recognise inclusion, full participation in society, and the removal of barriers to participation as key policy objectives for people with disabilities. For example, the New Zealand Disability Strategy (NZDS) recognises that in order to contribute to the objective of supporting quality living in the community for disabled people, the government will require all new scheduled public transport to be accessible, encourage the development of accessible routes to connect buildings, public spaces and transport systems and develop nationally consistent access to passenger services where there is no accessible public transport.

In addition to the NZDS other government policy documents that are relevant to the inquiry include:

- The New Zealand Transport Strategy;
- The New Zealand Positive Aging Strategy;
- Pathways to Inclusion: Improving Vocational Services for People with Disabilities;
- The New Zealand Health Strategy

The Commission considers that an inquiry will establish the range of issues involved for the various public land transport users and providers, allow all those with an interest to express their views and incorporate best practice from other jurisdictions in any proposed solutions.

The Inquiry will seek input and submissions from throughout the country. In addition the Wellington and Otago regions will be used as case studies to explore in greater depth the issues for public land transport users and potential users, the organisational responsibilities and responses to the issues and how particular regional circumstances are identified and responded to.

For the purpose of this Inquiry, only public land transport will be included.

In April 2002 DPA and other disability groups in Dunedin held a transport forum to discuss transport issues for the transport disadvantaged, particularly the disabled and older people. As a result the Transport Working Party (TWP) was formed to further the issues. In October 2002 the TWP invited the Commission to host a transport forum in Dunedin. Reports from that forum led the Commission to explore the possibility of conducting an Inquiry into accessible public transport.

In relation to Wellington, as in other areas, concerns have been expressed about premises, infrastructure, conveyances, service information and the role of Councils in the provision of accessible public land transport. These issues involve the community as a whole, central and local government, and are not simply matters to be dealt with by an individual transport operator or regional council. The Commission has not formed any views or conclusions on the matters raised in either of these cases. Taken together the two regions provide examples of most of the issues that the Inquiry will have to deal with. In both cases the regions in question will be those areas enclosed by the regional council boundaries.

## 8. GUIDELINES

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### Submissions

1. The Commission will receive submissions in writing. Where appropriate, alternative formats including oral submissions will be accepted.

Comment

The Commission must be mindful that some people may have difficulty preparing a submission in writing and may find it easier to speak to Commissioners without notes.

2. The Commission will consider submissions that address the terms of reference of the inquiry. The Commission will not explore issues that go wider than the terms of reference.

Comment

It is important that the Commission does not make findings on matters outside the terms of reference. This ensures the integrity of the process and that parties are not later subject to findings on issues which they have not had an opportunity to submit on.

### Access to submissions and comments on other parties submissions

3. The Inquiry will receive confidential evidence if this is necessary, for instance, to protect personal privacy or commercially sensitive information.

Comment

Every reasonable step will be taken to ensure such evidence remains confidential.

4. Submitters will have access to other submissions subject to guideline 3.

Comment

A list of all publicly available submissions will be circulated prior to the first public hearing. Parties should have an opportunity to consider other parties written submissions, and if desired, comment on them.

5. Submitters will have the opportunity to request copies of written submissions.

comment

This allows submitters to consider the views of others submitters in advance of the hearing process.

6. Submitters will have an opportunity to comment on other submitters' submissions either:

- a) During the course of presenting their own submission during the oral hearings.
- b) In writing, by way of further submission; or
- c) By questions, in response to an oral submission on the day of the hearing.

Comment

This provides a range of options to submitters to respond to concerns or issues raised by others.

## The Hearings Process

7. A schedule of hearing times will be released in advance of the hearing so that interested parties have an opportunity to attend and hear submissions of particular interest to them.
8. Two Commissioners accompanied by staff will hear submissions.
9. Oral submissions that are not accompanied by a written submission may be recorded and transcribed.

### *Comment*

This ensures an accurate record of proceedings.

10. Commissioners will conduct the hearing process with flexibility and respect for the particular needs of the parties. Commissioners are entitled to ask submitters questions.

### *Comment*

Questioning will aim to clarify statements being offered. Submitters have the same privileges as witnesses in court and are not compelled to give evidence if they can claim privilege or if they have a valid reason why disclosure should not be made.

11. Hearings are open to the public and the media.

### *Comment*

This ensures that the process is open and transparent.

12. Submitters are entitled to ask another submitter questions:

- a) At the end of each submission, Commissioners will ask if any other submitters have questions. Commissioners must advise the submitter that they are not “obliged” to answer questions.
- b) If the submitter agrees to answer questions, the Commission will ask the submitter if they choose to respond to questions orally or later in writing.
- c) Where a submitter chooses to answer questions in writing, the questions will be provided in writing to the submitter for a written response with copies provided to Commissioners.
- d) Commissioners may limit the number of questions asked.

13. Questions at oral hearings are limited to questions from other submitters and Commissioners.

### *Comment*

Other parties, such as media or members of the public, are not entitled to ask questions during the hearing process.

14. Oral submissions will be limited generally to 30 minutes.

## Findings

15. In developing its findings, the Commission may ask for further submissions or clarification from any parties to the inquiry or from any other parties it considers appropriate.
16. The Commission will publish its draft report, provide copies to submitters and invite final comments.
17. The Commission will consider final comments of submitters before reaching a decision. This may include further clarification of issues.

### Comment

The Commission will not make any adverse statement about a particular organisation, group or individual without first giving them an opportunity to be heard. See section 138 of the Human Rights Act.

18. Information given to the inquiry will only be used for the purposes of the inquiry

### Comment

The Commission is not actively seeking to exercise the power given to it by section 92E of the Human Rights Act.

## 9. INVOLVEMENT

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1. To receive further information including a copy of the Commission's report on the initial research and consultation or
2. To make a submission (the closing date is 20 April 2004) or
3. To present a submission at a public hearing

**please phone, fax, email or write to**

Bruce Coleman  
Project Manager  
Human Rights Commission  
P O Box 1578  
Christchurch

Ph: (03) 353 0952

Fax: (03) 353 0959

Email: [brucec@hrc.co.nz](mailto:brucec@hrc.co.nz)

**Or contact**

The Human Rights Commission InfoLine:

0800 4 YOUR RIGHTS

0800 496 877 (toll free)

TTY (teletypewriter) 0800 150 111

## Appendix 1: Principles of Natural Justice

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The right to natural justice applies in cases where the exercise of a power affects a person's rights, obligations or interests. It covers two concepts:

1. A duty to hear both sides of a dispute before making a decision.

In practice, this varies depending on context. Sometimes a right to consultation will be sufficient. In other cases, it includes a right to counsel and the right to cross-examine witnesses.

Given that the inquiry could result in recommendations about public land transport, it is important that all parties have an opportunity to be heard and to put questions to other submitters.

2. No one should be a judge in his or her own cause.



## 9. INVOLVEMENT

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1. To receive further information including a copy of the Commissions report on the initial research and consultation or
2. To make a submission (the closing date is 20 April 2004) or
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Project Manager  
Human Rights Commission  
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Fax: (03) 353 0959

Email: [brucec@hrc.co.nz](mailto:brucec@hrc.co.nz)

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