

NOTICE OF FILING

Details of Filing

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Registry:	VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA



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Registrar

Important Information

This Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The date of the filing of the document is determined pursuant to the Court's Rules.



Concise Statement

No. of

Federal Court of Australia

District Registry: Victoria

Division: Administrative and Constitutional Law and Human Rights

PAULA KAYE HOBLEY

Applicant

RASIER PACIFIC PTY LTD (ABN 27 622 365 833)

Respondent

Important facts giving rise to the claim

- 1 The Applicant is a person who is blind and lives with a disability within the meaning of s 4 of the *Disability Discrimination Act 1992* (Cth) (**DDA**). The Applicant has at all material times used a dog guide to assist her in alleviating the effects of her disability.
- 2 From 9 February 2018 to 10 February 2023, the Applicant was supported by a dog, 'Vonda', trained and provided to her by Guide Dogs Victoria. The dog is an 'assistance animal' within the meaning of s 9(2)(c) of the DDA.
- 3 The Applicant is usually accompanied by her dog when she leaves her home. The Applicant is unable to navigate public spaces or travel safely without a dog guide or other equivalent form of assistance.
- 4 The Respondent operates a business that uses the Uber mobile phone application (**Uber app**) to arrange point-to-point transport between 'riders' and 'drivers.' Riders can use the Uber app to request personal transport from one place to another. Once a rider has made a request for transport, it is presented to one or more drivers (selected via an algorithm) who can choose to accept or reject the request. Riders have no means of directly contacting drivers to arrange transport other than via the Uber app.
- 5 When a driver accepts a rider's request for transport, the driver and rider are connected via the Uber app and can send messages to one another. The rider relies on the driver's acceptance and expects the driver to arrive at the rider's selected location and transport them to the rider's selected destination. The transportation of the rider is to be conducted in accordance with the terms and conditions set out by the Respondent's policies. A driver or a rider may cancel after a rider's request for transport has been accepted. The Respondent's policies provide that in some circumstances a driver may be penalised for

cancelling after accepting a rider's request. Penalties can include suspension from using the Uber app or a permanent ban from the Uber app.

- 6 Since at least March 2021, the Applicant has sought, used and paid for point-to-point transport services from the Respondent.
- 7 Once the Applicant requests transport using the Uber app and a driver accepts the request, the Applicant's usual practice is to send a message to the driver, via the Uber app, to ask them to move the front passenger seat forward so her dog guide can sit in the footwell. The Applicant does this to ensure the car is prepared for her dog guide and to notify the driver she is accompanied by an assistance animal.
- 8 On or around 11 March 2021, the Applicant began recording instances she was refused transport by the Respondent where she had reason to believe the refusal was based on her being accompanied by a dog guide.
- 9 Between 11 March 2021 and 10 November 2022, the Applicant experienced 32 instances where she was refused transport by the Respondent. These refusals occurred on or around: 11 March 2021; 22 April 2021; 7 June 2021; 25 October 2021; 5 November 2021; 4 February 2022 (x2); 18 March 2022 (x2); 2 June 2022; 7 June 2022; 21 June 2022; 27 June 2022 (x2); 14 July 2022 (x2); 2 August 2022; 11 August 2022; 23 August 2022; 6 September 2022; 16 September 2022; 20 September 2022; 21 September 2022; 29 September 2022 (x2); 4 October 2022; 18 October 2022 (x2); 8 November 2022 (x3); and 10 November 2022.
- 10 On each of these occasions the Applicant requested transport from the Respondent through the Uber app and a driver accepted the request.
- 11 On 28 October 2021, the Applicant opted in to the Respondent's Service Assistance Program (**SAP**). The SAP included using notification features in the Uber app to, each time a driver accepts a request from the Applicant, notify the driver the Applicant uses an assistance animal and of the driver's legal obligations in relation to assistance animals.
- 12 After the driver accepted each of the Applicant's requests for transport, it was the Applicant's usual practice to send a message to the driver as referred to above at paragraph 7.
- 13 The Respondent refused to transport the Applicant on each occasion referred to above at paragraph 9 by:
 - a. the driver cancelling their acceptance of the Applicant's request for transport without further communication with the Applicant, after the Applicant sent a message, and/or from 28 October 2021, after she opted into the SAP;
 - b. the driver cancelling their acceptance of the Applicant's request for transport or instructing the Applicant to cancel her request, after exchanging messages with

the Applicant, in which the driver refused to transport the Applicant with her dog guide; or

c. arriving at the Applicant's designated pick-up point, and refusing to transport the Applicant after becoming aware she was accompanied by a dog guide.

- 14 Following each refusal, the Applicant attempted to book transport with another driver using the Uber app, or arranged alternative transport such as via a taxi service.
- 15 The Applicant reported each of these refusals to the Respondent via the 'Report a service denial, assistance or assistance animal issue' tool within the Uber app.
- 16 On most occasions, the Applicant received a refund of the fees associated with the refusal, and/or \$35 in 'Uber Cash' credited to her Uber account.
- 17 On 10 March 2023, the Applicant made a complaint to the Australian Human Rights Commission (**Commission**) alleging unlawful disability discrimination against the Respondent.
- 18 The Commission held a conciliation conference with the Applicant and the Respondent on 15 July 2024 and facilitated further conciliation discussions between the parties' representatives on 30 October 2024.
- 19 The Commission terminated the complaint on 18 December 2024 pursuant to s 46PH(1B)(b) of the *Australian Human Rights Commission Act 1986* (Cth) (**AHRC Act**) on the basis that there was no reasonable prospect of the matter being settled by conciliation and issued a notice under s 46PH(2) to the Applicant and Respondent on the same day.

Primary legal grounds for the relief sought

- 20 Section 8(1) of the DDA applies in relation to having an assistance animal in the same way as it applies in relation to having a disability. Under s 8(2), the DDA has effect in relation to the Applicant's assistance animal as if a reference to the assistance animal were a reference to the Applicant's disability.
- 21 The Respondent has, on each of the 32 occasions listed in paragraph 9, unlawfully discriminated against the Applicant on the basis of her disability within the meaning of s 5(1), and/or s 5(2), of the DDA.
- 22 The Respondent provides a service of point-to-point passenger transport. Subsections 24(a) and (c) of the DDA respectively make it unlawful for the Respondent to discriminate against a person, on the ground of that person's disability, either by refusing to provide this service, or in the manner in which the service is made available to the person.

- 23 In the provision of the service of point-to-point transport, the Respondent selects the driver to provide the service and the driver acts as its employee or agent within the meaning of s 123(2) of the DDA. Each driver who was engaged to transport the Applicant on the occasions listed in paragraph 9 refused to provide the service in one of the ways outlined in paragraph 13 in the exercise of their actual or apparent authority from the Respondent.
- 24 As such, each driver's refusal to transport the Applicant discriminated against the Applicant by refusing the service on behalf of the Respondent. In the alternative, each driver's refusal to transport the Applicant discriminated against the Applicant in the manner the service was provided.
- 25 In the alternative, if the driver was not the Respondent's employee or agent, the Respondent is responsible for the driver's conduct in that the Respondent permitted the unlawful conduct on each occasion within the meaning of s 122 of the DDA.
- 26 Further, the Respondent's failure to address the Applicant's reports as described in paragraph 15 above to address and prevent further refusals, thereby permitted ongoing and systemic unlawful discrimination.
- 27 For the purposes of s 5(1) of the DDA, the Respondent treated the Applicant less favourably than it would treat a person without her disability (including being accompanied by her assistance animal) (the **comparator**) by refusing to transport the Applicant because of her disability. The circumstances of each refusal make clear the Applicant would have been transported had she not been accompanied by her assistance animal; and that the refusal occurred in response to her being accompanied by an assistance animal.
- 28 In addition, or in the alternative, for the purposes of s 5(2) of the DDA:
- a. travelling with her dog guide was an adjustment the Applicant sought to use the Respondent's services on each occasion referred to in paragraph 9 above;
 - b. by refusing to transport the Applicant's dog guide on each of those occasions, the Respondent did not make reasonable adjustments for the Applicant; and
 - c. the Respondent's failure to make the reasonable adjustments had the effect that the Applicant was, because of her disability (including being accompanied by her assistance animal), treated less favourably than the comparator would be treated in circumstances that are not materially different.

The harm experienced by the Applicant

- 29 As a result of the Respondent's conduct, the Applicant experienced hurt, psychological harm, and distress in response to each refusal. On some occasions, the Applicant

incurred additional expense by booking a taxi. These experiences were compounded by the recurring and frequent nature of the refusals.

The relief sought

30 The Applicant seeks relief as set out in the Originating Application filed in this proceeding.

Certificate of lawyer

I Ellen Tilbury certify to the Court that, in relation to the statement of claim filed on behalf of the Applicant, the factual and legal material available to me at present provides a proper basis for each allegation in the pleading.

Date: 13 February 2025

A handwritten signature in dark ink, appearing to read 'ETilbury', is written over a horizontal dotted line.

Signed by Ellen Tilbury
Lawyer for the Applicant

This concise statement was prepared by Ellen Tilbury, Mitchell Skipsey and Erin-Jura Turner Manners, solicitors, and settled by Kate Eastman SC, and Miles Foran and Chadwick Wong of counsel.