Submission in response to the New Generation Rollingstock Project Application for temporary exemptions under the Disability Standards for Accessible Public Transport 2002 (Cth) and Disability Discrimination Act 1992 (Cth) jointly made by the State of Queensland (acting through the Department of Transport and Main Roads) and Queensland Rail on 27 September 2017

REQUEST FOR IDENTITY AND CONTACT DETAILS OF THE SUBMITTER TO REMAIN CONFIDENTIAL

Dear Australian Human Rights Commission,

It is essential that my name, personal address, personal contact telephone number and personal email address be kept confidential. They must not be published online or provided to the applicants.

I contacted the Australian Human Rights Commission on 9 and 15 January 2017 and spoke to Ella who told me that my name and contact details could remain confidential and would not be published without my permission.

Thank you,

Table of Contents

What are the reasons in favour of granting an exemption? 4

Reasons not to grant an exemption 4

Safety 4

Commercial gain 5

What will be the impact on individuals and others on the particular exemptions sought under sections 2.6, 2.8(1), 8.2, 15.3, 15.4(1)(a) and 15.4(1)(b) of the DSAPT? 6

Effect of exemptions sought under section 2.6 of the DSAPT 6

Effect of exemptions sought under section 2.8(1) of the DSAPT 7

Lack of access to the emergency intercom 7

Effect of exemptions sought under section 8.2 of the DSAPT 8

Effect of exemptions sought under Section 15.3 of the DSAPT and Section 15.4(1)(a) of the DSAPT 9

What is your view regarding the applicants' submission that the post-rectified trains will ultimately have accessibility improvements that will exceed the requirements of the DSAPT? 9

In the event any of the exemptions sought are granted, should any conditions be imposed on the granting of an exemption in this matter? 10

What are the reasons in favour of granting an exemption?

As a person with a disability who uses a mobility aid and requires assistance, including the use of a ramp, to both board and disembark the train at all stations I cannot think of any reasons in favour of granting an exemption.

I note that the Commission Guidelines relating to temporary exemptions under the *Disability Discrimination Act 1992* (Cth) state that the Commission will have regard to, amongst other things, 'Whether an exemption could be granted subject to terms and conditions which **further the objects** [my emphasis] of the Disability Discrimination Act …'[1]

If the reasoning behind this is that granting an exemption with conditions may encourage the elimination, over time, of discrimination that would otherwise continue to occur, then I do not think the exemption application in question complies with this reasoning. This is because:

- in several respects the new trains provide a lower level of access, safety and comfort for people with disability than the trains in the fleet they are intended to replace (for example, by relocation of the guard from the middle to the end of the train)
- in several respects the new trains provide a lower level of access, safety and comfort for people with disability than for people without disability (for example, in contrast to the new high-backed 'regular' seats that promise increased safety, the new seat backs for priority seats are lower than for the existing fleet)
- the applicants claim to support object 3(b) of the *Disability Discrimination Act 1992* (Cth) which is 'to ensure, as far as practicable, that persons with disabilities have the same rights to equality before the law as the rest of the community' whilst at the same time claiming that there is a 'necessary implication that it may not be reasonable to immediately or completely eliminate discrimination in every instance'[2] without citing any authority to support the suggestion that discrimination is reasonable if it is not practical to eliminate it.

Reasons not to grant an exemption

Safety

I personally have experienced situations that illustrate some of the safety issues that can arise for passengers who use a mobility aid and require assistance to board and disembark the train. Over the years there have been many occasions where my safety has been put at risk due to the interaction of factors such as carriage design, the absence of train guards, and communication channel breakdown. These include:

---

[1] Australian Human Rights Commission, *Temporary Exemptions Under the Disability Discrimination Act: Commission Guidelines* (2010), 4.

[2] New Generation Rollingstock Project: Application for temporary exemptions under the Disability Standards for Accessible Public Transport 2002 (Cth) and Disability Discrimination Act 1992 (Cth), 17.

- being left on the train at my destination, necessitating attempts to contact the Guard so that the guard can assist me to disembark by:
    - using the emergency intercom button, which is only possible on some models of train and then only when standing in the doorway of the train. There are no emergency intercom buttons within reach of the priority seating area in any of the trains in the fleet, including the NGR trains. However, even when reached this does not work if there is no guard or driver on board the train to answer the intercom, such as when they have left the train to take a rostered break or assist another passenger, or because the train is at the end of a line
    - calling out to the guard
    - knocking on the door of the guard cabin, and
    - asking other passengers on the train or on the platform outside to do any or all of the above.
- being loaded into the carriage behind the guard when the carriage is already overfull, so that there is nowhere for me to sit, and left standing in the doorway of the train as it took off.

There is no reason to believe that these same issues will not arise on NGR trains. Given that the location of facilities for passengers with disability remains in the same position on the NGR trains as it is in the older trains, but the guard has been relocated to the rear of the train, passengers with disability will not have recourse to knocking on the guard cabin door, calling out to the guard, or having others do the same, to seek assistance to disembark or if they find themselves in an unsafe situation on the train (such as being left on the train or loaded into a full carriage with nowhere to sit).

Commercial gain

The applicants refer repeatedly in their application not only to the need to replace the existing fleet (the fleet not comprised of NGR trains), but to the need for sufficient trains to be available for the Commonwealth Games. Whilst I am sure that sufficient public transport is essential to enable the Commonwealth Games to be hosted successfully, I am disappointed to see the Commonwealth Games being cited as a reason to deny people with disability the protection of the *Disability Discrimination Act 1992* (Cth). Denial of the protection afforded by the *Disability Discrimination Act 1992* (Cth) would seem to be at odds with the values and principles contained in the Charter of the Commonwealth.[3]

As the Commonwealth Games are promoted as creating commercial opportunities and conveying economic benefits it would appear that a major factor in putting the NGR trains into service in a non-compliant state (and therefore necessitating an exemption application to protect the State of Queensland, to an extent, from claims of disability discrimination) is commercial advantage.

[3] See http://thecommonwealth.org/sites/default/files/page/documents/CharteroftheCommonwealth.pdf

The Commission's own Guidelines state that: 'Where an exemption is sought for reasons wholly unrelated to the objects of the Disability Discrimination Act (such as to gain commercial advantage), this may be a factor weighing against the grant of an exemption.'[4]

What will be the impact on individuals and others on the particular exemptions sought under sections 2.6, 2.8(1), 8.2, 15.3, 15.4(1)(a) and 15.4(1)(b) of the DSAPT?

Effect of exemptions sought under section 2.6 of the DSAPT

The effect of granting exemption from section 2.6 of the DSAPT on individuals with disability who use mobility aids would be to leave individuals with disability who use mobility aids without recourse for discrimination which has the following harmful effects:

- individuals with disabilities who use mobility aids prevented from moving between carriages, including for the following purposes:
    - to exit the train in an emergency, when access to the nearest safe exit is via the access path past the accessible toilet
    - to exit the train via a door in an adjacent carriage, in the event of malfunction of the train doors, where the adjacent carriage is reached via the access path past the accessible toilet
    - to choose to travel in the MB car (where the toilet, baby change and sharps disposal facilities are) if it is not possible to enter the MB car directly (for example, where the doors to the MB car have been locked due to malfunction, or where the MB car does not line up with the accessible boarding point), because it will not be possible to board the MA car and then move to the MB car
    - to move from the MA car to the MB car and back again to use the toilet, baby change or sharps disposal facilities
- individuals with disabilities who use mobility aids prevented from accessing priority seating adjacent to allocated spaces when the allocated spaces either side of the access path leading to the priority spaces are both occupied
- individuals with disabilities who use mobility aids prevented from accessing priority seating by travelling the length of the carriage along the access path, in the event that priority seating nearest the door at which they boarded is unavailable because it is occupied or broken

Further, the effect of granting the exemption '(C) Access path is only available at a single door' would create the following absurd situations:

- access available to either the MB or the MA car, not both, rendering the allocated spaces and priority seating in one of the two so-called 'accessible cars' unusable by people who require an 'accessible car' and potentially denying passengers with disability access to the onboard toilet, baby change and sharps disposal facilities, as these are only available in the MB car and the pathway between the MA and MB cars is non-compliant

[4] Australian Human Rights Commmission, *Temporary Exemptions under the Disability Discrimination Act: Commission Guidelines* (2010), 4.

- access not available at all to or from the platform at which the train is scheduled to arrive or depart. This possibility is alluded to in the following paragraph contained in the Exemption Application:

  > *'Finally, QR will communicate boarding locations (MA car – no toilet access or MB car - with toilet) for each station platform on the QR website so passengers who need toilet access can plan their travel for origin and destination.'*[5]

Effect of exemptions sought under section 2.8(1) of the DSAPT

Lack of access to the emergency intercom

It is notable that in their application for exemption from the provisions of section 2.8(1) there is no mention of facilities apart from the toilet module. The NGR trains have an emergency intercom facility installed. Although there is an emergency intercom point in each of the allocated spaces and by each of the doors, there is no emergency intercom within reach of any of the priority seats. This means that it is necessary for passengers using the priority seats to leave their seat and walk to the closest emergency intercom in order to use it. If the allocated spaces either side of the access path closest to the priority seats are occupied, by persons in wheelchairs or mobility scooters or by prams, bicycles, luggage or other goods, it will not be possible for passengers in priority seating areas who use a mobility aid such as a wheelie walker to move to an allocated space to reach an emergency intercom button located there or to move to a doorway to reach an emergency intercom button there. Further, mobility impairment may prevent passengers who use priority seating, whether or not they use a mobility aid, from mobilising whilst the train is moving to access an emergency intercom button regardless of whether or not their access is hindered by the narrowness of the non-compliant access path or presence of obstacles such as wheelchairs or luggage.

I have taken two journeys on an NGR train to date. On both journeys, I sat as close as possible to the emergency intercom button, that is, I sat in a priority seat immediately adjacent to an allocated space. On one journey, the allocated space was to my right. On the other journey, the allocated space was to my left. I was not able to reach the emergency intercom either way. If I leaned as far over to one side as I could, I could just reach the 'request for assistance' button while the allocated space was not occupied. I have been told that the 'request for assistance' button alerts the guard that someone requires assistance but does not activate the emergency intercom.

The above illustrates that non-compliance with s 2.8(1) not only impacts access to the toilet, baby change and sharps disposal facilities but also to the emergency intercom facility. The impact of this is heightened by the fact that in the NGR trains, the guard cabin is not located alongside the accessible carriages and so alerting the guard to a safety issue directly by knocking on the guard cabin door or calling out to the guard is not possible on the NGR trains.

---

[5] New Generation Rollingstock Project: Application for temporary exemptions under the Disability Standards for Accessible Public Transport 2002 (Cth) and Disability Discrimination Act 1992 (Cth), 23.

Effect of exemptions sought under section 8.2 of the DSAPT

The effect of granting the exemption would be similar to the effect of granting an exemption to allow '(C) Access path is only available at a single door', creating the following absurd situations:

- access available to either the MB or the MA car, not both, rendering the allocated spaces and priority seating in one of the two so-called 'accessible cars' unusable by people who require an 'accessible car' and potentially denying passengers with disability access to the onboard toilet, baby change and sharps disposal facilities, as these are only available in the MB car and the pathway between the MA and MB cars is non-compliant
- access not available at all to or from the platform at which the train is scheduled to arrive or depart. This possibility is alluded to in the following paragraph contained in the Exemption Application:

  > *Finally, QR will communicate boarding locations (MA car – no toilet access or MB car - with toilet) for each station platform on the QR website so passengers who need toilet access can plan their travel for origin and destination.*

- relying on a single entry/exit door could lead to passengers being placed in, or left in, unsafe situations, such as:
  - Being boarded into an overfull carriage with no safe allocated space or priority seat available, leading to priority seat users being left standing (this has happened to me) and to wheelchair and scooter users left with no option but to park in such a way that they obstruct the doors and/or aisles, which creates an obstruction to evacuation during an emergency. Wheelchairs and mobility scooters parked in doorways also reduce the circulation space for other mobility aid users, prams and luggage, creating hazards for those passengers when they exit or enter the train.
  - The new trains have been promoted as having 'new straps to secure bicycles' (touted in some publications as 'new straps to secure bicycles, mobility devices and prams'). The only straps are those attached to the emergency intercom point in the allocated spaces for wheelchairs. There is no space on the NGR trains for bicycles or prams to be stowed anywhere except in the allocated spaces. The presence of bicycles in allocated spaces represents similar risks to those outlined in the paragraph above in terms of leading mobility aid users to park in doorways, aisles and the circulation space.
  - Being unable to exit the train in the event of an emergency
  - Being unable to board the train when the 'single door' is locked or otherwise out of order
  - Access available to either the MB or the MA car, not both, rendering the allocated spaces and priority seating in one of the two so-called 'accessible cars' unusable by people who require an 'accessible car' and potentially denying passengers with disability access to the onboard toilet, baby change and sharps disposal facilities, as these are only available in the MB car and the pathway between the MA and MB cars is non-compliant

Effect of exemptions sought under Section 15.3 of the DSAPT and Section 15.4(1)(a) of the DSAPT

My mobility aid (wheelie-walker) is 62 cm wide at its widest point and 69 cm long. It will not fit through the corridor alongside the toilet in the NGR trains, and the dimensions inside the toilet appear to be too small to accommodate it when allowing for the fact that I walk behind it. I have not had the opportunity to test this.

What is your view regarding the applicants' submission that the post-rectified trains will ultimately have accessibility improvements that will exceed the requirements of the DSAPT?

I disagree with the applicants' submission that:

> *(c) If the temporary exemptions were granted, passengers with disabilities would also attain long term benefits from the rectification work being undertaken. This would include further accessibility improvements that exceed the requirements of the DSAPT. These benefits would include:*
> *(i) doubling the toilet facilities currently offered on interurban trains, given that both train cars with allocated spaces would have DSAPT-compliant access paths provided to accessible toilet facilities instead of just one car*
> *(ii) the single boarding point offering superior service reliability, allowing operational consistency and making it easier for passengers with hidden disabilities to seek assistance*
> *(iii) additional priority seating in new locations*
> *(iv) improved functionality for the wall-mounted unit in the allocated spaces*
> *(v) adding braille to the 'Emergency Door Release' button*
> *(vi) new wording on the 'Priority seating' signage*
> *(vii) maximising functionality of grab/handrails, accessible buttons and controls*

As far as I can tell from the information available, none of the benefits listed would exceed the requirements of the DSAPT.

As to the applicants' submission that the remainder of the listed items are benefits:

> *(ii) the single boarding point offering superior service reliability, allowing operational consistency and making it easier for passengers with hidden disabilities to seek assistance*

The use of a single boarding point would be a continuation of current practice, whereby customers requiring boarding assistance are 'by default' placed in the carriage behind the guard, which aligns roughly with the assisted boarding point on existing platforms on the network. This system is far from reliable and will not become more reliable ('superior reliability') in the event that passengers are travelling on an NGR train. It is also difficult to see how restricting passengers who require boarding assistance to the use of a single

boarding point would provide equal, let alone superior, access when compared to passengers without disability.

(iii) additional priority seating in new locations

If passengers with disabilities who require boarding assistance will only be able to board NGR trains through a single door at a single boarding point, and the access paths from that door to the priority seating is non-compliant, then additional priority seating in new locations can only be of benefit to passengers who do not require boarding assistance, and thus the benefit to passengers most affected by the granting of an exemption in the terms requested by the applicant would be minimal at best.

In the event any of the exemptions sought are granted, should any conditions be imposed on the granting of an exemption in this matter?

I would support the imposition of conditions on the granting of an exemption in this matter. I notice that the conditions proposed by the applicants involve very long timeframes, especially when considered from the perspective of regular commuters, such as commuters who travel by train to and from their place of employment.

I am concerned that timeframes proposed for the monitoring of impacts of non-compliance are too long. If the effect of non-compliance is to render it difficult or impossible for some passengers with disability to travel by train, this could have negative consequences for their ability to undertake activities, including for example paid employment, which would no doubt create difficulties for affected commuters well inside six months.

I would like to see a commitment to reviewing the impact of any exemption granted at shorter time intervals, for example perhaps at 6 weeks, then each three months for a period of up to a year, then 6 monthly.