2 January 2018

The Commissioners
Australian Human Rights Commission
GPO Box 5218
SYDNEY NSW 2001
Email: legal@humanrights.gov.au

Dear Commissioners

The Australian Human Rights Commission (the Commision) has received a joint application from two Queensland Government agencies (the Department of Transport and Main Roads and Queensland Rail) for temporary exemptions to the *Disability Discrimination Act 1992* (DDA) and the *Disability Standards for Accessible Public Standards 2002* (DSAPT) in order to operate in service New Generation Rollingstock (NGR) passenger trains that do not conform with the legislation or the standards applying under that legislation.

Specifically, the application is made pursuant to s 55(1) of the DDA and s 33A.1 of the DSAPT.

RAIL Back On Track (RBoT) is a web-based community support group for rail and public transport and the principal advocacy group for public transport passengers in Queensland. It is recognised by the Queensland Government and is consulted regularly about policy and operational issues having to do with public transport services provided across South-East Queensland (SEQ). Our website is viewed regularly and records up to 65,000 'hits' daily.

RBoT thanks the Commission for allowing this opportunity to make this submission in response to the TMR/QR joint exemption application.

It is not our intention to address the specific details of non compliance. We are aware of other public submissions to the Commission from the Disability Sector in respect of this matter, and they will cover the non compliance aspects comprehensively.

Essentially, RBoT's position is as follows:

1. We support the granting of an exemption till the conclusion of the Commonwealth Games; with any further extension of the exemption being subject to TMR/QR submitting to the Commission a full-costed rectification plan applying not just to those NGR trains that are available to be used currently, but all future trains on order. <u>All</u> trains (in service <u>and</u> on order) should be fully-compliant within 18 months of the initial exemption being granted or, as a consequence, the Commission should order that non-compliant train sets be removed from service after that period has elapsed. This 'carrot and stick' approach should apply to Queensland Government agencies that, regrettably, have a past history of recidivism in meeting goals, obligations, budgets or deadlines.

2. We submit that TMR/QR were fully aware of their obligations under the DDA and the DSAPT at the time the NGR trains were designed and procured, and at every stage since. The evidence is conclusive. It is RBoT's contention that TMR/QR have sought to manage the public engagement process essentially as a stalling tactic, knowing full-well the consequences of their actions and with the intent to put into service non-compliant trains in defiance of the legislation and the mandate of the Australian

Human Rights Commission. Our view is that TMR/QR have delayed any plans to rectify the NGR non-compliance issues cynically, in the hope that the likely added strain on the SEQ public transport network during the staging of the Gold Coast Commonwealth Games will bring adverse pressure on the Commission to allow sub-standard trains into service. In other words, TMR/QR have sought to manage the effects of the non-compliance without due care and attention to solving the underlying fundamental design issues. Sadly, we believe this will be their tactic going forward. During the three-year period for which the applicants have requested a temporary exemption, a full set of 75 non-compliant trains can be imported into Queensland, each with a projected lifespan of 30 years; thereby creating the situation where TMR/QR could argue that temporary exemptions applying to the handful of NGR train sets delivered and required for the Commonwealth Games should apply subsequently to the entire fleet. TMR/QR would appear to be building the case for a rolling exemption program, not just a one-off single exemption.

3. Finally, we consider the move to operate the NGR trains without the protection of a temporary exemption has now placed the State of Queensland (and its citizens through possible cost imposts) in potential serious legal jeopardy. It is a slap in the face to the Commission. More importantly, it shows a callous disregard to the needs of those with a disability. Make-do, band-aid solutions to mitigate against the consequences of running non-compliant trains on the SEQ rail network, as proposed by TMR/QR, are 'window-dressing' at best, are non-sustainable in the long term and go against standard operating procedures that place the guard at the centre of a six-car train set, where platform design allows easy boarding by people with disabilities. The proposal is to move away from uniform operating procedures currently applying to the existing QR train fleet to a dual system of one set of rules for current trains in service, plus new operating standards for NGR rolling stock. This is not conducive to the functioning of an efficient and effective passenger rail network and, as stated, would be unsustainable over time. This adhockery pervades TMR/QR corporate thinking and decision-making, unfortunately, not just on this issue.

These points are dealt with further in the submission attached to this letter.

Yours faithfully

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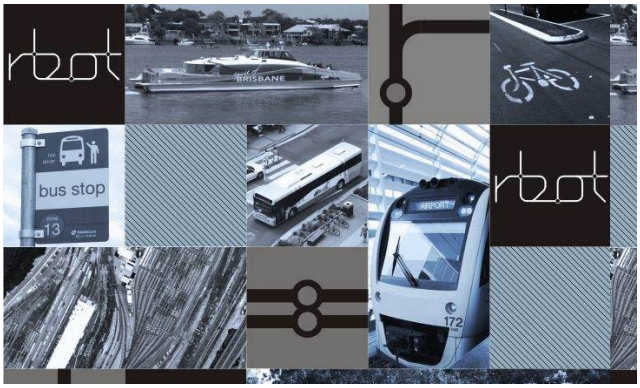

2 January 2018

Submission to the Australian Human Rights Commission in Respect of Joint Application from TMR/QR Regarding Non-compliant New Generation Rollingstock Trains

— RAIL Back On Track

Introduction

This submission should be read in conjunction with the accompanying letter of the same date. It is made by RAIL Back On Track (RBoT), the principal advocacy group for public transport users in South-East Queensland (SEQ). RBoT notes the Commission's request that submissions address, in part or wholly, the following key themes:

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

Our submission is structured accordingly. We note also that the details of the DSAPT non-compliance will be covered in detail in other submissions. Accordingly, the RBoT submission touches lightly on this matter, which is not to diminish its importance or the obligation the Commission has to give considerable attention to the detail and to the consequences that might flow from granting the application in the manner put by the applicants.

ROBERT DOW – Administrator, RAIL Back On Track
2 January 2018

What are the reasons in favour of granting an exemption?

In respect of this matter, the Commission should have regard to the stated position of TMR/QR about contingency plans both agencies say they propose to implement up to and during the staging of the Gold Coast Commonwealth Games over 11 days in April when 6000 athletes and officials from 70 Commonwealth nations, as well as hundreds of thousands of visitors, will require fast and efficient public transport access to the various Games venues, some of them in Brisbane. This will involve trains running at 10 minute intervals on the Gold Coast Railway Line (GCL) and special traffic management provisions applying to the M1 Motorway between Brisbane and the Gold Coast. The SEQ transport network will be stretched considerably, beyond what could be regarded as the normal capacity for the rail network.

A 'perfect storm' of calamity has befallen QR. Old train sets that it would have hoped to retire before now have been kept in service, with some having to be broken up for parts to keep other trains operable. The New Generation Rollingstock (NGR) trains have had design issues apart from those relating to the DDA and DSAPT, delaying their introduction to service. And a driver shortage, due to too few new drivers being trained, has meant that QR is forced to operate an ever-changing reduced timetable frequency on school holidays, on Fridays (where the timetable is different to Mon.-Thurs.) and on Saturday and Sunday, which are different again, and different to each other. This has created much confusion in the eyes of the travelling public, and has led to them lacking confidence in QR to run a reliable service. The media and the public have dubbed the juxtaposition of these three occurrences as 'RailFail'. As of 1 January 2018, RailFail had been experienced for 455 days.
These uncertainties that plague QR cannot occur during the period of the Gold Coast Commonwealth games in April, so much so that the Queensland Government has decided to run several non-compliant NGR trains in service, thereby risking legal action being brought against QR under the provisions of the DDA. We are aware of several impending actions being considered against QR.

TMR/QR have known of these predictable strains on the system and have relied on delivery of the 75 new NGR trains from India to begin to arrive in time to go into service on 10 suburban lines and three inter-urban lines across SEQ, but especially on the GCL, where it is proposed to ramp-up passenger train services to the 10 minute schedule during morning and evening peaks, and for much of the day while the Games are being staged.
Since the onset of RailFail, QR has cutback services generally on all lines and has implemented a reduced service timetable during school holidays, reducing service frequency from 30 minutes to one hour in many cases and, as stated, different timetables on a Friday than Monday to Thursday. These reductions are due mainly to the availability of train crew on any one day, due to sick leave, holidays and rostered days off. It is thought this reduced service timetable will be the template for train operating schedules during the period of the Commonwealth Games and immediately before and after the Games are staged on the Gold Coast. The services on other lines will be sacrificed to maintain maximum passenger train loadings, and reliability, on the Gold Coast Line.

QR has said that revised timetables will be announced 'well in advance of the Games'. Clearly TMR/QR are awaiting the Commission's deliberations on the exemption application for NGR trains before finalising the special Games timetable. It will be yet another timetable variation for the public to keep abreast of.

The *Sunday Mail* newspaper of 31 December 2017 carried an article quoting 'QR internal sources' as saying that the Shorncliffe Line would close for the duration of the Games, its trains diverted to the GCL, while buses and taxis would be deployed to move passengers along other rail corridors across the rail network, supplementing reduced train services.
In response, QR CEO, Mr Nick Easy, issued this statement:

> "There are no plans to close the Shorncliffe Line. There will inevitably be adjustments to some services given the scale of this international event and an increase in demand on the Gold Coast Line. An integrated transport model will be released well before the Games, which will best meet demand during the Commonwealth Games, and will ensure that public transport users will still be able to access services."

There was no categorical commitment that lines other than the Shorncliffe Line might need to close, with trains, most likely, operated by shuttle buses.

Our recommendation is as follows:

> It is clear that the ongoing impact of RailFail and the added burden of Commonwealth Games patronage during April will have an adverse impact on the convenience of the general travelling public and the functioning of the SEQ tourism industry and economy such that operation of those NGR trains passed as safe be allowed to operate till the conclusion of the Commonweatlh Games, and subject to stringent conditions outlined later in this paper.
>
> Notwithstanding the genuine concerns of the disability sector, these factors outweigh the impact on that particular group of people. RBoT in no way wishes to downplay or dismiss the issues people with a disability have concerning the NGR trains going into service in a non-compliant state. We share those concerns fully and have put forward a 'carrot and stick' plan for the Commission's consideration so that TMR/QR can bring the entire 75-train fleet to a compliant state within 18 months. We believe this is both responsible and achievable.

We reject utterly the applicants' request for a three-year exemption from the provisions of the DDA and DSAPT.

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?

The relevant sections of the *Disability Standards for Accessible Public Transport 2002* are as follows:

> **2.6 :** ..... An access path that allows continuous and unhindered passage must be provided with a minimum width of at least 850 mm.
> **2.8(1):** An access path must extend from the entrance of a conveyance to the facilities or designated spaces provided for passengers with disabilities.
> **8.2:** A manual or power assisted boarding device must be available at any accessible entrance to a conveyance .....
> **15.3:** If toilets are provided, there must be at least one unisex accessible toilet without airlock available to passengers using wheelchairs or mobility aids.
> **15.4(1):** An accessible toilet must comply with the requirements set out in this section; and allow passengers in wheelchairs or mobility aids to enter, position their aids and exit.

RBoT is aware that the specifics of these provisions, and impacts, will be dealt with in other submissions to the Commission. The bottom line is that a new train designed from the ground up in the 21st Century should not require an exemption from the provisions of the DDA and the DSAPT. Something has gone horribly wrong with the management of this project. There were no technical, temporal or financial barriers preventing the NGR from being designed and constructed to a standard that would have offered an equality of service to all customers through an excellent, inclusive design.

QR prominently displays on its website — and through corporate policy literature that reflects a whole-of-government commitment to meeting the needs of people with disabilities — its goals and objectives to achieve those published outcomes. Yet, by applying for this exemption for the NGR trains, it seeks an exemption from the law while continuing to place greater emphasis on a confected image of protecting the rights and best interests of customers with a disability.

It wants to run brand new train sets that do not satisfy the DDA and the DSAPT on the GCL – complete with indigenous motif livery – to create an impression that papers over its duplicity.

The Queensland Government boasts that the 'inclusive' Gold Coast Commonwealth Games will proudly host the largest integrated Para-Sport program in Games history. GC2018 will set a new Commonwealth Games record by hosting up to 300 para-athletes and 38 medal events across seven sports — an increase of 45 per cent more athletes and 73 per cent more medals compared with the para-sport competition staged at the last Commonwealth Games at Glasgow in 2014.

TMR/QR proposes that these athletes, and the thousands of spectators with a disability travel to and around venues on trains that do not meet their specific needs. This is despite strong and prolonged representations by RBoT and bodies representative of the disability community over several years that the NGR design specifications were fundamentally flawed and in breach of the DDA.

The Queensland Government did not include persons with disabilities in consultation until 2014. This was after the design of the train's structure was finalised. Our experience is that

TMR/QR enter into a public engagement process that is closely monitored and structured so as to achieve a pre-conceived outcome, rather than the consultation having its own dynamic leading to a superior result.

It beggars belief that QR is seeking an exemption for new NGR trains that don't conform with the DDA/DSAPT yet can operate successfully, on a narrow gauge track, the current Citytrain passenger fleet consisting mainly of Electrical Multiple Unit (EMU), Inter-urban Multiple Unit (IMU) and Suburban Multiple Unit (SMU) trains that have functioning toilets (IMU) able to be used by people with disabilities, seating, vestibule space and aisle widths that meet the needs of all passengers.

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?

In short, bunkum.

The record of Queensland Government transport agencies in implementing stated policy, fulfilling strategies worked up with industry and interest groups, or following agreed internal procedures, is not a good one. On the RBoT website, our members scoff at the well-produced policy documents, brochures, artistic mock-ups and fly-through video presentations associated with proposed new infrastructure, the project hyperbole and motherhood statements that are implemented in part at best, but almost always fail to come to fruition. To be fair, these thwarted outcomes are not always the result of lapses and structural failure within TMR, QR and TransLink. They arise also from rapid-changing government policy, sometimes within the one term of a government, or due to the changing priorities of different political parties in power over time – the Liberal National Party (LNP) and the Australian Labor Party (ALP).

Two examples of this are:

- The myriad design changes to Brisbane's Cross River Rail (CRR) Project from one government to the next and the argy-bargy that exists between opposing political parties in power at a federal and state level over its funding, and
- The NGR project itself, where design aspects were dealt with by TMR – according to the ideology of the government of the day being that QR would become the rail operator, primed for potential privatisation, and that Queensland's new train fleet, over time, would consist of walk-through six-car sets, without guards, and driver-only operated (DDO).

The way in which Queensland transport agencies fail to coordinate their functions and exercise their responsibilities effectively or to plan has caused RBoT to declare the current arrangements dysfunctional; to be overcome, we believe, through the breakout of public transport functions from TMR and, together with QR and TransLink, the formation of a new statutory organisation that we call Public Transport Queensland (based on a WA model that works).

We have also sought a commission of inquiry into the NGR mess. The current state government is resisting this. The Opposition, because of its involvement in approving the design of the NGR trains and their procurement, won't push this matter either.
This disjoint between the good intent of a published strategy document and abject failure to implement it has caught the eye of the Queensland Auditor-General, Mr Brendan Worrall. In his recent report on *Integrated Transport Planning in Queensland*, looking at the government's latest *Shaping SEQ* policy document, Mr Worrall documents siloed thinking and failure to coordinate across agencies that, together, have responsibility for co-ordinated policy implementation.

The audit, which was conducted to determine whether the state's approach to strategic transport planning enables effective use of transport resources and a transport system that is sustainable over the long term, said:

> "The government's *Shaping SEQ* plan finds journey lengths, trip times and the average kilometres people will travel each year will all fall, but includes no rationale for these assumptions."

In a follow-up editorial, the Courier-Mail newspaper said:

> "*Shaping SEQ* was penned by the Department of Infrastructure, and could easily have contested the Man Booker Prize for Fiction."

The assertion by TMR/QR that post-rectified trains ultimately will have accessibility improvements that will exceed the requirements of the DSAPT, we submit, is a sop — designed to have the Commission falsely believe that the granting of the exemption application will result in a superior outcome. It won't.

Our scepticism around this matter can best be demonstrated by publication on the QR website of the QR *Accessibility Action Plan 2014* that purports to activate policies to 'remove barriers and pioneer solutions that support inclusive communities'.

That document reads:

> "People with disabilities are entitled to the same rights, responsibilities and opportunities as other people. Queensland Rail understands the connective role it plays in peoples' lives and is committed to improving access to its passenger rail services.
>
> "At Queensland Rail, we strive to promote accessibility for all members of the community. We do this by working with our customers to remove barriers and pioneer solutions that support inclusive communities.
>
> "As a public transport operator, Queensland Rail's obligations under the DDA are specified in the *Disability Standards for Accessible Public Transport 2002* (Transport Standards) and the *Disability (Access to Premises – Buildings) Standards 2010* (Premises Standards). Both the Transport and Premises Standards (collectively referred to as the Disability Standards) stipulate minimum requirements for the provision of accessible transport premises, services and facilities. Many of the standards rely on Australian Standards in setting out the requirements.
>
> "<u>All new services coming into operation after October 2002 must be fully compliant.</u>
>
> "Where practicable, <u>Queensland Rail has adopted the most up-to-date Australian Standards to provide a **higher** level of access than the minimum requirements</u>. The up-to-date Australian Standards reflect improved application and understanding of the needs of customers with disabilities and this approach assists Queensland Rail in creating a more sustainable rail environment capable of responding to changing circumstances and local community needs.
>
> "Our program of work continues to be shaped by the voice of our customers. We are committed to capturing their feedback about accessibility issues and considering different perspectives.
> "Infrastructure upgrades to stations and train overhauls remain the major focus for improving existing service accessibility. <u>Providing an accessible network for a wide range of customers will be central to our decision making process</u>."

Critically, QR knew that all services coming into operation after October 2002 needed to be fully compliant with the DDA and DSAPT. Despite this being Queensland Government policy at the time the NGR trains were designed and ordered, this policy was ignored.
The non compliant design was signed off by the then (LNP) Newman Government. The NGR project delivery was taken out of the hands of QR and handed to TMR, whose lack of expertise in rail-related matters has surfaced before in non compatible signalling being installed along the Redcliffe Line at the time it was built. This oversight delayed the line being brought into service and cost millions of dollars to rectify. A non-compliant pedestrian overbridge has been installed at Banyo Station. These breaches are indications of systemic problems perhaps best rectified by an employee education program discussed in the next section of this submission.

In 2014, QR was promising to 'provide a higher level of access than the minimum requirements'. Again, it has failed to deliver on rhetoric that, in the *Courier-Mail's* opinion is worthy of consideration for the Man Booker Prize for Fiction.
It defies credulity that this late application by TMR/QR, in the shadows of the Commonwealth Games, was based on the realisation only in June 2017 that there were significant issues for both agencies to address. These issues have been known at least since 2015 and probably before that. The request for the Commission to 'expedite' the process is a sham and an attempt to cover up the State's abject failure to order compliant NGR trains and then failure to act in a timely and decisive manner to fix known problems. They have had more than two years to get this right and they haven't – remembering this involves public investment of $4 billion.

Should the temporary exemption be granted and all changes made good as proposed, an ongoing discrimination will be inflicted. It is TMR/QR's continuing plan that the guard on NGR trains operate from a location at the back of the last carriage, as opposed to the centre of the train, as currently applies on all QR suburban passenger trains. The central guard's position coincides with the central platform location of all services for passengers with a disability, including so-called 'camel hump' raised sections of platform that allow wheelchairs easy access to the floors of trains.

The isolation of the guard by 70 metres from the mid-platform assisted boarding point will diminish service levels for people who require assistance to board or alight, especially on unstaffed platforms. This will be a permanent, unacceptable, consequence of the Commission granting an exemption and certainly is not a move towards providing a 'higher level of accessibility than the minimum requirements' (QR's own words). Despite what TMR/QR says about providing additional assistance staff at stations (at an estimated cost of $15 million annually), not all stations will have these staff. People with a disability will be required to board and leave trains not at their closest or most convenient railway station, but one some distance from their home or destination. They will be required to phone ahead to see whether a station is staffed, and they have no way of knowing whether the next train will have a guard positioned in the middle of the train or at the end.

TMR/QR's undertakings that post-rectified NGR trains 'ultimately will have accessibility improvements exceeding requirements' ring hollow.
The post-rectified NGR train fleet will be modified and split into a 'suburban fleet' (without toilets) and a long distance fleet with toilets. So whereas the original plan was to have 75 trains fully toilet-fitted, approximately half the fleet will be fitted thus. This will provide a

lesser standard of service toilet-wise for the 30-year life of the entire NGR fleet. Another key objective intended at the outset will have been compromised.

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

Definitely, yes.

RBoT opposes absolutely the three-year exemption period being sought by TMR and QR in their joint submission. Our reasons for proposing an initial exemption covering the period of the Commonwealth Games are explained elsewhere in this paper.
A three-year exemption, in our view, would allow the Queensland Government to import all the train sets on order, with those trains potentially being non-compliant with respect to the DDA and DSAPT. Queensland then would be in a position to seek to have the exemption apply to the whole order by virtue of the fact that the importation of all NGR trains would have occurred in the three-year period during which an exemption was operable. It is likely that further exemptions would be sought.

RBoT is aware that submissions from groups representative of the disability sector will suggest that TMR/QR's request be rejected outright and that no exemption be granted under any circumstances until all NGR trains are made compliant. While respecting that viewpoint, and without diminishing the veracity of the arguments likely to be put, RBoT proposes a progressive compliance regime be applied as part of a binding order to a six-month exemption being granted immediately.

It is RBoT's view that the considerable disruption will likely flow should none of the NGR trains currently in Queensland be put into service during the period of the Commonweath Games. It will be severe, most likely requiring trains and crew to be re-allocated from other railway lines in SEQ, thereby severely affecting frequency of services and connectivity from elsewhere on the rail network to the GCL, where frequency will be ramped up considerably. While QR has denied categorically that it has 'no plans' to close one line (Shorncliffe) during the Games, it is obvious that buses and taxis will replace some services on lines other than the GCL. Trains that normally run to a 30-minute timetable most likely will run every hour, thereby inconveniencing passengers wanting to transfer to buses timed to run to and from bus-rail interchanges and co-located stops. In all probability, train frequency will be reduced to every two hours on the Sunshine Coast Line.

While giving consideration to allowing a temporary exemption for NGR trains to be put into service, our recommendation is that the Commission should consider the following binding conditions as a further imposition on TMR/QR.
Any further extension of the exemption period beyond the initial period should be subject to TMR/QR lodging with the Commission during the initial exemption period a costed rectification plan covering all 75 trains in the NGR order. The plan should require operating and compliant toilets being installed on <u>all</u> trains and must require abandonment of the current planning, which would see approximately half the fleet having toilets removed in order to save costs to make toilets on remaining trains compliant with the provisions of the DDA and DSAPT. Failure to lodge such a rectification plan should result in no further exemption being considered until the plan is produced and funds identified for its implementation.

- The implementation plan must be for 18 months duration, during which time the Commission would consider further exemption applications subject to satisfactory progress being made to convert the full fleet.

- All toilets at the 105 toilet-equipped stations across QR's SEQ network be open and accessible to the public at all times during which trains are running to those stations; this to apply for the duration of the Commonwealth Games at least, but ideally for the exemption period if longer. (Usually, station toilets are locked when the stations are unmanned. Not all toilets meet the DSAPT specifications.)

- Staffing of all stations on the Airport and Gold Coast lines during the duration of the Commonwealth Games, from the operating of the first morning service until 8pm.Also, it is clear that, within the siloed structures of TMR, QR and TransLink, there has been a breakdown in corporate governance around policy-making, planning and implementation of provision of disability services and accessibility for all.

A further stipulation the Commission may consider imposing on the applicants as a condition of granting an exemption could be as follows:

- An exemption being granted upon TMR/QR entering into a binding obligation with the Commission to conduct a staff education program about the DDA/DSAPT – that program being rolled out within the first six months of an exemption being granted and must be completed within an 18-month period of the exemption being granted.

Both TMR and QR have shown in the past their willingness to 'talk the talk' around DDA compliance and disability access, but lacking follow-through in this regard. The most recent example of this is the provision of an overpass at the suburban Banyo station not designed to meet DDA/DSAPT requirements.

This recalcitrance must be stamped out through changed corporate culture. Leadership should start at the top.

Further matters for consideration

The evolution of this project should be noted and understood.

The former LNP Government approved procurement of the NGR trains as a Public-Private Partnership deal in December 2013, knowing the legislative requirements to be met under the DDA and DSAPT. Planning had begun more than a year earlier. The NGR trains are required to replace an ageing portion of the existing QR fleet known as EMUs (Electric Multiple Units), which had been upgraded to meet current DSAPT standards.

In September 2012, the Department of Transport and Main Roads (TMR) became the principal delivery agency for the NGR project and the responsibility for project procurement was handed to Projects Queensland (now Queensland Treasury Commercial Group).

The technical specification for the NGR train provided to Treasury Commercial Group at that time did not include a second toilet, calling for a six-car driver-only train, with one toilet in the middle (to align with the platform assisted boarding point). The decision to include one toilet module (rather than two) was made at Cabinet level by the State Government at that time.
RBoT understand that the NGR designs were not signed off by QR. At that time, management of the project was the responsibility of TMR. This keeping of QR at arm's length was a crucial mistake.

The NGR design specifications were as follows:

- Single deck, electric train to operate on the SEQ suburban and interurban narrow-gauge rail network Six narrow body cars per train, with a train crew/drivers cab at each
- Two accessible cars (known as the MA and MB cars) in the middle of the six-car set
- Twelve allocated spaces (six in each accessible car) specifically for people with disabilities
- One unisex accessible toilet module in the MB car
- Four priority seats in each car.

Consideration of two unisex accessible toilets per train (in the MA and MB cars) was abandoned due to cost-cutting measures.

Organisations representing the Disability Community were not consulted during the design stages. They were presented with a mock-up carriage in August 2014 as a *fait accompli* and were told there was no opportunity for change. Also non-negotiable was the position of the guard (at the rear) in a six-car consist, despite protestations at the time.

The advice from disability groups was consistent with the DDA, DSAPT and QR's own *Accessibility Action Plan 2014.* It can be established categorically that TMR/QR were well aware of their obligations to meet disability standards in mid-2014. And probably well before then.

Consistently, since March 2015, QR's Accessibility Reference Group has been told that the structural design of the NGR train sets was 'non-negotiable'. The written response from government was that: "NGR design changes are not possible, as we are under contract and the cost of change would be prohibitive." Consultation was one-way, weighted towards TMR's 'push through' approach. We now know the financial cost of this attitude is $150 million (the government's own estimated cost of rectification of the NGR train sets.)

The trains when they landed from India, were non compliant, and were known to be so. A further 18 months passed during which time TMR did nothing, ignored representations and advice. Finally it acknowledged at the end of that period that the trains were not compliant. There were other design issues, having to do with the cabin design.
These were rectified.

Then Acting QR CEO, Neil Scales, interviewed in ABC Radio 612, Brisbane, 2 November 2016 said:

> "On the NGR rolling stock, I actually met with the trade unions last year and their cab committee and sorted out a lot of the design issues because with any new [... so, you were aware] Oh yeah, I fixed them. The bottom line is that we were aware of all these issues on a cab mock-up. We got an independent ergonomist to have a look at the cab and they made five recommendations. Those five recommendations have been implemented. ... As far as I am concerned, I am making these trains work for the people of Queensland."

Follow-up action was not taken after similar meetings with disability groups. Why? Had they done so, TMR/QR would have had plenty of time to undertaken rectification work to get trains fully compliant before the Commonwealth Games. Instead, they have gone down the path of delay, then seeking an exemption from the Commission.
And they have put non-compliant trains into service. TMR/QR is betting that any action brought under the DDA legislation would take months, dragging the matter into the period where the exemption (if successful) would be in place — allowing for a stay of proceedings until after the exemption period expires.
In addition to issues about the configuration of the on-board toilet, the one accessible toilet per train creates problems for people in a wheelchair (or mothers with large prams, or people with a walking frame) to get past the non-compliant toilet module from the adjoining carriage.
Realising that legal action can be brought against QR through the Commission, the state government proposes a rectification process that will achieve savings while attempting to keep within the overall $4 billion budget. (A significant cost overrun would trigger an investigation by the Auditor-General.)

The now Palaszczuk Labor Government now proposes to split the 75 NGR trains into two fleets:

- Reconfiguration of the accessible toilet module to meet dimensions and improve functionality in line with DSAPT for an Interurban fleet of 35 trains (two toilet modules per six-car train) – adding a second unisex accessible toilet module to the MA car, so that allocated spaces and priority seats in both the MB and MA cars have an access path to a toilet module.
- A suburban fleet of 40 trains (no toilets). It is proposed to remove the unisex accessible toilet module from the MB car.

In addition, regarding train accessibility for people with disabilities, TMR/QR have adopted a platform based direct assistance solution to a rollingstock design problem. Over the expected 30+ year service life of the NGR train, the wages bill of the extra staff required is likely to be of $450 million

We submit this is not an outcome best serving taxpayers, nor is it consistent with QR's policy position of adopting the 'most up-to-date Australian Standards to provide a higher level of

access than the minimum requirements.' Clearly, it is not consistent with TMR's assertion that 'the post-rectified trains will ultimately have accessibility improvements that will exceed the requirements of the DSAPT.'

Whereas the original plan was to have 75 new train sets with fully-accessible toilets, only 35 of the new trains will have toilets. This will lead to scheduling issues, as a distinction will need to be made between those NGR trains without toilets are run on shorter suburban runs, while long-distance services require toilet-equipped trains.

Having all 75 NGR trains' toilets compliant with DDA and DSAPT would overcome deficiencies of toilet design at stations. People with a disability 'needing to go' will be required to alight their suburban train, use the station toilets (assuming they are open and a wheelchair can fit inside) and must hope that the station concerned is manned to assist them on and off the train, or that the guard can help by running from the end of the train to the middle. This Heath Robinson arrangement is a patchwork of add-on changes that TMR/QR says is temporary only, but which is likely to be in place for the 30-year lifespan of the NGR fleet. There is a strong possibility that people with a disability will be overlooked by a guard who will be situated at the end of the train and not in the middle, as currently is the situation for all other six-car trains, with guard and the passenger requiring assistance being within a metre or two of each other.