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Dear Ms Kucharova

Exemption application by State of Queensland & Queensland Rail – NGR Trains

Thank you for the invitation to make a submission about the application for temporary exemption in relation to the Queensland Government's New Generation Rollingstock (NGR) trains.

The State of Queensland and Queensland Rail seek an exemption from the application of the *Disability Discrimination Act 1992* (Cth) and the *Disability Standards for Accessible Public Transport 2002* for a period of three years. The exemption sought would enable NGR trains to be used on the South East Queensland train network while rectification work is undertaken to address, as far as possible, accessibility.

The identified accessibility issues are:

- Access paths;
- Unisex accessible toilets; and
- Assisted boarding.

The NGR fleet comprises 75 new six-car trains, commissioned by the Queensland Government in 2013. It is a grave indictment on the State that a major public works project was procured with apparent disregard for the laws that prohibit discrimination and set out minimum standards for public transport accessibility. The Queensland *Anti-Discrimination Act 1991* has operated since 30 June 1992 and the federal *Disability Discrimination Act 1992* has operated since 1 March 1993. Both Acts prohibit discrimination of people with disabilities in accessing public transport.

Additionally, the *Disability Standards for Accessible Public Transport 2002* (Transport Standards) commenced in October 2002. The purpose of the Transport Standards is to enable public transport operators and providers to remove discrimination from public transport services.¹ All new conveyances brought into use for public transport service after October 2002 must comply with the Transport Standards.²

That the Queensland Government would in 2013 commission a fleet of trains that do not fully comply with the Transport Standards, and in other respects are likely to discriminate against people with disabilities, is reprehensible. And in further defiance and disregard for the law, the NGR trains have been put in use without any rectification work and without the benefit of an exemption granted by the Australian Human Rights Commission.

The applicants say the reason for deploying the non-compliant NGR trains is to replace aging trains and provide services for the Commonwealth Games, which are to take place on the Gold Coast in early April 2018.

Ideally, accessibility should have been addressed at the design and construct stages of the project, and the trains should not have been put in use before being made fully accessible. Unfortunately that has not occurred.

The applicants claim that withholding the trains from service pending compliance with the Transport Standards would impose significant financial burdens on the State. There is no detail of those financial burdens.

Everyone has the right to use public transport.³ Given that non-compliant trains are in use, people with disabilities are already very likely to be experiencing discrimination. The impact on those people must be the primary consideration in resolving the current situation. The application makes no provision for people who are disadvantaged by the non-compliant trains while the rectification work takes place, other than a communication plan, the details of which are not finalised. A draft of that plan has not been provided to the Australian Human Rights Commission (AHRC) or made publicly available with the exemption application

The status of the design, build and delivery of the 75 NGR trains, and a high level timetable for the rectification works, have been provided to the AHRC, but have not been made publicly available on the basis that they are 'commercial-in-confidence'. A detailed timetable for each step of the rectification process is still to be developed, and the designs for the rectification works are still at the concept stage.

In view of the lack of certainty of the proposed works and want of provision for the people who are disadvantaged by the trains, the Commission is unable to support

¹ *Disability Standards for Accessible Public Transport 2002*, section 1.2(2).

² *Disability Standards for Accessible Public Transport 2002*, section 33.1.

³ The Department of Transport and Main Roads acknowledges this right on its website, which includes information about the *Disability Discrimination Act 1992* and the Transport Standards -see <https://www.tmr.qld.gov.au/Travel-and-transport/Disability-access-and-mobility/Accessible-public-transport-standards>.

the granting of an exemption as currently requested. Any exemption granted, should have strict conditions that address the following issues.

The applicants must undertake not to put more non-compliant trains in use.

There needs to be alternative arrangements and a compensation scheme for people with disability who are unable to access the new trains or who experience disadvantage because of the trains.

The assisted boarding issue is broader than compliance with the Transport Standards. Some people require assistance to board and alight from trains. Currently, a guard stationed in a guard cab mid-train usually provides assistance. The applicants have discounted installing a guard cab in the centre of the train, and claim there will be assistance by platform staff. Many stations are not staffed, particularly those in outer urban areas or on weekends and public holidays. Many platforms even at peak hour times, do not have platform staff waiting for each and every train stopping at a station. If assistance to board and alight is not available to people with disability who need that help, discrimination will result, and the discrimination will become systemic. It is not appropriate to rely on platform staff for assistance, and a design solution involving a guard cab is necessary.

The trains will remain non-compliant with the Transport Standards after rectification in respect of the boarding device. A boarding device will be available only at a single door, rather than at all doors. The applicants say that this is the case for existing trains, as per the existing exemption. However, it is not the same case because without a central guard cab assistance is less likely.

In conclusion, an exemption granted to the applicants, should be conditional on:

- Specific works and designs
- A design solution incorporating a guard cab
- A clear timetable for the works
- Regular reporting to the AHRC
- Alternative travel options for people with disability who are unable to access the trains
- A compensation scheme for people with disability disadvantaged by the non-compliance
- An undertaking not to put any more trains in use until they are fully compliant, including a guard cab.

Yours sincerely



KEVIN COCKS AM
Anti-Discrimination Commissioner