

Summary of the Australian Human Rights Commission's decision on the 'New Generation Rollingstock' train exemption application made by the State of Queensland and Queensland Rail.

The Australian Human Rights Commission ('Commission') has today given notice of its decision on the joint application by the State of Queensland (acting through the Department of Transport and Main Roads) and Queensland Rail for temporary exemptions to the *Disability Discrimination Act 1992* (Cth) ('DDA') and the *Disability Standards for Accessible Public Transport 2002* (Cth) ('Transport Standards').

Consistent with its preliminary view, the Commission has decided that it will not grant the majority of the temporary exemptions sought by the applicants in this matter. The DDA has made it unlawful for public transport providers to discriminate on the ground of disability since 1993. Since 2002, when the Transport Standards came into operation, all new conveyances — including trains — must comply with the Transport Standards. Despite being procured in 2013, the New Generation Rollingstock trains do not comply with sections of the Transport Standards.

In passing the DDA and making the Transport Standards, the government sought to reverse a history of exclusion from areas of public life for people with disability. It created a comprehensive regime intended to ensure the accessibility of public transport for people with disability. The Commission considers that exemptions to this law and national standards should not be granted lightly. Given the significant legal consequences for potential complainants, the Commission must be satisfied that a temporary exemption is appropriate and reasonable, and evidence is needed to justify an exemption.

While the Commission acknowledges that the Queensland Government has agreed to allocate funds to bring the trains into substantial compliance with the Transport Standards within three years, the Commission is not convinced that this commitment is sufficiently persuasive to suspend the rights of people who might experience discrimination on the NGR trains during this time to make a complaint under the DDA.

In forming its decision, the Commission considered the views contained in 20 submissions received from individuals, government agencies and disability advocacy organisations. The majority of these submissions opposed the Commission granting the exemptions to the applicants, either outright or on the conditions requested by the applicants. The Commission also considered the response of the applicants and other interested parties to the Commission's preliminary view.

The Commission recognises that the procurement of the NGR trains is a large and complicated infrastructure project that has spanned successive Queensland governments. It also notes that the applicants have recognised that their consultation and procurement processes could have been better and have taken steps to improve the situation. The new Accessible Transport Networks team within TMR is a commendable development in this regard for the future.

The Commission has decided that it will grant one exemption to the Department of Transport and Main Roads to s 8.2 of the Transport Standards until 1 October 2020 to align it with an existing temporary exemption already enjoyed by Queensland Rail.

Pursuant to s 56 of the DDA and s 33A.4 of the Transport Standards, and subject to the *Administrative Appeals Tribunal Act 1975* (Cth), an application may be made to the Administrative Appeals Tribunal for a review of the decision to which this notice relates by or on behalf of any person or persons whose interests are affected by the decision.

29 March 2018

Please note that this statement is not intended to be a substitute for the reasons of the Commission as set out in its decision or to be used in any later consideration of the Commission's reasons.