

22 December 2017

Australian Human Rights Commission, Sydney. NSW.

legal@humanrights.gov.au

Dear Madam/Sir,

Re Spinal Life Australia Submission

Spinal Life Australia represents people with spinal cord damage and other physical disabilities.

We tender the following submission to the Australian Human Rights Commission relating to the Application for Temporary Exemption for the NGR trains by the State of Queensland and Queensland Rail.

With kind regards,



Michael Powell
Chief Executive Officer

Submission from Spinal Life Australia

A submission in response to an Application for temporary exemptions for the New Generation Rollingstock trains (NGR).

Spinal Life Australia, headquartered in Brisbane, represents people with spinal cord damage and other physical disabilities.

We make the following submission to the Australian Human Rights Commission relating to the Application for Temporary Exemptions for three years for the NGR trains by the State of Queensland (through the Department of Transport & Main Roads) and Queensland Rail. Our view is this:

- A completely new product should not be eligible for a Temporary Exemption and none should be granted. The NGR should be brought to a state of accessibility and compliance before it goes into service.
- A Temporary Exemption for the NGR only rewards poor procurement practice and legitimises a refusal to consult with the disability sector pre-procurement.
- The procurement process, and the product procured, are inconsistent with the Objects of the Disability Discrimination Act (DDA).
- The Qld Government's dismissal, over a two year period, of legitimate concerns regarding the discriminatory design of the NGR disqualifies it from any credible argument that the NGR's design was an oversight or unfortunate accident.
- Material supplied by the Department of Transport & Main Roads (TMR) to the Australian Human Rights Commission (AHRC) confirms that the more discriminatory aspects of the NGR's design, such as the single toilet and guard in car 6, resulted from directions to the Project by the Queensland Cabinet.
- No evidence can be located to indicate that TMR advised the Queensland Cabinet or the Transport Minister that the Cabinet direction would result in an unlawful product.

Access to Toilets

- The allocated spaces in the MA car are not connected to the accessible toilet in the MB car by an access path. The path provided between these two cars is only +/-650 mm in places. Most wheelchair users in the MA car will not be able to travel to the toilet in the MB car.

Toilet Design

- The distance from the centreline of the pan to the far wall falls short of the 1150 mm required for compliance. This is due to the curved shape of the door. Most wheelchair users will not be able to perform a side transfer onto the pan with the current door design and pan location as their wheelchairs will not fit easily into the available space.

Guard Cab

- Rather than being located mid train as is currently the case with six car City Trains, the NGR guard cab is in the last car of the train (car 6). This puts guards +/- 70 m from customers waiting for boarding assistance at the mid platform assisted boarding point. Note: the CityTrain Network comprises over 150 stations and the assisted boarding point has been purposefully located mid platform at every station, creating a predictable, reliable point of interface between staff and customers.
- Because the NGR's middle cars (MA and MB) are the accessible cars, as per the current City Train fleet, moving the assisted boarding point to the end of the platform nearer the guard is not feasible.
- Guards in car 6 will rely on carriage mounted closed circuit video systems to survey the platform and particularly to view who is waiting for boarding assistance. Electronic equipment of this type is prone to failure, which would render customers waiting for assistance invisible to the guard. Further, at peak hours when crowding occurs, a customer in a wheelchair is unlikely to be visible when surrounded by standing patrons.
- At 70 m distance, communication with customers, or with platform staff who may have assisted the customer to board, is all but impossible. Information on customer destination will not be conveyed to the guard.

Platform Assistance Proposal

- Platform staff assistance has been offered as the solution to the dilemma of the NGR guard's remoteness from the assisted boarding point. Currently, many Queensland Rail (QR) stations are only staffed for a few hours per day and a small minority are staffed 24/7. Therefore, staffing all 150+ stations throughout operational hours will require the hiring and rostering of a considerable body of people.
- Over the expected 30+ year service life of the NGR the wages bill of these extra staff is likely to be astronomical, with an estimated scenario of \$450 million, and therefore susceptible to cutting. It is doubtful that future governments will fund these extra positions and the Deputy Premier confirmed that she could not hold future governments to any funding agreements that she struck.
- The Deputy Premier verbally informed a member of Spinal Life Australia that to relocate

the guard cab to mid train would cost \$250 million. Moving the guard cab rather than employing extra platform staff will save the taxpayer \$200 million over the service life of the NGR train.

What will be the impact on individuals?

- In seeking the exemptions, people with disability are being asked to put their lives aside; to put a hold on employment opportunities, on education and training, recreation, access to daily living and health services. To put a hold on their choice and control – which is clearly treating people unfavourably. And by seeking to knowingly and deliberately treat people with a disability unfavourably, we have to ask the State of Queensland, ‘where is your humanity?’

The AHRC asks what is your view regarding the applicant’s submission that the post-rectified trains will have accessible improvements that will exceed the requirements of the DDA?

- As this matter relates to transport, the specific requirements are set out in the Disability Standard Accessible Public Transport 2002 (DSAPT). This Standard was written in 1994, had its Regulation Impact Statement in 1995 and was not passed in Parliament until October 2002. The technology leap alone between 1995 and 2002 meant it was a weak Standard when it commenced, and it is unfortunate governments have taken so long to commence the DSAPT modernisation project recently. The struggle has been, making a service compliant with DSAPT does not necessarily make it functional – and people can lodge complaint if a service is not functional. The equitable access recommendations made by the Access Reference Group which the State of Queensland has accepted to complete were made to ensure both compliance and functionality were secured in order that every customer could receive a service which in turn would minimise risk of potential complaint against the State of Queensland – and would maximise the social and economic performance of the service and the region it serves.

Past and future

- When viewed politically, the Newman government created the NGR design debacle which the incoming Palaszczuk government had to address. During that term, the government tried to introduce a Human Rights Act for Queensland which would have required more responsible thinking and action to develop an equitable, integrated Queensland. However, the Nicholls Opposition refused to support it. Now, with a fresh election (25 November 2017) comes fresh hope that every parliamentarian in the new Queensland Legislative Assembly will act to ensure Queensland is not shamed because of the State of Queensland and Queensland Rail pre-election applying to knowingly and deliberately deny people with disability and other populations to access services, to participate in their community and be a customer. This new Parliament should ask TMR and QR for a timetable to be released that shows dedicated commitment to fixing the 21 trains that are built and in Brisbane. The

public needs this show of good faith – an indication that this new Parliament will act for the electorate, not expediency.

Running non-compliant revenue services

- We are shocked and appalled that the State of Queensland and Queensland Rail has commenced operating non-compliant NGR trains for revenue services whilst this matter is before the Australian Human Rights Commission. This disrespect shows the Applicant's in the poorest light possible to the people of Queensland.

