

Queensland Rail Accessibility Reference Group

Submission in Response to:

An Application for Temporary Exemptions under the *Disability Standards for Accessible Public Transport 2002* for the New Generation Rollingstock Project

Xx December, 2017

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Introduction

A joint application for temporary exemptions from the *Disability Standards for Accessible Public Transport 2002* (DSAPT) by the State of Queensland (acting through the Department of Transport and Main Roads (TMR)) and Queensland Rail (QR) for the *New Generation Rollingstock* (NGR) Project has been submitted to the Australian Human Rights Commission (AHRC). The QR Accessibility Reference Group (ARG) will comment on this application and make various recommendations. It will also comment on matters that have led to this application for temporary exemption being necessary.

The ARG is both encouraged and appalled that the State of Queensland has applied for temporary exemptions. Encouraged because the need for temporary exemptions has vindicated the ARG's long-held position that the design of the NGR train is discriminatory. Appalled because of the deeply flawed procurement process undertaken by TMR, and the shameful treatment of our just concerns over several years by the State of Queensland, that has led to the point where a completely new train requires temporary exemptions.

The ineptitude and contempt displayed by TMR are magnified by the 2018 Commonwealth Games and the concurrent Paralympic sports requiring first class, accessible mass transit between Brisbane and the Gold Coast¹. It was always intended that the NGR fleet would contribute significantly to this mass transit demand. If it is indeed operational by the Games², the NGR will provide a discriminatory service to the athletes and people with disabilities who will be its customers. Due to the discriminatory nature of the service provided by the current NGR design the ARG believes it should not enter service until the discriminatory aspects of the train's design are rectified.

Temporary exemptions opposed by the ARG

Bearing in mind the deeply flawed process that led to the current debacle, and the egregious waste of two years in which the ARG's concerns could have been addressed, the ARG does not support the granting of any temporary exemptions. Further, the Australasian Rail Association (ARA), of which QR is a member, has a history of seeking ongoing extensions to 'temporary' exemptions. The ARG believes that the ARA has been taken advantage of this exemption process, delaying any work until it can diminish the requirements of the DSAPT through the 'DSAPT modernisation' project.

¹ <https://www.gc2018.com/article/gc2018-host-largest-para-sport-program-commonwealth-games-history>

² <https://www.brisbanetimes.com.au/politics/queensland/reports-says-trains-may-not-be-ready-for-commonwealth-games-20170808-gxrhrx.html>

There is nothing to suggest that TMR and QR will not follow the same strategy used by the ARA if granted 'temporary' exemptions. However, the ARG accepts that the AHRC may grant temporary exemptions, and so all ARG recommendations in this document will be made in the context of exemption opposed, but if granted then strict conditions to apply.

Explanation for opposition to granting temporary exemptions

The ARG opposes temporary exemptions for the NRG for nine principal reasons as detailed below.

Firstly, the application is not consistent with Objects of the DDA:

1. Elimination of discrimination.

The exemption would prolong discrimination although the applicants had prior knowledge of accessible design and construction, prior advice on accessible arrangements from persons with disabilities, and time and resources to allow remedy.

2. Ensuring same rights to equality before the law.

An exemption would undermine those rights by permitting and extending the applicants' non-compliance with the standards that guarantee those rights.

3. Promoting recognition and acceptance in community that persons with disabilities have the same rights.

An exemption strengthens a public view that the interests of persons with disabilities are subsidiary to everyone else's interests.

Secondly, several points must be taken into consideration:

- Few, if any, of the train-users 'affected by the outcome of the application' support the proposed exemption.
- The DDA, DSAPT and ARA Exemptions were already in place when the Queensland Government commissioned the trains in 2013.
- The Queensland Government did not include persons with disabilities in consultation until 2014, and this was after the design of the train's structure was finalised. The ARG could only comment on preferred fit out within a discriminatory structure.

Thirdly, only a refusal without terms and conditions will address the root cause – discriminatory procurement – of the discriminatory practice.

Fourthly, on ABC Radio's *Mornings*, hosted by Steve Austin and broadcast Monday November 6, 2017 at 9.30 am, the Deputy Premier of Queensland, Jackie Trad, alleged that the Newman Government of Queensland deliberately circumvented good consultative procurement / commissioning practice³ to drive down cost. This may or may not be the case, but the ARG can confirm that when quizzed as to why only one toilet was provided on the NGR rather than two that a TMR project manager stated that he believed it was a cost saving measure. (Two toilets are required to offer left and right hand transfer options.)

The ARG was informed by the current Labor Minister that the design and procurement decisions were made by the previous Liberal National Party Government. Governments must be held to account for their actions, and a refusal may well expose any political interference in the process of designing and procuring the NGR. It may also deter future political interference in DSAPT related procurements.

Fifthly, no 'hardship' can justify these exemptions (not cost, not claimed Commonwealth Games necessity) because unjustifiable hardship is only relevant as a defence to a discrimination complaint, not flawed design and consultation processes for an entirely new fleet of trains. Also, the matter of the cost imposition of retrofitting for compliance is doubtful, because the Deputy Premier indicated in the *Brisbane Times*, November 9, 2017⁴ that contingency funds for modifications were already available:

Ms Trad said there was a contingency budget for the modifications to the trains and it would not cost taxpayers any more money.

Sixthly, the ARG noted a comment by the Director General (DG) of TMR made during an ARG meeting with the Deputy Premier, the DG and QR CEO that QR has a Plan B for Commonwealth Games train arrangements that does not depend on the NGR being available. This comment was repeated by the DG at a QR ARG meeting on June 27, 2017.

Seventhly, only a design solution can overcome the boarding assistance dilemma created by the guard's cab being located 70 m from the customer waiting at the assisted boarding point of an unstaffed platform. This is because:

- Over the 30+ years life of the NGR trains, there is no certainty that Treasury / TMR / QR will retain commitment to any extra platform staffing arrangements. The Deputy Premier (Transport Minister) admitted to the ARG that she could not commit future governments to fund the extra platform based boarding assistance promised by TMR and QR.

³ <http://www.abc.net.au/radio/brisbane/programs/mornings/mornings/9101690>

⁴ <https://www.brisbanetimes.com.au/politics/queensland/question-remains-over-commonwealth-games-trains-20171109-p4ywwz.html>

- An exemption for boarding arrangements is not reasonable given the nature and extent of its discriminatory effect - see AHRC Guidelines #3 (b).
- Persons with disabilities will be treated less favourably because they will have to:
 - a. (sometimes) make prior arrangements with QR staff to travel, making City Train a booked service for some customers,
 - b. relearn new boarding / alighting procedures,
 - c. on unstaffed platforms, determine as the train arrives which of the two guard cab locations their train has (mid train as per current rollingstock or end of train as per NGR) and adopt different procedures with each, which is quite a challenge for people with a vision impairment, cognitive or intellectual disability,

Eighthly, this would be an exemption-on-exemption. The AHRC granted the ARA (to which QR is a party) 'narrow-gauge line' corridor-width exemption. The AHRC guidelines at #3 (c) require the decision-maker to consider whether the applicant will reduce or remove the discriminatory practice.

Lastly, the TMR and QR Accessibility Action Plans have included little more than motherhood statements with no substantive content or enforceable commitments. These are only half-hearted indications that discriminatory practice, procurement and products will be addressed. As has been demonstrated by the NGR, even billion dollar commitments do not guarantee non-discriminatory outcomes.

Matters of discrimination falling outside the DSAPT

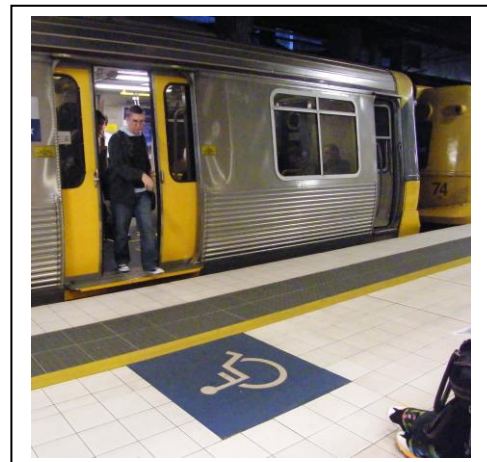
The issues raised in the application from the State of Queensland do not address all of the ARG's concerns. Concerns that fall outside the scope of the DSAPT will be raised in the text below, before a critique of the individual arguments for temporary exemptions is offered later in this document.

Location of guard in Car 6 rather than mid train

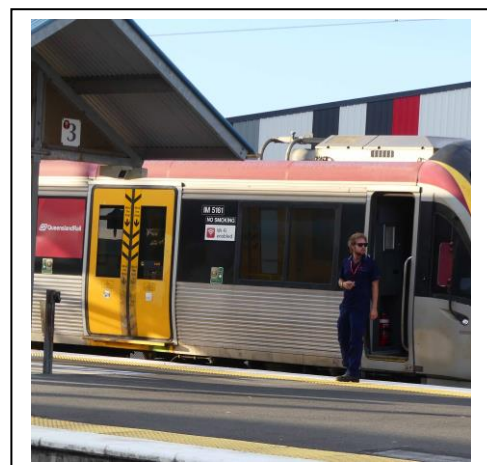
Should the temporary exemption be granted and all changes made in good faith the NGR will, in the ARG's opinion, still be a discriminatory design. DSAPT compliance will not deal with one of the ARG's key concerns – the location of the guard in Car 6 rather than mid train (as is currently practiced) and which current practice is illustrated to the right. The isolation of the guard by 70 m from the mid platform assisted boarding point will diminish service levels for people who require assistance to board or alight, especially on unstaffed platforms. On these unstaffed platforms customers who require boarding or alighting assistance will be overlooked or forgotten, left on the train or left behind on the platform.



Being left on trains currently occurs with annoying frequency and the ARG expects that unless a guard cab is provided mid train the frequency of passengers who require assistance to board or alight being overlooked or forgotten will escalate from annoyance to become a systemic problem. The ARG argues that this increased neglect will constitute indirect discrimination and be attributable to the NGR's design widely separating guards from customers requiring assistance to board or alight. The close proximity of the guard's cab to the assisted boarding point is illustrated in the adjacent photograph.



Guards customarily step out of their cab while the train is standing at the station. This places the guard at a conversational distance from customers who need assistance to board via the door adjacent to his cab. It also means that the guard is easily able to see people waiting on board who wish to alight. For people who have hidden disabilities this proximity to the guard on unstaffed platforms is of paramount importance, as a guard 70 m distant is unable to communicate with them. This proximity of guard to boarding point / accessible door is illustrated in the photograph to the right.



The City Train fleet, mostly Electrical Multiple Unit (EMU), Inter-urban Multiple Unit (IMU) and Suburban Multiple Unit (SMU) trains, is described on the QR website:

<https://www.queenslandrail.com.au/aboutus/organisation/citytrain-fleet>

All three classes of train locate the guard in the middle of a six car set, usually in the front cab of the fourth car in the direction of travel.

The Figure following illustrates the standard location of assisted boarding points on a QR station, the proximity to that boarding point of the guard cabs of EMU and SMU trains currently in service and the wide separation of the NGR guard cab from the assisted boarding point. Based on the length of the NGR train (147 m) it is anticipated that the guard will be separated from the assisted boarding point by approximately 70 m.



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 QR stations are only stationed for a few hours per day and a small minority are staffed 24/7. Therefore, staffing all 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 and therefore susceptible to cutting.

Taken in the context of these extra platform staff being not currently required, with their *raison d'être* being only an appeal to a platform based Direct Assistance solution to a rollingstock design problem, it will be tempting for any future QR CEO or Transport Minister to make these proposed platform roles redundant. When pressed on the matter, the Deputy Premier of Queensland confirmed to members of the ARG present in her office that she was in no position to commit future governments to fund these extra platform roles.

The proposed staffing solution has a short lifespan at best and is offered only as a sop to convince the AHRC to grant an exemption. Only a mid-train guard cab can ensure that, on unstaffed platforms, boarding and

alighting assistance will be available at close quarters to customers who require that assistance throughout the service life of the NGR.

The ARG fears that QR, having cut the extra staff will resort to the same strategy employed in Sydney and make their trains a booked service on unstaffed platforms for people who require boarding assistance, treating customers with a disability less favourably than others. An excerpt from the Sydney Train website reads:

Getting assistance

If you need help to board the train, contact your departure station and let staff know your needs and travel plans, so they are ready to assist you. Arrive at the station well before your train is due and make yourself known to staff.⁵

NGR and the Objects of the DDA

The ARG believes that the Objects of the Disability Discrimination Act 1992 (DDA) have been violated by the NGR design and procurement process.

Disability Discrimination Act 1992

3 Objects

The objects of this Act are:

- (a) to eliminate, as far as possible, discrimination against persons on the ground of disability in the areas of:
 - (i) work, accommodation, education, access to premises, clubs and sport; and
 - (ii) the provision of goods, facilities, services and land; and
 - (iii) existing laws; and
 - (iv) the administration of Commonwealth laws and programs; and
- (b) 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; and
- (c) to promote recognition and acceptance within the community of the principle that persons with disabilities have the same fundamental rights as the rest of the community.

Regarding 3(a) above the ARG argues that the Queensland government surrendered any pretence that it is attempting to eliminate as far as possible discrimination when for two years it ignored the ARG's calls for change to the NGR. Correspondence and verbal communication with the Minister for Transport over this period elicited the same response: 'NGR design changes are not possible as we are under contract and the cost of change would be prohibitive'. Given the intransigence of government,

⁵ http://www.sydneytrains.info/travelling_with/accessible_services/boarding

TMR and QR it is no accident that a completely new product valued at over \$4 billion is so fundamentally flawed.

The ARG argues that the spirit of 3(b) was violated in that the requirements of the DDA and DSAPT were ignored in part by the designers. 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. Customers who have a disability could have used the train with ease and predictability. Instead, the ARG is placed in a position that obliges it to battle the State of Queensland over the discriminatory design of new rollingstock.

Clause 3(c) has been neglected. Rather than promote the rights of persons with a disability, TMR and QR, with government blessing, have knowingly disregarded those rights. It would be hard for TMR and QR to plead ignorance of the DDA and DSAPT during the scoping, design and procurement of the NGR. Therefore, the ARG can only conclude that TMR and QR, under successive governments, have deliberately ignored the rights of those of their customers who have a disability. This sets a dangerous precedent and may mark the beginning of state government attempts to diminish the DDA rights of people with disabilities.

TMR culture

It is the opinion of ARG members that TMR has a culture of secrecy and stakeholder exclusion, whether deliberate or unconscious, and this culture has contributed directly to the failure of the NGR design to meet DSAPT standards or DDA requirements. Consequently, there is a risk that future design problems can be expected for projects yet to be mooted or under consideration.

TMR must engage its customers as project partners rather than as a problematic afterthought, at which point they are perceived as threats to projects, and valid concerns are dismissed. The customers have a vital stake in TMR's projects, being the intended users of public transport products that connect them to daily living experiences, which impacts on the social and economic performance of the region. In fact, many people with a disability use public transport more than average due to the inability to drive a vehicle. Following two years of active campaigning by the ARG, TMR now seeks a temporary DSAPT exemption for the NGR. This situation was entirely avoidable if only TMR had listened to the ARG.

Comments on the application for exemptions' text

The ARG's comments will appear in blue in the following text.

3. THE NGR TRAIN

(a) The NGR train was procured in December 2013 (when the Public Private Partnership (PPP) contract was awarded) to the following technical specifications:

- (i) Single deck, electric train to operate on the South East Queensland suburban and interurban narrow-gauge rail network
- (ii) Six narrow body cars per train, with a train crew/drivers cab at each end (147 metres long)
 - (A) Two accessible cars (known as the MA and MB cars in the middle of the six-car set)
 - (B) Twelve allocated spaces, six in each accessible car
 - (C) One unisex accessible toilet module in the MB car
 - (D) Four priority seats in each car

ARG Response: The ARG did not view a mock-up of the NGR until shown a single 'dummy' carriage in August 2014. By this time our protestations of discriminatory design were futile as the design had been finalised and the contract awarded. The ARG suspects that it was being manipulated into approving the design, despite having no opportunity to contribute to the design, though this was not apparent at the time. It was not until March 2015 that the ARG realised that the structure of the NGR as listed in 3(a) above was non-negotiable and that our consistent advice to centrally locate the guard, among other matters, was wasted.

(b) Due to the narrow gauge of the tracks in the South East Queensland passenger rail network, car bodies are narrow-width which means compliance with a number of the requirements of the DSAPT is a challenge.

ARG Response: Gauge constraints are easily avoided through intelligent design. Witness the very accessible EMU trains, a 1980s design. Gauge only became a problem for the NRG after non-compliance was raised by the ARG. Significantly, when the EMUs were very successfully upgraded to meet the DSAPT, the ARG was fully consulted by QR, and was provided with layout options. The chief constraint on the NGR's accessibility is not track gauge but TMR and QR's refusal to engage with the ARG in design phase and pre-procurement.

(c) Consultation with external stakeholders was undertaken throughout train procurement, concept and detailed design development phases of the project.

ARG Response: At no time pre-procurement was any comment sought from, or dialogue undertaken with, the disability sector and particularly the ARG. TMR completely excluded the ARG from all participation in the development of the NGR. Had the ARG been a participant in pre-

procurement design and project scope its representatives could have guided TMR to a non-discriminatory product rather than the deeply flawed product that is the subject of an application for temporary exemption from the DSAPT.

(d) Two sessions were held with representatives from the Queensland disability sector at a physical mock-up of a portion of the train in August 2014 and March 2015.

ARG Response: These sessions were held post procurement when the NGR design was a *fait accompli*. The ARG was only able to comment on fit out rather than design, hence its vigorous campaign against the poorly conceived and discriminatory design developed by TMR in consultation with the 'stakeholders' mentioned in (c). Unfortunately, the ARG was not informed until the March 2015 session that the design was already fixed and that many of the matters on which we were pressing for change were non-negotiable.

(e) The non-compliances identified on the NGR train relate to:

(i) Access paths – width:

(A) The access path adjacent to the allocated spaces in the two accessible cars is not compliant.

(B) The access path past the unisex accessible toilet module is not compliant.

(ii) Access paths – extent of path:

(i) The access path does not extend between the single assisted boarding point door and all allocated spaces and priority seats in the accessible cars.

(ii) The access path does not extend between all allocated spaces and priority seats in the accessible cars to/from the unisex accessible toilet module.

(iii) Unisex accessible toilet module:

(A) Dimensions – one dimension within the toilet module (from the centre-line of the pan to far side wall) is noncompliant due to the design trade-off between the size of the toilet module and adjacent path past the toilet.

(B) Functionality – some customers using a mobility device may not be able to carry out a fully parallel side transfer to the pan due to the circulation space between the toilet module's curved door and wall and pan.

ARG Response: The ARG would like the AHRC to consider that the DSAPT has been in force since 2002 and all new designs / procurements should be fully compliant as they enter service. The AHRC may wish to inquire of the State of Queensland as to why this was not the case with the NGR, and why a temporary exemption should be granted for a product that should not have the discriminatory design flaws noted above.

The ARG further notes that the statement in 3(e)(iii)(A) above is incorrect. It alludes to a toilet non-compliance being a result of car width being constrained by narrow gauge, as per an earlier claim in 3(b). This is incorrect. The DSAPT requirements for onboard toilets are in Section 15.4 below.

15.4 Requirements for accessible toilets — ferries and accessible rail cars

- (1) An accessible toilet must:
 - (a) comply with the requirements set out in this section; and
 - (b) allow passengers in wheelchairs or mobility aids to enter, position their aids and exit.
- (2) The minimum dimension from the centre line of the pan to the near-side wall must be 450 mm (AS1428.1 (2001) Figure 22).
- (3) The minimum dimension from the centre line of the pan to the far-side wall must be 1150 mm (AS1428.1 (2001) Figure 22).
- (4) The minimum dimension from the back wall to the front edge of the pan must be 800 mm (AS1428.1 (2001) Figure 22).
- (5) The toilet seat must be between 460 mm and 480 mm above the floor (AS1428.1 (2001) Figure 18).
- (6) Hand washing facilities must be provided either inside or outside the toilet (AS1428.1 (2001) Clause 10.2.1 (b), Water closets).

Conveyances: * Ferries, * Accessible rail cars

The ARG asks the AHRC to note the 1150 mm dimension of 15.4(3) above. Referring to material below supplied by TMR in June 2017 the 1150 mm has been met in the current iteration of the NGR. Claiming that narrow gauge is a compliance constraint is disingenuous and harms the credibility of the exemption application. The corridor width has no impact on the footprint of the toilet, rather circulation space is constrained by the curved door. A later model IMU toilet and door are illustrated at right. The current NGR toilet has roughly the same layout and footprint.

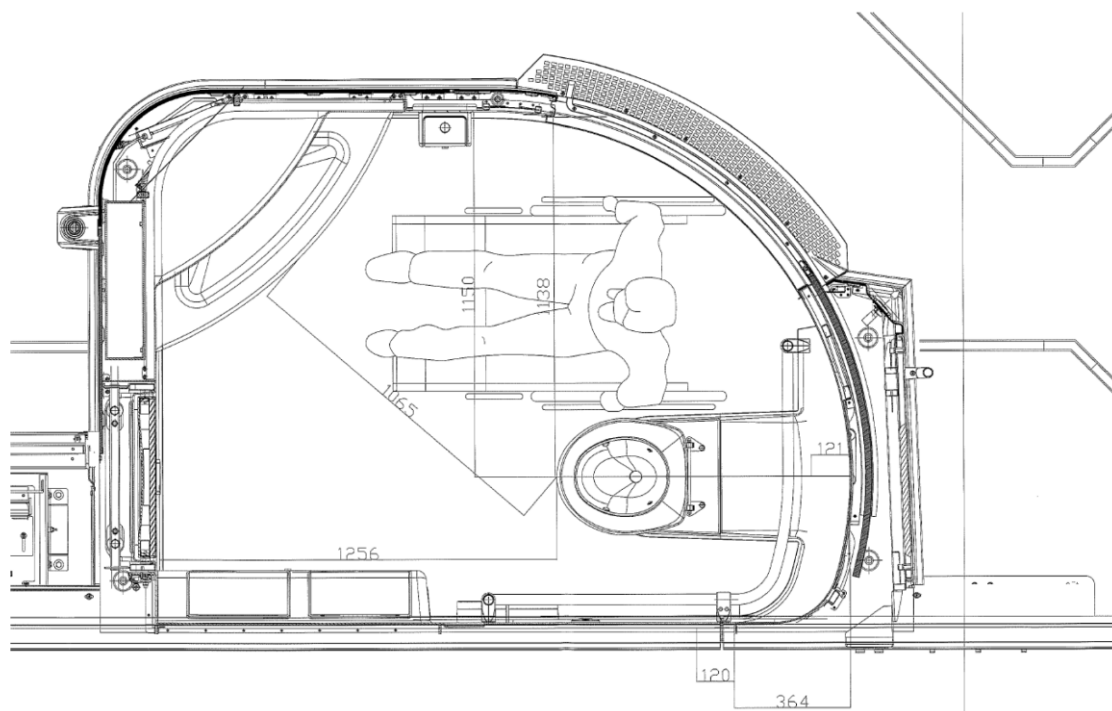


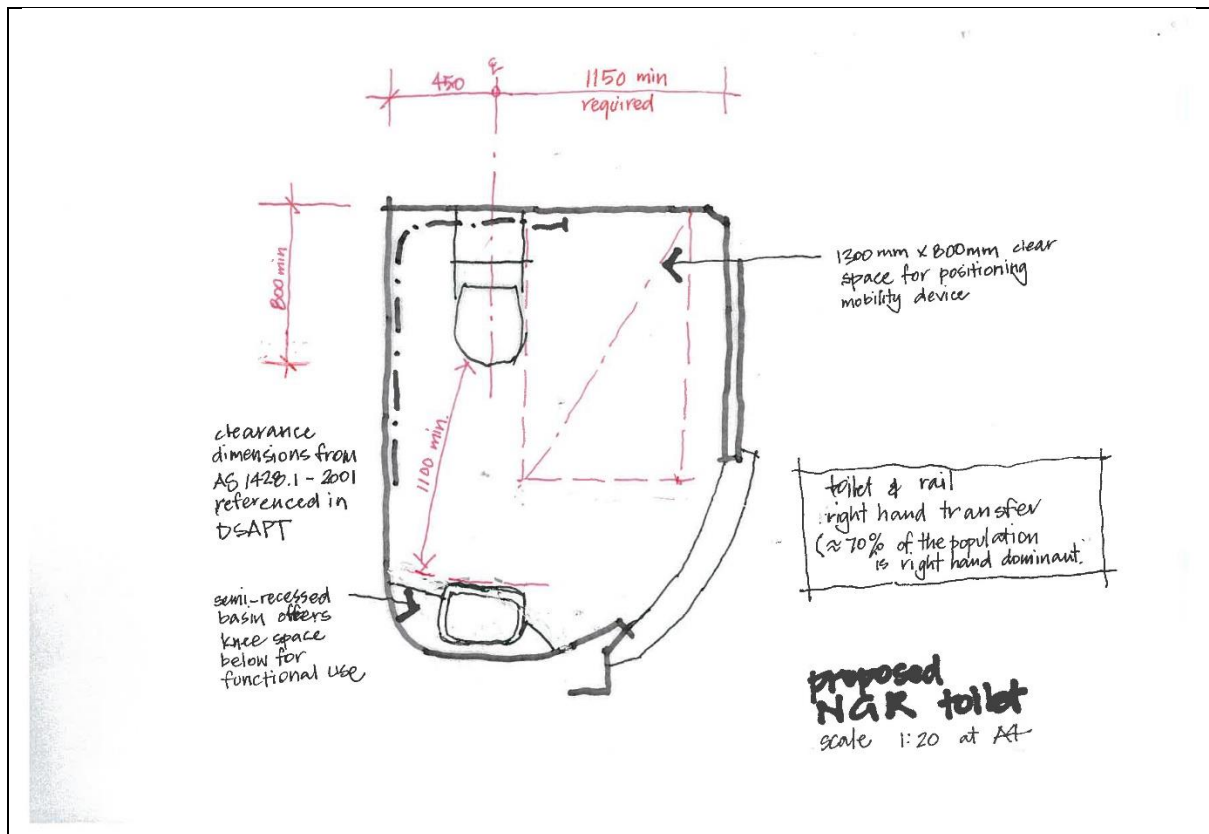
Earlier model IMU toilets had a flat door as per the illustration at right. This allowed a compliant footprint but a very narrow door (+/- 750 mm clear open width). In later model IMUs QR solved the door width issue by compromising the toilet footprint with a wide, curved door.



The ARG wished to advise TMR during design phase that the curved door was a hindrance to manoeuvring inside the toilet but was not given the opportunity. The design was finalised and the contract signed without ARG input. The ARG feels vindicated that after two years of advocacy by the ARG, TMR has finally accepted our design and has offered to alter the toilet module to achieve compliance (see below). This was a completely unnecessary conflict that was avoidable had consultation pre-procurement been undertaken.

On-board toilet module





(f) In response to these findings and concerns raised by the disability sector through the Queensland Rail Accessibility Reference Group (ARG), TMR made a commitment in June 2017 to review the overall design of the NGR train's design to maximise its compliance with the discrimination and safety legislation, associated disability standards and functional performance requirements.

ARG Response: The NGR design was so flawed and the ARG so adamant that TMR finally engaged an external consultant to gauge their problem. Armed with information from the expert consultant that validated much of the ARG's position TMR then knew that it would lose any DDA challenge and so sought to negotiate its way out of difficulties.

The ARG asks the AHRC to note the two-year gap between March 2015 and June 2017. During this period, the ARG was obliged to campaign in the face of government and TMR indifference at best and dismissiveness at worst.

4. TEMPORARY EXEMPTIONS SOUGHT

Together, TMR and QR, seek the following exemptions to the DDA and DSAPT for a period of three years, to progressively resolve non-compliances (as far as possible) and improve the overall functionality of the NGR train.

ARG Response: As stated in the Introduction the ARG asks the AHRC to refuse all temporary exemptions.

5. PRELIMINARY CONSIDERATIONS

5.1 Urgent processing requested

(a) The Applicants require the use of the NGR fleet for the 2018 Gold Coast Commonwealth Games, which will officially commence on 4 April 2018. The use of NGR trains is integral to the Commonwealth Games timetable. In order for the NGR fleet to be ready, a period of track testing and trial operation will be required.

ARG Response: The ARG notes the impending Commonwealth Games. It also notes the two years in which TMR ignored the ARG's advocacy. The ARG further notes that in August 2017 the consultancy firm Deutsche Bahn believed that the NGR trains would not be ready for the Commonwealth Games⁶. Even at this late stage the State of Queensland will still not commit on how many NGR trains will be in service for the Commonwealth Games⁷. The ARG has no doubt that the State of Queensland has a contingency plan prepared should few if any NGR trains be ready for the Commonwealth Games.

(b) The NGR trains are required to replace an ageing portion of the existing QR fleet (EMU Fleet, Electrical Multiple Unit). Work is being performed to extend the life of these units to allow them to continue in service and on the network. This is increasing costs and these units will need to be retired as soon as possible.

ARG Response: The EMUs are among the most accessible vehicles in QR's fleet. Their accessibility is due to the exemplary process of upgrading them to meet the DSAPT in which QR and the ARG were partners. Extending the life of the EMUs is likely to be due to the probable unavailability of NGR trains during the Commonwealth Games. This unavailability is likely to be due to defects other than the DSAPT issues. An ageing fleet is therefore not germane to any argument or request to expedite the exemption process.

(c) As a result, the Applicants request an expedited consideration of this application.

ARG Response: Bearing in mind the delay in accepting the ARG's argument and the flawed design and procurement process it seems unreasonable to move the exemption process with undue haste.

⁶ <https://www.brisbanetimes.com.au/politics/queensland/reports-says-trains-may-not-be-ready-for-commonwealth-games-20170808-gxrhrx.html>

⁷ <https://www.brisbanetimes.com.au/politics/queensland/question-remains-over-commonwealth-games-trains-20171109-p4ywwz.html>

6. REASONS FOR DSAPT EXEMPTIONS SOUGHT

6.1 How the proposed exemptions fit within the objects and scheme of the DDA/DSAPT

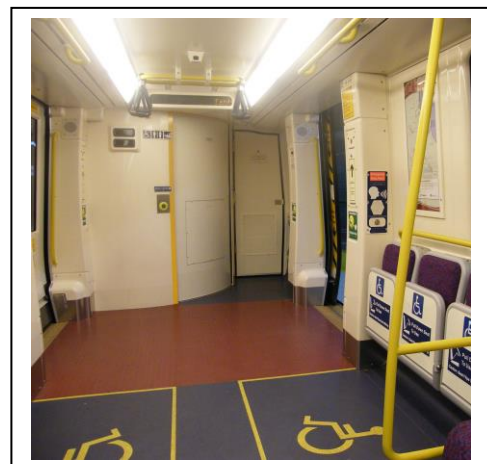
ARG Response: The ARG has detailed its opinion on how the State of Queensland violated the Objects of the DDA on page 3 of this submission. With regard to meeting the DDA's Objects, the State of Queensland's arguments in its application for temporary exemption are completely without merit.

6.2 Why immediate compliance with the DDA/DSAPT is not possible or should not be required

ARG Response: A completely new train should not require a temporary exemption from the DSAPT. As outlined earlier, two years of advocacy by the ARG has not caused TMR to alter the discriminatory design, nor rectify the need for a centrally located guard cab.

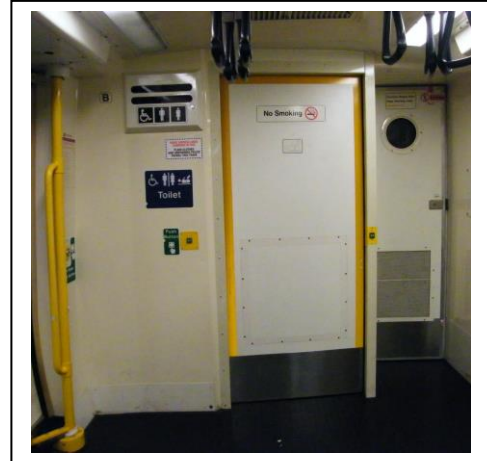
(a) The NGR trains will be required to run on a narrow gauge rail track in Queensland. This necessitates that the NGR train cars have a narrow width to fit on existing infrastructure, including railway tracks and tunnels.

ARG Response: The current IMU trains, which have two toilets in a six car train (one per three car set), experience no difficulty with paths of travel to accessible facilities on narrow gauge. The protestations of gauge constraints are an obfuscation calculated to hide poor design work. The photograph at right illustrates a clear path of travel connecting carriage doors, allocated spaces and the toilet in a later model IMU. If the NGR train was designed to have two toilets instead of only one, it would have functioned in a manner as compliant as the later IMU fleet.



(b) The narrow body width of the train also requires that a balance be struck between the proportion of the car width allocated to the toilet module's circulation space and the proportion allocated to the adjacent aisle width. Increasing the aisle width beside the toilet module will necessarily reduce the circulation space inside the toilet module and lead to further reduction in toilet compliance and functionality. This means that in some instances, an access path no wider than 600mm is achieved.

ARG Response: Further obfuscation. If the NGR had two toilets per six car train, as per the current IMUs and as per TMR's intention for retrofitting 35 NGRs, the issue of aisle width would never have arisen. An early model IMU toilet is illustrated to the right. The internal footprint of the toilet meets the DSAPT requirements and easily retains an access path past the toilet to the guard / driver's cab. Passengers in wheelchairs have the entire vestibule in which to manoeuvre and approach the door from the allocated spaces.



(c) For example, the minimum distance between the centre line of the toilet pan and the far side wall of the toilet module must be at least 1150mm. On an NGR train, this would only leave around 600mm for the adjacent corridor leading to the MA car. This corridor is required to allow crew access by QR staff, including guards.

ARG Response: On all models of the IMU, guards and other staff currently enter and leave the guard and driver's cabs via the aisle adjacent to the toilet as is illustrated to the right. This practice of many years has been effective and has not caused any operational problems.



(d) It is not possible to use the inter-car gangway between the MA and MB cars as an access path due to the:

- (i) significant pitching when the train is in motion; and
- (ii) floor gradient, which does not meet the compliance requirement for a walkway.

ARG Response: Agree. Though this wisdom seems to have escaped TMR during the NGR's design phase. This despite QR and the ARG determining years earlier that the Tilt Train gangway was an environment that had severe accessibility challenges for some customers.

(e) While the gangway width is compliant for an access path, the motion and gradient issues may present a risk to some passengers with disabilities and the elderly who may attempt to reach the unisex accessible toilet module in the MB car from the MA car.

ARG Response: Agree. As stated in the response to (d) above, this was known following field testing by ARG members years earlier in a QR Tilt Train. TMR appears to have ignored this existing evidence in its designing the NGR.

(f) The only DSAPT-compliant solutions given these technical constraints are to either:

- (i) provide a second toilet in the MA car, so that an access path is not required from allocated spaces in the MA car to the toilet module in the MB car; or
- (ii) remove the toilet from the MB car altogether, which in turn no longer requires that an access path be provided between the MA car and the MB car.

ARG Response: Agree. The outcomes of (i) and (ii) above will replicate the current IMU and SMU layouts respectively. This design of either two toilets or no toilets per six car train should have been blindingly obvious at the design phase of the NGR.

(g) Either option would take a significant length of time to implement.

ARG Response: Which is precisely why TMR should have consulted during the design phase and should not have delayed for two years after the design flaws were pointed out. As stated, none of the arguments above regarding the gangway are new to the ARG. Many years previous QR and the ARG had tested the gangways in the Tilt Trains and found them not accessible or safe for people with mobility disabilities. If consulted, the ARG could have advised TMR of this. Gangway trials involving the ARG and conducted in the City of Cairns Tilt Train on February 28, 2011 is illustrated to the right.



(h) The Applicants are planning to undertake rectification work to ensure compliance with the DSAPT. This process is expected to take between 18 and 36 months to complete.

ARG Response: The ARG believes that rectification should be undertaken prior to the NGR entering service. But, if the AHRC grants temporary exemptions then rectification milestones should be set against a strict timetable by the AHRC to counter any strategic delaying by TMR.

(i) In order to allow the rectification process to be undertaken without further delays, the Applicants seek that these temporary exemptions be

granted as an interim measure to allow enough time to retrofit and reconfigure the NGR trains.

ARG Response: As stated in the Introduction the ARG does not support temporary exemptions for the NGR.

(j) Although removing the toilet modules on all MB cars would allow the Applicants to achieve substantial technical compliance with the DSAPT, this would deliver an inferior overall outcome for passengers on longer journeys due to reduced passenger amenity.

ARG Response: Agree. The initial procurement should have specified two toilets per train. This would have prevented a waste of public money, greater flexibility in the deployment of individual trains and a best practice on-board experience for all customers.

(k) This would also require that the NGR trains be returned to the manufacturer for the removal of their toilet modules, which could further delay the introduction of NGR trains to the passenger rail network. The removal of toilet modules would be unlikely to achieve a materially faster introduction of NGR trains onto the rail network compared to the undertaking of the rectification work.

ARG Response: Agree.

(l) The lack of temporary exemptions would also disadvantage the travelling public of Queensland due to the unavailability of urgently required new rollingstock, which is required to replace the ageing fleet currently in use for passenger rail services. It will also impact public transport for the 2018 Gold Coast Commonwealth Games.

ARG Response: The EMU trains are aged but remain quite serviceable. They are in many respects more accessible than early model IMU and SMU trains. Prolonging their life will be to the travelling public's advantage.

Members of the ARG noted a comment made by the Director General of TMR at one of our meetings, with the DG, Deputy Premier and CEO of QR. The comment was to the effect that the NGR trains were not crucial to the success of the Commonwealth Games and that other operational issues may prevent the NGR trains being ready for the Games in any case. The comment may have been an off-the-cuff remark, or may confirm that TMR and QR have a transport strategy in place should the NGR not be in service for the Games.

6.3 Any things done or planned by the Applicant which seek to achieve the objects of the DDA/DSAPT

(a) The Applicants intend to achieve compliance with the relevant sections of the DSAPT by:

- (i) Reconfiguration of the accessible toilet module to meet dimensions and improve functionality in line with DSAPT
- (iii) Dividing the NGR fleet in two:
 - (A) 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 have an access path to a toilet module
 - (B) Suburban fleet of 40 trains (no toilets) – remove the unisex accessible toilet module from the MB car.
- (iv) Reconfiguration of seating and allocated spaces in both accessible cars to meet access path width requirements between the assisted boarding door and accessible facilities.
- (v) Other changes which will include additional priority seating, revised train signage (wording and braille), additional grab/handrails and additional buttons and controls where appropriate to maximise functionality.

ARG Response: The matters detailed in (iv) above are welcome but as per the remainder of 6.3(a) should have featured in the original design rather than a temporary exemption application. The question remains unanswered as to why the applicant did not consider the Objects of the DDA / DSAPT during design and procurement.

(b) As noted, this approach will mean that passengers will not need to move through the inter-car gangway between the MA and MB cars. On the interurban fleet, both the MA and MB cars will have their own unisex accessible toilet modules, for which a DSAPT-compliant access path will be provided from the accessible spaces and priority seats.

ARG Response: Once again, this was the obvious design for the NGR trains. The State of Queensland may have to explain why it failed to follow the successful formula of its IMU trains in having two toilets per six car train. If, as was conveyed verbally to ARG members, this single toilet per train was a cost saving measure it has failed spectacularly to reduce the project budget.

6.4 Any terms or conditions which further the objects of the DDA and which the Applicants are prepared to meet as a condition of being granted the exemption

(a) TMR and QR are intent on keeping stakeholders informed of progress towards rectification work and the retrofitting of the NGR trains. To achieve this, TMR will:

- (i) progressively carry out the rectification work referred to above;

(ii) facilitate physical access for the ARG to provide design input and test the reconfigured toilet modules before they are returned to passenger service;

(iii) continue to consult with the ARG as set out above; and

(iv) report to the Commission as set out above.

(b) In order for the Commission to obtain a better understanding of the constraints currently faced by the NGR trains, TMR are also prepared to facilitate a visual inspection by the Commission of an NGR train already delivered to Queensland.

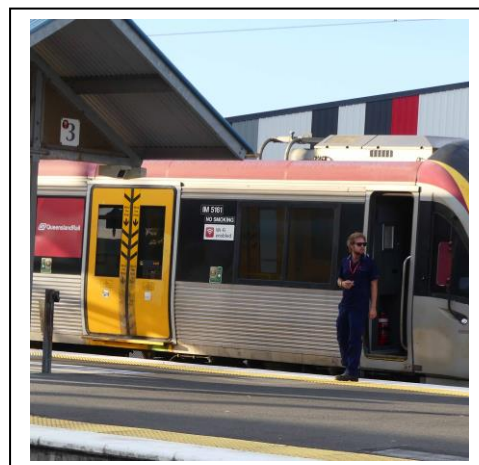
ARG Response: The ARG supports this.

6.5 The results of any consultations undertaken with people who may be affected by the proposed activity and their representative organisations

(d) In the 2017 ARG Feedback, the ARG indicated that adding a second toilet to interurban NGR trains would be an acceptable solution when considering toilet location, while indicating its preference for a solution that included a train guard's cab in the middle of the train.

ARG Response: The ARG proposed the second toilet in the MA car as the only way that DSAPT compliance was possible for customers in the MA car not able to reach the toilet in the MB car.

As discussed in a prior section, the mid train guard cab is not a DSAPT issue, but as the inevitable service failures accrue due to the guard in car 6 being stationed 70 m from the platform assisted boarding point it will become a DDA issue. Currently the guard cab is not more than 5-10 m from the assisted boarding point allowing easy interaction between guard and any customer waiting to board and who requires assistance.



(e) The Applicants have taken this feedback into consideration, but for a variety of reasons have concluded that adding a guard cab to the middle of NGR trains would not be appropriate. A middle guard cab with doors would impede customer access through the NGR cars, reducing the benefits of the new design. Direct assistance would still be provided to all passengers requiring it, with the QR business operating model providing for timely and reliable assistance from platform staff.

ARG Response: The benefits of the new design have already been greatly reduced for customers who have a disability, hence the need for the application for temporary exemptions.

This (e) clause admits to discrimination in that some passengers are allowed the benefit of travel between cars and some are not. The 'timely and reliable assistance from platform staff' will only be possible at stations that have platform staff. Many platforms, and indeed entire stations, are unstaffed for much of the time. As stated prior, the Deputy Premier of Queensland could not guarantee funding for the extra 'reliable platform staff' who would be needed during operational hours to ensure reliable boarding and alighting over the 30 year service life of the NGR.

The ARG wishes to remind the AHRC that the time for meaningful consultation was during design phase and prior to procurement. TMR and QR squandered the opportunity to consult during this time, preferring to present the ARG with a design to be acquiescently approved. Post procurement consultation was only able to influence peripheral matters as the major design flaws were already contractually locked in. Later consultations were part of the TMR strategy of risk management. The epiphany of the NGR's discriminatory design, and the legal implications of this discrimination, initiated these later consultations.

6.6 Information about any Action Plan developed and lodged by the Applicants in accordance with Part 3 of the DDA, including a report on the implementation of the Action Plan to date.

TMR

(a) TMR released its Disability Service Plan 2017-2020 on 27 July 2017. This followed on from its Disability Action Plan made pursuant to the DDA, Improving Access to 2017 (which was reviewed in 2016).

(b) The Queensland Government has developed the State Disability Plan 2017-2020 All Abilities Queensland: Opportunities for All to support Queenslanders with disability. TMR supports this whole of government commitment.

QR

(c) QR has an Accessibility Action Plan 2014. The document outlines the extensive consultations undertaken by QR with disability sector contacts on a range of issues relating to the NGR project, as well as outlining QR's commitments to upgrade infrastructure, engaging with people with disabilities and working to enhance accessibility.

ARG Response: TMR and QR's Accessibility Action Plans have included little more than motherhood statements with no substantive content or enforceable commitments.

The newly constructed Banyo station overpass (October 2017) is an example of QR's 'commitment' to DSAPT. The overpass connects platforms 1 and 2 and is accessible only via stairs. Customers not able to use these stairs must cross between platforms via a level crossing. QR claims a safety imperative for the construction of the overbridge. The ARG has no argument with safety but maintains that new infrastructure should be DSAPT compliant.

6.7 The financial or other hardship which will be incurred if the exemptions are not granted

- (a) There are compelling and sound economic and social reasons for the temporary exemption to be granted. As noted above, the NGR trains are required to replace an ageing train fleet which has reached its end of life. Further, the NGR trains are required for operation in the upcoming Gold Coast Commonwealth Games in April 2018.

ARG Response: Neither argument is 'compelling'. As detailed earlier, the matter of the cost imposition of retrofitting for compliance is doubtful, because the Deputy Premier indicated in the *Brisbane Times*, November 9, 2017⁸ that contingency funds for modifications were already available. Also, the EMU trains can have their service life extended.

The limiting factor on services during the Commonwealth Games may yet prove to be the availability of crew (drivers and guards) to staff such trains as are available.

- (b) Without this exemption being granted, the only manner in which the Applicants could comply with section 2.6 of the DSAPT would be to remove all toilet modules (which would further delay roll-out and prevent the preparation, testing and use of any NGR trains in time for the Commonwealth Games), or to withhold the NGR trains from service altogether. Either outcome would impose significant financial burdens on the State and deprive passengers and patrons of new trains at a time when they are critically needed.

ARG Response: The ARG believes that the option of complete refit of the fleet prior to entering service, including constructing a guard's cab mid-train, should be considered.

- (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

⁸ <https://www.brisbanetimes.com.au/politics/queensland/question-remains-over-commonwealth-games-trains-20171109-p4ywwz.html>

accessibility improvements that exceed the requirements of the DSAPT. These benefits would include:

ARG Response: Temporary exemptions will not provide a long-term benefit for people with a disability. If the exemptions are not granted the NGR trains will not be excused from DSAPT or the DDA, and be liable to complaints of discrimination. The only beneficiary of any temporary exemptions will be the State of Queensland.

- (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

ARG Response: Doubling the number of toilets is not a benefit. Providing access paths to accessible facilities is a DSAPT minimum requirement.

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

ARG Response: Nonsense. Customers requiring boarding assistance already board from the accessible boarding point designated on each platform throughout the City Train network. This single assisted boarding point is located mid platform. NGR will not change or influence this in the slightest. Therefore 6.7(c)(ii) offers nothing that customers do not already have.

Customers with hidden disabilities waiting at this accessible boarding point will be located 70 m from the guard in car 6. How will the customer communicate with the guard to ask for assistance? Guards will be challenged to visually identify a hidden disability at any distance. Currently though, customers with hidden disabilities can easily converse or interact with the guard who is located mid-train in EMU, IMU and SMU trains.

The quality and reliability of this assistance at this assisted boarding point will be diminished on unstaffed platforms due to the NGR's guard being 70 m distant from the customer. As stated prior, guards currently forget to assist customers who require assistance to alight at an annoying frequency despite being within metres of the customer. The wide separation of guard and customer in the NGR will see boarding and alighting assistance failures reach systemic levels. As noted, people with hidden disabilities waiting to board will fare the worst as the distant guard will only have the capacity to visually assess if a customer requires assistance rather than converse with the customer as is currently possible on EMU, IMU and SMU trains.

- (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

6.8 Measures proposed to minimise or reduce any hardship which maybe faced by people with a disability and any other people affected by the proposed exemption

- (a) There are 105 stations on QR's Citytrain network that provide unisex accessible toilets for customers (a substantial majority of the total 154 stations across the network).

ARG Response: A number of these toilets fall well short of the DSAPT footprint and toilets are customarily locked when stations are unstaffed. This measure will not be effective for the full duration of operational hours at most stations. People with larger mobility aids may not fit in some of the unisex toilets even if they are open.

- (b) A Customer Communication/Education Campaign will also be delivered to support customer awareness of assisted boarding and how to obtain assistance for the NGR trains.

ARG Response: This should be anticipated as standard practice rather than offered as measure to reduce hardship.

- (c) QR will provide an opportunity for passengers with disabilities to view and trial the accessible toilet module prior to travel.

ARG Response: While welcome, this will involve only a small sample of the many thousands of potential users.

- (d) 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.

ARG Response: The proposal is impracticable. Not all people gain their information online. And, apparently, QR is proposing two assisted boarding points per platform. QR has in the past stated that this double boarding point option, one for MA another for MB, is not achievable – but suddenly it has emerged as a solution? Platform staff or guards should be trained to board customers into the MB car on request rather than expect

customers on the platform to differentiate an MA car from an MB car or know which of two locations they should wait at.

7. REASONS FOR DDA EXEMPTIONS SOUGHT

(a) Sections 23 and 24 are general provisions of the DDA.

(b) The Applicants seek exemptions from these sections to the extent that they relate to issues covered by the temporary exemptions sought above. This is to prevent the temporary exemptions from the DSAPT being rendered otiose in collateral proceedings under the DDA.

(c) The rationale for seeking the above exemptions from the DDA is otherwise the same as the reasons outlined in section 6 for exemptions from the DSAPT.

ARG Response: As stated earlier, the ARG is of the opinion that for many reasons a temporary exemption from the DSAPT is not warranted.

ARG Recommendations

Recommendation 1. Refusal of application for temporary exemptions

The ARG asks the AHRC to refuse the applications for temporary exemptions. It is preferred that the discriminatory aspects of the NGR trains be rectified before the trains enter service. This includes a guard cab located mid-train.

Recommendation 2. Guards to be located mid-train

Should temporary exemptions be granted the ARG recommends that as a condition the AHRC insist on a guard cab being located mid train. Space for the cab exists in both the MA and MB cars and retrofitting the NGR is entirely possible. The State of Queensland can only lamely offer a cost argument for not retrofitting a new train to allow non-discriminatory boarding procedures.

Recommendation 3. Procurement legislation for Queensland

Should temporary exemptions be granted the ARG recommends that the AHRC insist that the State of Queensland to commit to:

- i. the introduction of legislation that will guarantee DDA-compliant procurement in Queensland, and
- ii. strong representations to the AHRC in support of a comprehensive and enforceable DSAPT when it is reviewed in 2018.

Recommendation 4. State of Queensland practices and policy to eliminate discrimination

Should temporary exemptions be granted the ARG recommends that as a condition the AHRC insist that the Queensland Government and all its departments, contractors and officers must abide by the law. The DDA is part of the legislative landscape. As a condition of temporary exemption the Queensland Government must commit to the Objects of the DDA, and that its commitment is demonstrated through:

- i. regular staff training on DDA,
- ii. respectful and timely consultation on projects and procurements, and,
- iii. the adoption of policy and practice to ensure non-discriminatory outcomes for projects and procurements.

Recommendation 5. Consultation by transport authorities on DSAPT related projects

Should temporary exemptions be granted the ARG recommends that the AHRC makes sincere consultation on all future DSAPT related projects and procurements by TMR and QR a condition of the exemptions. This

consultation to occur at scope, design and procurement phases of the project.

Recommendation 6. Disability Impact Statements for the State of Queensland's public transport procurements and policies

Should temporary exemptions be granted the ARG recommends that the AHRC insist that the State of Queensland commit to the development of a disability impact statement for any significant public transport infrastructure, rollingstock, ticketing or policy project.

Recommendation 7. Disability Action Plans to be developed, implemented and enforced

Should temporary exemptions be granted the ARG recommends that the AHRC insist that the State of Queensland commit to the development, implementation and enforcement of disability action plans that permit the State of Queensland to conform to the Objects of the DDA and to the timeframe of the DSAPT's Schedule of Compliance.