

Summary of the Australian Human Rights Commission’s preliminary view 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 issued a preliminary view 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’).

As reflected in *Commission Guidelines: Temporary Exemptions under the Disability Discrimination Act 2010*, the Commission will sometimes issue a preliminary view on an application for temporary exemptions before it reaches a final view. The purpose of a preliminary view is to provide procedural fairness and to give interested parties the opportunity to respond to the Commission’s preliminary findings before it makes a final decision.

The Commission is of the preliminary view that it will refuse to 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 the Transport Standards. It is not clear to the Commission why the Queensland Government procured non-compliant trains in 2013, or why the rectification work did not occur between procurement in 2013 and entry into passenger service in 2017.

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 has frequently expressed the view that exemptions to these laws 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 substantial evidence is needed to justify the exemption.

Although the Queensland Government has undertaken, within three years, to meet a legal obligation that has existed since the Transport Standards came into effect in 2002, the Commission is not persuaded that the reasons advanced in favour of the exemption outweigh the discriminatory impact of the non-compliant trains on people with disability. The Commission is not satisfied that it is reasonable to grant the majority of the exemptions sought in this matter. This means that the right of people with disability to bring a complaint under the DDA is preserved. The Commission is of the preliminary view 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.

In forming its preliminary view, 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. Many of these submissions also expressed concerns about the relocation

of the guard carriage in the new NGR trains to the back of the conveyance. The Commission was not able to consider this issue because the applicants had not applied for temporary exemptions relating to the guard carriage.

Decisions about the configuration of the New Generation Rollingstock trains, and the timing of their entry into passenger service, are for the Queensland Government. The Commission's role in this matter is limited to deciding whether the applicants should be exempt from the usual application of the DDA and the Transport Standards for the areas of non-compliance that they have identified.

Interested parties have until 16 March 2018 to provide a response to the Commission's preliminary view. Submissions should preferably be made in electronic format, and emailed to legal@humanrights.gov.au.

2 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 preliminary view or to be used in any later consideration of the Commission's reasons.