

New Generation Rollingstock Trains Commission of Inquiry  
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31 August 2018

Dear Mr Forde,

## **Arthritis and Disability**

Arthritis Queensland represents over 600,000 Queenslanders who live with more than 100 different forms of arthritis. All forms of arthritis are incurable, chronic conditions which often result in swelling of the joints, stiffness, pain and reduced mobility, amongst other symptoms.

Disease severity varies from individual to individual however many people living with arthritis will fall within the definition of a person living with a disability under the Disability Discrimination Act 1992 (the Act) as a result of partial loss of bodily function.

Arthritis falls within the group of “invisible illnesses” meaning that the needs of people living with these diseases are often overlooked. While relatively few people living with arthritis use a wheelchair primarily because of the disease, the use of assistive devices such as wheelie walkers and walking sticks is much more frequent and the need for adaptive design (such as resting points, hand rails, etc.) is extremely high.

Without appropriate, inclusive, adaptive design many people living with arthritis are unable to access public transport and public spaces.

## **Arthritis Queensland’s involvement with the NGR**

Arthritis Queensland’s Health Educator, Paula Herlihen, has been involved in the consultation process with both Queensland Rail (since May 2017) and the Department of Transport and Main Roads (TMR) (since December 2016). Ms Herlihen has been a member of both the Queensland Rail’s Accessibility Reference Group (ARG) and also of the NRG trains Project Working Group (PWG).

The ARG and PWG identified numerous specific areas of concern around the design of the NGR trains in relation to non-compliance the Disability Standards for Accessible Public Transport 2002 (the “Standards”). These areas of non-compliance included:

- Access paths
- Manoeuvring areas
- Boarding

- Toilet design
- Signage
- Alarms
- Furniture and fitments

Numerous meetings of the ARG and PWG were held between May 2017 and July 2018. Concerns around lack of compliance with the Standards are clearly noted in the minutes of these meetings. While some of the requested adaptations to the NGR were approved for inclusion in the redesign of the NGR trains, ultimately the decision was made to bring the non-compliant NGR trains into service.

On 22 September 2017, we received correspondence from Deputy Premier, Jackie Trad (then Minister for Transport) that the non-compliant NGR trains would be put into service in order to meet the increased capacity need resulting from the Gold Coast Commonwealth Games. While we acknowledge the importance of the Gold Coast Commonwealth Games as a major international event, the fact that non-compliant NGR trains have remained in service (with more units being rolled out across Brisbane) suggests that this event was used as an excuse to bring the non-compliant NGR trains into service.

As the inquiry will be aware, compliance with the Standards requires either direct adherence to the Standards or the provision of equivalent access to public transport “without discrimination ‘as far as possible’”. Not only did Queensland Rail and TMR fail to meet the Standards they have also failed to provide equivalent access. There certainly has been no attempt to “include direct assistance over and above that required simply to overcome the discrimination”.

Queensland Rail and TMR have been responsible for the development of the NGR train project since 2012. The announcement that the Commonwealth Games were to be held on the Gold Coast was made in 2011. If adequate compliance and engagement processes and competent staff had been engaged during the interim, Queensland would not have been delivered a rail service which discriminates against people living with a disability.

Arthritis Queensland, and the other NFPs and consumers, have invested significant time and resources into providing consultation services for the NGR trains project. The failure of Queensland Rail and TMR to deliver a usable rail service despite this input speaks to their lack of commitment to protecting the rights of people living with a disability.

We welcome the creation of the commission of inquiry and the opportunity to provide submissions on the terms of reference:

- 1. The procurement process for the NGR trains related to compliance with the Disability Discrimination Act 1992 and the Disability Standards for Accessible Public Transport 2002 and functional requirements, including project milestones, technical specifications, project sponsor arrangements and governance;**

We are unable to provide any specific comment on these detailed aspects of the project management of the NGR trains project.

However we note that there has been a consistent lack of clarity and certainty around specific timelines for NGR trains achieving full compliance. This remains the case despite the non-compliant NGR trains now being in service.

**2. The obligations of contractual parties, governance arrangements and entities involved in procurement of the NGR trains;**

We are unable to provide any specific comment on this issue as we are not party to the contractual and governance arrangements.

However, we do note that both Queensland Rail and TMR have an overarching obligation to comply with legislation and to spend tax payer's funds in an efficient manner. The procurement of the clearly non-compliant NGR trains and huge expense required to retrospectively achieve compliance are clear breaches of these fundamental duties.

**3. The design approval process under the contract, including review of scale mock-ups, engagement with the disability sector and processes adopted to ensure compliance with the Disability Discrimination Act 1992 and the Disability Standards for Accessible Public Transport 2002;**

While we are not party to the terms of the contract, we make the following statements in relation to the design approval process:

- Lack of early consultation with consumers

We understand that there was little consultation with consumers or representative groups at the pre-contract or design phase of procurement. Inclusion of genuine consumer consultation at the early stage of product identification and design would clearly have avoided many of the post manufacture non-compliance issues identified by the ARG and PWG. We view this lack of early engagement as a fundamental failing in the procurement process.

- Lack of competency and/or process to ensure compliance

The extent of non-compliance with the Standards and Act in relation to the technical design of the NGR trains is so extensive that it suggests internal failures of competency and/or process within Queensland Rail and TMR. This level of non-compliance with the technical requirements of the Standards and Act should have been recognised and corrected by experts within these organisations at an early stage.



**4. Decisions made by respective Governments, statutory authorities and departments that caused or contributed to non-compliance with the Disability Discrimination Act 1992 and the Disability Standards for Accessible Public Transport 2002, and any reasons provided for those decisions.**

- Decision to apply for an exemption from The Human Rights Commission

The decision by TMR and Queensland Rail to apply for an exemption from legislative compliance is extremely concerning.

Despite having significant resources and time to complete this project and subsequently having every opportunity to rectify non-compliance issues, TMR and Queensland Rail sought permission to by-pass their duty not to discriminate against people living with disability.

By seeking authority to discriminate against some of the most vulnerable members of our community, TMR and Queensland Rail have attempted to set a disturbing precedent. Anti-Discrimination laws exist to protect all members of society and government bodies should not think of compliance with these laws as optional. It should be an embarrassment to the Queensland Government that their own services are currently operating outside of anti-discrimination legislation.

- Reported reason for early and ongoing roll out

In September 2017, we were informed by Deputy Premier Trad (then Minister of Transport) that a decision to roll out the non-compliant NGR trains had been made in order to service expected increased demand for the Commonwealth Games on the Gold Coast. However, we note that the roll out was not reversed following the Commonwealth Games, when presumably demand returned to normal levels. We also note that the roll out has increased across the broader Brisbane region, including suburbs which were never directly involved in the Commonwealth Games. This brings Deputy Premier Trad's reasoning into question.

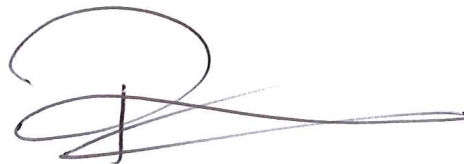
We look forward to the findings of the inquiry being published and hope that your work leads to improved processes and greater transparency for future procurement projects.

If we can provide the inquiry with any further assistance please let us know.

Yours sincerely



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CEO  
Arthritis Queensland



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Arthritis Queensland