

31 August 2018

New Generation Rollingstock Trains Commission of Inquiry

commissioner@traininquiryngr.qld.gov.au

Dear Commissioner,

Re Commission of Inquiry into New Generation Rollingstock Trains

Spinal Life Australia represents people with spinal cord injury, the late effects of polio and transverse myelitis. We appreciate the opportunity to make a submission to the Inquiry and do so in the hope it can foster a more inclusive Queensland.

Yours sincerely,



John Mayo

Chief Advisor – Government

Recipient: UN international Year of the Built Environment Award (Accessibility)

Representative for Spinal Life Australia on the:
Queensland Rail Accessibility Reference Group
Dept. Transport & Main Roads Accessibility Reference Group
Project Working Group, NGR Rectification Project

Submission from Spinal Life Australia

Inquiry into the New Generation Rollingstock trains

Spinal Life Australia is a leading provider of advocacy, therapy and supports for people with spinal cord damage and related physical disabilities. We are a member of the:

Queensland Rail Accessibility Reference Group
Dept. Transport & Main Roads Accessibility Reference Group
Project Working Group, NGR Rectification Project

We are pleased to comment as follows.

The Citytrain Network landscape before the NGR design:

Trains:

The design before the NGR was the Electrical Multiple Unit (EMU) train. They were not compliant with the Disability Standards for Accessible Public Transport 2002 (DSAPT) but a successful redesign occurred when a small working group from the Queensland Rail Accessibility Reference Group and Queensland Rail engineers worked as equal partners in the redesign of the EMUs to comply with DSAPT. These trains have a guard cabin at the centre of the train, designed to align with the Assisted Boarding Point at the centre of station platforms.

Stations:

Queensland Rail began operating an Accessibility Reference Group in the 1990s. One of their key agreements was to create an Assisted Boarding Point at the centre of every station platform to provide uniform certainty to the public with diminished functionality to assemble – and that trains would stop so the midpoint guard cabin would align with the Assisted Boarding Point so there was certainty of assistance to patrons who required it, examples being people with vision impairment, wheeled mobility device users who required a ramp to bridge the gap and any height differential between platform and train. Assisted Boarding Points were progressively retrofitted at station platforms and have been systematically installed as a standard feature of all stations redeveloped since the 1990s. Note: There are 152 stations in the Citytrain Network, a small minority staffed across all hours of operation, with many unmanned, only staffed a few hours per day, hence the critical importance of the guard cab aligning with the platform Assisted Boarding Point.

Years of patient work by the disability, aged and medical condition sectors and their representatives on the Queensland Rail Accessibility Reference Group and later, the Transport and Main Roads Accessibility Reference Group, had achieved a safe, accessible, predictable train 'service'.

The Citytrain Network landscape with the NGR train design:

Trains:

The NGR train is just over 140 metres long. There is no guard cab at mid train point. The guard and the driver are located at either end of the train, each 70 metres away from the mid train point that aligns with station platform Assisted Boarding Points. The train designers say the camera system in the rear guard cabin will 'see' customers who require assistance from 70 metres away and assist them. This is absurd. How can that system 'interact' with customers and how can it detect a person with hearing or vision impairment or a hidden disability – and at peak hours, crowding standing customers will not necessarily permit sight of a customer seated in a mobility device. Further, the notion that a guard could walk 70 metres to the train midpoint, render assistance, and return 70 metres to the guard cab without impacting route timetables is ludicrous. Additionally, the accessible toilet offers nowhere near the functionality offered in the older EMU train – and there were other design deficiencies identified in a paper '*Queensland Rail Accessibility Reference Group Response to NGR Preliminary Options Report August 2017*' dated 1 September 2017. See attached.

Stations:

With no guard cab and guard at train midpoint, the 'interface' service with customers assembling at the platform Assisted Boarding Point has broken down.

Why did the NGR procurement, design and compliance process fail?

Answer: No mandatory procurement process for inclusive design in State infrastructure projects – and in this particular case, no public consultation pre-procurement. That specifically includes the Queensland Rail Accessibility Reference Group.

Note: the Accessibility Reference Group members are not paid; their expertise is volunteered by them as individuals or by their employers.

To answer the question above in more detail, we refer to our Submission to the Australian Human Rights Commission, 22 December 2017 (attached) titled, *A submission in response to an Application for temporary exemptions for the New Generation Rollingstock trains (NGR)*. We identify matters specific to pre-procurement and procurement on page 2.

Our Submission, at page 3, Platform Assistance Proposal, also speaks to the government's proposal to deal with the dilemma of the NGR guard's remoteness from the Assisted Boarding Point. Based on the information we had at the time, we expected that over the 30 year life of the NGR, the wages bill to staff all stations for all hours of operation would be an estimated \$450 million. However, more recent knowledge indicates a cost closer to \$2 billion. Designing the guard cab into the train midpoint, as it is in the EMUs, should have been a given. The government has not decided to retro fit a guard cab or alternatively, provide a Customer Service Representative position at the mid train point. If it did, it would save tax payer's millions of dollars over the service life of the train.

Our Submission at page 4, refers to the potential influence of a Human Rights Act for Queensland and the political background during the critical development life stages of the NGR. Since our Submission, we are pleased to note the Queensland government Budget 2018 has provisioned

funding to the Anti-Discrimination Commission Queensland to develop a Human Rights Act for Queensland which it is hoped will influence government decision making.

We further answer the question above by referring the Commission to the *Queensland Rail Accessibility Reference Group Submission to the Australian Human Rights Commission re 'An Application for Temporary Exemptions under the Disability Standards for Accessible Public Transport 2002 for the New Generation Rollingstock Project'* (by the State of Queensland and Queensland Rail). Spinal Life Australia is both a contributor and signatory to this Submission.

Advocacy in 2018:

In January 2018, Spinal Life Australia launched an NGR focused petition that asked, "Should State government put measures in place to ensure full accessibility remains a compulsory part of the planning and procurement process for any future major infrastructure". The petition received over 16,300 signatures in seven weeks in support of introducing new measures to make accessibility a mandatory part of future State Government infrastructure so that every Queensland and visitor can participate and be a customer in our community. The Premier's office was advised of the petition result.

On January 30, 2018, we wrote to all 94 members of the new Queensland Legislative Assembly asking them to ensure non-inclusive designs like the NGR never happen again – and to back the government to put procurement processes in place to ensure full accessibility in all future State infrastructure projects. This letter is attached.

On 14 March 2018, we wrote to the Australian Human Rights Commission in response to their decision not to accept the State of Queensland and Queensland Rail Application for exemptions for the NGR (letter attached). We noted various population groups who would be impacted favourably by the decision. We also said: *The immediate issue is the refurbishment process to make the NGR fleet accessible. Whilst the State government has agreed to fund the refurbishment, there is no project modelling or design drawings publicly available. Only when the Dept. Transport & Main Roads and Queensland Rail engineers and management begin to work consultatively with customer representatives to a dedicated timetable with public updates will faith begin to be restored.*

By June 2018, a small Project Working Group derived from members of the Queensland Rail and the Transport and Main Roads Accessibility Reference Groups began work with NGR Project management on the NGR rectification process. This work should end in September.

Enhance the procurement process used by State government:

The following makes a case to affect change to the procurement process of State government by having tenders for works and services meet the requirements of the Goods and Services provision of Australia's discrimination legislation, either Commonwealth or State – advice to be taken on which Act preferred.

The Goods and Services provisions of these Acts are relatively succinct and clear in their expectation that every person capable of being a customer or able to participate within the community would not be excluded from accessing the service or built outcomes proposed in the tender.

Through this simple requirement, tenders involving buildings, infrastructure, precincts, facilities, amenities, goods, services and information would require onus on the tenderer to deliver outcomes that are non-discriminatory and equitable.

This would offer multiple benefits:

1.

It is a sound risk management approach by the State of Queensland, seeking to ensure inclusive outcomes for its citizens and minimising the opportunity for the State of Queensland to be joined as a co-respondent in future complaints, noting that 16% of total complaints to Queensland's Anti-Discrimination Commission annually are by people claiming they are capable of being a customer or participant but cannot access a service or venue.

2.

That all residents and visitors could potentially access the infrastructure/service/building would improve both the social and economic performance of the region.

3.

It would contribute to achieving an inclusive community and would support and enhance the State's Disability Service Plans for all government portfolios – and the forthcoming Human Rights Act for Queensland.

4.

It would give confidence to the public and stakeholders asked to engage in community consultation processes that can occur prior to developing a tender or as part of a tender deliverable by the tenderer. It also sets discipline into the community consultation process through an understanding that public consultation for State infrastructure must focus on delivering equitable, inclusive outcomes (not just any vocal group's views).

Timing: why now?

There is an aligning of the planets that underpins this conversation, as follows:

Populations with diminished functionality – see data attached. Against a backdrop of an aging Australia, populations with diminished function are increasing, especially the Over 60s, people with a disability, people with a medical condition and temporary injury. Yet they all want to participate fully in their community and be a customer. Increasingly, they will expect new projects and services to be accessible and user friendly.

In July 2016, the National Disability Insurance Scheme (NDIS) commenced across Australia. By 2019, the scheme is intended to fund 462,000 Australians with a disability (93,000 in Queensland). As a result, they will be participating as never before in their communities and as customers of goods and services - and as employees.

In July 2016, the National Injury Insurance Scheme Queensland (NIISQ) commenced in Queensland, with funded supports for people who sustain a 'catastrophic' injury by accident. This is a no fault, no age limit Scheme. Six catastrophic types: Spinal cord injury, Acquired brain injury, Multiple amputee, Severe burns, Blindness, Brachial plexus. Their aspirations will match those of 'NDIS' recipients.

The Queensland government's inquiry testing acceptance for a proposed Human Rights Act for Queensland drew considerable interest and almost 500 submissions to the inquiry. The inquiry has recommended the Queensland Parliament move to legislate for a human rights act in Queensland and the government in the 2018 Budget provisioned funding to the Anti-Discrimination Commission to proceed with developing an Act. When enacted, such legislation would influence decision making by all governments in Queensland.

Which discrimination legislation might the State choose to reference?

Goods and Services provisions in State and Commonwealth Acts are:

Anti-Discrimination Act 1991 Queensland

Section 46, Discrimination in goods and services area

Disability Discrimination Act (Cth) 1992

Section 24, Goods, services and facilities

Copies of these are below.

The Commonwealth Act identifies people with a disability whereas the Queensland Act identifies any person.

45A Non-application of s 46 to provision of assisted reproductive technology services

- (1) Section 46 does not apply to the provision of assisted reproductive technology services if the discrimination is on the basis of relationship status or sexuality.
- (2) In this section—

assisted reproductive technology services means—

 - (a) services provided in the course of, or for the purpose of, any of the following—
 - (i) in-vitro fertilisation;
 - (ii) artificial insemination;
 - (iii) gamete, zygote or embryo transfer; or
 - (b) any other services provided for the purpose of assisting in artificial fertilisation.

46 Discrimination in goods and services area

- (1) A person who supplies goods or services (whether or not for reward or profit) must not discriminate against another person—
 - (a) by failing to supply the goods or services; or
 - (b) in the terms on which goods or services are supplied; or
 - (c) in the way in which goods or services are supplied; or
 - (d) by treating the other person unfavourably in any way in connection with the supply of goods and services.
- (2) In this section, a reference to a person who supplies goods and services does not include an association that—
 - (a) is established for social, literary, cultural, political, sporting, athletic, recreational, community service or any other similar lawful purposes; and
 - (b) does not carry out its purposes for the purpose of making a profit.



Commonwealth Consolidated Acts

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DISABILITY DISCRIMINATION ACT 1992 - SECT 24

Goods, services and facilities

It is unlawful for a person who, whether for payment or not, provides goods or services , or makes facilities available, to discriminate against another person on the ground of the other person's disability:

(a) by refusing to provide the other person with those goods or services or to make those facilities available to the other person; or

(b) in the terms or conditions on which the first-mentioned person provides the other person with those goods or services or makes those facilities available to the other person; or

(c) in the manner in which the first-mentioned person provides the other person with those goods or services or makes those facilities available to the other person.

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Compliance v Functionality:

It is acknowledged a public transport project must comply with the Disability Standards for Accessible Public Transport 2002 legislation. However, the Standard was developed in 1994, had its Regulation Impact Statement in 1995 though not passed in parliament until October 2002 by which time it was already significantly dated and technologically bereft given the 8 year gap. Therefore, DSAPT compliance is the minimum requirement for a project – and the procurement and design effort needed to be around functionality in order to maximise the social and economic performance of the government's investment.

This emphasis on functionality needs to be applied to any major works program because meeting compliance with building or transport codes will not necessarily provide outcomes that are functional and practical for all – and that adds risk for the asset owner.

For example, take a building project (like Cross River Rail with four new stations) requiring accessible unisex toilets. The National Construction Code allows for toilet roll holders to be mounted up to 300mm forward of the front edge of the pan. However, people with limited or no stomach muscles cannot bend forward and their reach range is insufficient so embarrassingly, they do not receive the service, i.e. they are treated less favourably because universal design consideration was not required or employed. Further examples: locating the flush button adjacent to the pan instead of the hard to reach back of the pan for a wheelchair user; location of a baby change table that does not interfere with the circulation space required for mobility device users yet is close to the hand basin for the parent.

Public consultation targeting customer functionality, universal design and inclusive community outcomes is required at pre-procurement and design stage to assist all involved with a project to meet the requirements of the Goods and Services provisions of discrimination legislation – the legislation that was designed to enable people to participate and be a customer.

May we acknowledge Local Buy Pty Ltd, the buying arm for the Local Government Association of Queensland, for their leadership with their contract for Engineering & Environmental Consultancy Services which requires: *The Consultant shall ensure that the Services supplied meet the requirements of Section 46 of the Anti-Discrimination Act 1991 (Qld)* (see attached).

Summing up:

Question:

In addition to meeting compliance with Building and Transport Standards, why has it become an imperative for the State to strengthen its procurement process for capital works to require tenderers/contracts to meet the Goods and Services provisions of discrimination legislation and ensure functionality is achieved through public consultation and inclusive, universal design?

Answer:

In 1994, the Queensland government built the Brisbane Convention and Exhibition Centre front entry with 27 steps and no lift and when challenged, they said in court they built it to comply with the Building Code of Australia (the buildings equivalent of the DSAPT). The consumer advocates relied upon the Anti-Discrimination Act. The government lost – and said, yes, we accept the court's directive to install a lift (cost \$400,000), but most of all, we will ensure this never, ever, happens again.

Well, it has happened again over and over because the State has failed to fix the problem at the front end: the procurement process. The most excruciating recent example is the NGR project which has occupied much media time/space. It was dumbfounding when the State of Queensland and Queensland Rail sought exemptions for the NGR from the Australian Human Rights Commission. The government has now committed to fix the NGR but it's a struggle to achieve accessibility and inclusion in a built conveyance – it must properly be achieved at design concept stage and not compromised at detailed design stage.

It is also worth noting that despite all the education across government and business since 1994, consumers who are capable of being a customer still face discriminatory services, buildings and transport. Not everyone complains, but between 15 to 20% of the total complaints to the Anti-Discrimination Commission annually in recent history are consumers using the Goods and Services provisions of the Anti-Discrimination Act to deal with access issues. Others have used the Disability Discrimination Act. They rarely lose because government and corporations struggle to defend the inexcusable. There is little public awareness of these matters or through the media, because resolutions between the parties are 'confidential'.

Through a petition on [www. Change.org](http://www.Change.org) in January, 16,300 signatories supported new measures to make accessibility a mandatory part of future State government infrastructure so that every Queenslander and visitor can participate and be a customer in our community.

Also in January, we wrote to all 94 members of the new Queensland Legislative Assembly asking them to support the State of Queensland to put proper procurement processes in place. None have argued against it.

Clearly, recent history shows Queensland needs to improve – and we believe that requires mandating 'inclusion and accessibility' become a compulsory part of the planning and procurement process for future State infrastructure and capital works – and that will require public consultation, inclusive, universal design and legislation that ensures people's right to be a customer and user of buildings, infrastructure, precincts, goods, services and information.