New Generation Rollingstock Train Commission of Inquiry

Final Report - December 2018

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commission of inquiry | **New Generation Rollingstock Train**

The Honourable Annastacia Palaszczuk MP
Premier and Minister for Trade
PO Box 15185
City East Qld 4002

Dear Premier

In accordance with the *Commissions of Inquiry Order (No. 1) 2018*, I have made a full and careful inquiry into the circumstances leading up to and associated with the procurement of new generation rollingstock trains that fail to comply with the *Disability Discrimination Act 1992* (Cth) and the *Disability Standards for Accessible Public Transport 2002* (Cth) and functional requirements.

I present the report of the New Generation Rollingstock Train Commission of Inquiry.

Yours sincerely

Michael Forde
Commissioner
New Generation Rollingstock Train Commission of Inquiry

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Contents

Commissioner's foreword

Public transport services play an important role in Queensland and everyone, whether or not they have disabilities, has a right to use those services. The unsuitable design of public transport infrastructure should not impact on this right.

The Commission of Inquiry was established to determine why the new generation rollingstock trains purchased for Queensland did not comply with the relevant disability legislation.

The terms of reference required the Commission to analyse the procurement process, the contractual obligations and the design approval process that resulted in trains that did not comply with the legal standards. Of particular importance was whether the views and needs of the disability sector were properly considered.

The Commission sought information from relevant public authorities, the organisation awarded the contract and its contractors, consultants engaged during the procurement and design processes, and individuals. I am grateful for the assistance provided by all of them. The information they provided was essential to the work of the Commission.

A range of individuals and organisations, including from the disability sector, provided public submissions. I thank them for their contribution. Their insights certainly contributed to the quality of the Commission's processes and report.

The Commission gathered a huge volume of material through research, requests for documents and interviews. While we used computer software to compile and analyse the material, it was the Commission staff who reviewed the thousands of documents and determined the significant circumstances and events that contributed to the non-compliant trains.

The work carried out by the Commission staff during the four months of the inquiry was outstanding. Their professionalism and commitment delivered an independent and incisive inquiry.

I hope the findings and recommendations in this report will lead to more robust and effective public procurement processes. If applied, the suggested measures should deliver more efficient and economical outcomes. They will result in greater emphasis and understanding of the disability legislation, improved stakeholder engagement, and more transparent and accountable processes.

Michael Forde
Commissioner
BA.LLB, Masters Public Sector Management

Executive summary

Introduction

The New Generation Rollingstock (NGR) project involves the design, construction and maintenance of 75 new passenger trains for South East Queensland. The NGR trains are being delivered through a public-private partnership (PPP) between the State of Queensland (acting through the Department of Transport and Main Roads) and Qtectic.

As the NGR trains are used to deliver public transport services, the trains, TMR as the owner of the trains and Queensland Rail (QR) as the service operator are subject to requirements of the *Disability Discrimination Act 1992* (Cth) and the *Disability Standards for Accessible Public Transport 2002* (Cth) (DSAPT).

In response to concerns raised by the disability sector, a review of the NGR trains' compliance with the disability legislation and functional requirements was undertaken by the NGR project team in June 2017. It identified that the NGR train design does not fully comply with DSAPT requirements and raised a range of concerns regarding functional requirements.

The New Generation Rollingstock Train Commission of Inquiry was appointed to make an independent inquiry into the circumstances surrounding the procurement of trains that fail to comply with the disability legislation and functional requirements. It began on 1 August 2018.

Procurement process

The procurement process for the NGR trains was not ideal. Procurement was unnecessarily prolonged and was marred by delays, disruptions, and failures to adhere to policies, guidelines and frameworks. Decisions were made to specify design requirements that were non-compliant and there was a general acquiescence to non-compliance. There was also a flawed understanding of DSAPT requirements.

The procurement process took five years from the request for expressions of interest to contract execution. This was substantially longer than would be typical of a comparable infrastructure project. While the project was subject to a 'project pause' for six months, procurement had been underway for more than three years at the time of the pause. Prior to the pause, the NGR project was characterised by a lack of rigour, continual slippages and missed milestones.

The project pause and subsequent changes to the procurement model and the project lead delayed completion of the procurement process and created disruption and discontinuity. The procurement model was changed to an availability PPP model. This change so late in the process created disruptions, required the recommencement of the request for proposal (RFP) phase, and resulted in difficulties for the two shortlisted proponents. Changing the project lead from QR to Projects Queensland (acting on behalf of TMR) was similarly disruptive and created animosity between the agencies.

The disruption, inherent break in continuity, and resulting animosity may have contributed to non-compliance through relevant information not being transferred and information not being shared across agencies in subsequent phases of the project.

The need for compliance with DSAPT was recognised in the performance specifications issued with the second RFP, but it was contradicted and confused by other specifications that meant the design could not satisfy the requirements for technical compliance. The critical issue for the procurement of compliant trains was the reduction in the number of toilets on the trains. The decision to require only one toilet located at the leading end of accessible car B made it impossible for the trains to be fully compliant, using either technical or equivalent access compliance mechanisms under DSAPT.

The decision to request a non-compliant train through the procurement process and to then accept a proposal based on a non-compliant design and enter into a project deed on that basis was, in the Commission's view, seriously flawed. It is noted that these decisions were endorsed on the basis of incomplete information as non-compliance issues were not escalated to senior decision makers during the procurement process. The lack of advice and escalation about compliance issues was a common theme throughout the different phases of the NGR project.

NGR train design approval process

The NGR trains were procured based on performance specifications under a 'design, construct, maintain' contract. The broad parameters for the train design were defined by the technical requirements outlined in the project deed. Once the deed was executed, Qtectic was responsible for designing the train based on technical requirements, and the project team was responsible for approving the design through the various stages of the design process.

The project deed required Qtectic to design and construct NGR trains that, among other things, comply with the technical requirements (defined to mean both the performance specifications and Qtectic's proposal). However, the technical requirements are in some respects inconsistent and uncertain. The performance specifications include contradictory requirements regarding compliance with disability legislation including specifications that are non-compliant. Additionally, Qtectic's proposal details design elements that are inconsistent with the performance specification and that do not comply with DSAPT.

While it is not unusual for inconsistencies to arise as a result of incorporating a specification and proposal in the terms of a contract, the approach does give rise to risks of uncertainty and may have impacted on the effectiveness and outcomes of the design process.

As the technical requirements called for design elements that did not comply with the disability legislation, the design approval process for the NGR trains started from a non-compliant position. Designing the trains in accordance with the project deed would produce trains that did not meet the specifications outlined in DSAPT.

The capacity for the NGR project team to make changes during the design process was constrained by the technical requirements. A variation, with potential additional costs, would have been required to address most of the non-compliance issues identified by the Commission.

The possibility for non-compliances to be addressed through the design approval phase was also limited by the NGR project team and the QR technical experts not having a detailed understanding of the requirements under DSAPT, not recognising how equivalent access compliance could be pursued for some of the technically non-compliant elements, and not fully appreciating the possible consequences of non-compliance.

Stakeholder management and consultation

Consultation during the procurement phase of the NGR project was, in the Commission's view, inadequate. No specific consultation was undertaken with the disability sector about the NGR trains and the NGR project team failed to formally engage the QR Accessibility Team to strengthen its knowledge of the disability legislation and functional requirements.

If the NGR project team had undertaking genuine consultation about the NGR train design from an accessibility perspective before or early in the procurement process they would have had a greater understanding of accessibility considerations and preferences. They could have used this in formulating performance specifications, and it would have highlighted key accessibility requirements for consideration throughout the procurement and design approval processes. It would certainly have been more cost effective than rectification of the trains.

Consultation during the design approval phase was slightly improved, although it was still limited. The QR Accessibility Reference Group attended two of the train mock-up inspections, and consultation sessions regarding an assisted boarding model for the NGR trains. Feedback from the reference group suggests that its members were not given sufficient information at the mock-up inspections to make fully informed comments, and that the purpose of the consultation was not clearly explained as they were not aware that key design features were non-negotiable until late in the consultation process.

Consultation was substantially improved following the design approval stage. At this point the NGR project team sought to understand compliance issues escalated by the disability sector, and subsequently engaged with the sector regarding rectification of the trains. This consultation process included a range of effective elements that could be incorporated in future consultation process for the procurement of major public transport infrastructure. Had this transparent, respectful and consultative approach to engaging with the disability sector been adopted before the project deed was signed, or during the design process, many of the issues being examined with by the Commission could have been resolved.

Unfortunately, the cooperative approach was damaged by the decision to apply for temporary exemptions during the rectification consultation, without engaging with the disability sector on the rationale for the application. This was a serious oversight.

The Queensland Government has committed funding to rectify the NGR train design issues, but at the time of writing this report the recommended design developed in conjunction with the disability sector had not been considered by Government.

Governance

The NGR project has been subject to multiple governance arrangements since it began in 2008. Arrangements were altered as the project lead changed and the project progressed through different phases.

While the Commission identified no fundamental flaws in the governance arrangements, weaknesses were identified in the performance of key roles, in the engagement of appropriate accessibility expertise and, while TMR was the project lead, in the relationship between QR and the NGR project team.

The various governance frameworks for the NGR project each had a project manager/program director position, which was critical to the success of the project. The position was responsible for operational management, including risk management, and for regularly advising key governance bodies of the project's status and progress. The position was the key conduit between the project team and the project's governing bodies. However, there appears to have been a persistent failure throughout the life of the project to inform the project governing bodies and senior executives of the issues regarding non-compliance with disability legislation and associated risks and consequences.

The NGR project did not engage an accessibility expert, during the procurement or design approval phases, to provide advice on the application of the disability legislation and functional requirements and the mechanisms for achieving compliance. The project team had general knowledge of the disability legislation, but not enough to effectively manage compliance issues.

Further, the decision to remove QR as the project lead created a degree of resentment and animosity, resulting in a competitive relationship during the delivery phase of the project. Despite numerous documents outlining the respective roles of QR and TMR, there were ongoing tensions regarding each party's responsibilities particularly in relation to design approval and stakeholder consultation.

In the Commission's view, the tense relationship hindered the effective management and resolution of compliance issues. An environment where the prevailing consideration is defending roles and positions rather than working together to achieve a common goal is not conducive to positive project outcomes or the prompt and effective management of issues.

Conclusion

The narrow gauge of the Citytrain network makes compliance with DSAPT challenging, but it is possible to design a technically compliant train. Where an alternative design is preferred to improve functionality, the equivalent access provisions under DSAPT may be used to achieve compliance.

Neither compliance mechanism was effectively used during the procurement or design processes for the NGR trains. The procurement process requested non-compliant trains and the contract was awarded on the basis of non-compliant designs. The subsequent design process did not effectively manage or resolve the non-compliances.

Key issues that caused or contributed to the non-compliances include:

- the decision to require only one toilet on each train, located at the leading end of accessible car B
- a lack of expert knowledge regarding the disability legislation within the project team and QR technical experts and the failure to formally engage an accessibility expert
- the project team not advising senior decision-makers of compliance issues
- the absence of early, genuine consultation with the disability sector.

NGR project overview

The following figure provides an overview of the NGR project, including the various phases of the project, the project lead and key events.

Queensland Rail project lead		Project pause	Projects Queensland project lead	Department of Transport and Main Roads project lead			
Procurement phase 2008-2013				Design phase 2014-2016		Rectification phase 2017-2018	
Traditional procurement model	Build, construct, maintain model		Public-private partnership model	Conceptual design	Detailed design	Issue review	Rectification design
December 2008 Expression of interest for the design and construction of NGR trains advertised February 2009 Close of expression of interest May 2009 Finalisation of expression of interest evaluation – three proponents shortlisted December 2010 Release of first request for proposals July 2011 Close of first request for proposals December 2011 Finalisation of initial proposal evaluation – two proponents shortlisted		May 2012 to November 2012	March 2013 Release of second request for proposals August 2013 Close of second request for proposals October 2013 Finalisation of initial proposal evaluation – preferred proponent identified November 2013 Finalisation of evaluation and confirmation of preferred proponent December 2013 Execution of project deed	March 2014 Conceptual mock-up presentation (stage one) August 2014 Basic physical mock-up inspection (stage two) November 2014 Commencement of construction of the NGR trains March 2015 Detailed mock-up inspection (stage three) August 2015 Approval of Qtectic's request for a concession from non-compliance regarding braille on signs February 2016 Delivery of the first NGR train March 2016 Approval of Qtectic's request for a concession from non-compliance regarding access paths		June 2017 Commencement of review of trains' compliance with disability legislation September 2017 Application to Australian Human Rights Commission for temporary exemptions December 2017 First NGR train enters service March 2018 Australian Human Rights Commission decision made on application for temporary exemptions May 2018 Commencement of consultation with the disability sector about rectification September 2018 Consultation undertaken with the disability sector about equivalent access	

Recommendations

The terms of reference directed the Commission to make recommendations, considering any changes implemented to date, to ensure future public procurement involves consultation with the disability sector, takes account of functionality and complies with relevant disability standards.

The Commission makes 24 recommendations to address the issues identified during the course of the inquiry.

1 Introduction

This chapter provides an introduction to the New Generation Rollingstock Train Commission of Inquiry, including the establishment and scope, and the process used to conduct the Commission.

1.1 Commission of inquiry

The New Generation Rollingstock Train Commission of Inquiry (Commission) was established by *Commissions of Inquiry Order (No. 1) 2018*. The order is at Appendix 1.

The Commission's role was to make an independent inquiry into the circumstances leading up to and associated with the procurement of new generation rollingstock (NGR) trains that fail to comply with the *Disability Discrimination Act 1992* (Cth) and the *Disability Standards for Accessible Public Transport 2002* (Cth) (DSAPT) (referred to collectively as the 'disability legislation') and functional requirements.

Mr Michael Forde was appointed as the Commissioner, and the Commission began on 1 August 2018. Staff of the Commission were drawn from fields of expertise relevant to the Commission's work including the legal, procurement, policy, research and auditing professions. Appendix 2 outlines the establishment and operations of the Commission.

The Commission was required to deliver its findings and recommendations to the Premier and Minister for Trade by 3 December 2018.

1.2 Scope of the Commission

The terms of reference required the Commission to review the procurement of the NGR trains in relation to compliance with the disability legislation and functional requirements, including:

- project milestones, technical specifications, project sponsor arrangements and governance
- the obligations of contractual parties, and entities involved in the procurement
- the design approval process, including scale mock-up inspections, engagement with the disability sector and processes to ensure compliance with the disability legislation
- decisions made by respective governments, statutory authorities and departments that caused or contributed to non-compliance with the disability legislation, and any reasons provided for those decisions.

1.3 Process of the Commission

The Commission has undertaken extensive investigations to inform its findings and recommendations, obtaining information using a range of methods. The Commission:

- established a website to provide a channel for the public to contact the Commission
- called for submissions on its website and by invitation to identified stakeholders
- requested, received and reviewed more than 120,000 documents provided by relevant departments, statutory authorities, organisations and individuals
- conducted 32 interviews with members of the Queensland Government, former ministers, staff from relevant departments and statutory authorities, staff from the organisation awarded the contract (and its contractors), staff from organisations involved in the procurement process and representatives from the disability sector.

2 Context of the Commission

This chapter provides the background and context for the Commission, including an overview of the incidence and impact of disability in Queensland, the relevant disability discrimination legislation, the Citytrain network and the new generation rollingstock trains.

2.1 Queenslanders with disabilities

People with disabilities are a diverse and heterogenous group with different types and degrees of disability. It is estimated that nearly one in five Queenslanders (18.3 percent of the Queensland population) has a disability.[1]

People with disabilities are more likely to experience social and economic disadvantage due to a range of factors including adverse impacts on education, employment and earning opportunities, and increased expenditure to achieve a standard of living equivalent to people without disability. In many cases, disability restricts people from driving a car, either because of physical or cognitive disability or a lack of financial resources.[2]

Access to public transport affords people with disabilities opportunities for self-empowerment, social inclusion and community participation. Accessible public transport allows individuals to travel and participate in many social, economic or cultural activities based on their individual requirements, rather than relying on private transport options such as friends or family.[3] An estimated 146,800 Queenslanders have a disability with a limitation requiring assistance with transport.[4]

Recognising the importance of public transport services for people with a disability, legislative requirements have been introduced to 'eliminate, as far as possible, discrimination against persons on the ground of disability in the areas of … the provision of goods, facilities, services…'[5] and specifically 'to enable public transport operators and providers to remove discrimination from public transport services'.[6]

2.2 Disability discrimination legislation

Australia is party to the United Nations Convention on the Rights of Persons with Disabilities. The purpose of the convention is to 'promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities and to promote respect for their inherent dignity'.[7] A range of federal and state legislation has been enacted to support Australia's commitments under the convention.

It is unlawful in Australia to discriminate on the basis of a number of protected attributes, including disability, in certain areas of public life. Federally, the DDA aims to protect people from discrimination on the ground of disability, and Queensland has enacted the *Anti-Discrimination Act 1991* (Qld) to protect people in the state from unfair discrimination, including on the ground of disability. The relevant protections under the DDA and *Anti-Discrimination Act 1991* (Qld) are broadly consistent.

In accordance with its terms of reference the Commission has focussed its inquiry on the DDA and DSAPT.

2.2.1 Disability Discrimination Act

The DDA makes it unlawful to discriminate on the grounds of disability in a range of circumstances, including in the provision of goods and services, and accessing and using premises.[8] Public transport is a service covered by the DDA.[9]

Disability is broadly defined in the DDA to cover:

- total or partial loss of part of the body, bodily functions or mental functions
- the presence of organisms causing, or capable of causing, disease or illness
- the malfunction, malformation or disfigurement of part of the body
- a disorder or malfunction that results in a person learning differently
- a disorder, illness or disease that affects a person's thought processes, perception of reality, emotions or judgment or that results in disturbed behaviour
- a disability that presently exists, previously existed, may exist in the future or that a person is believed to have.[10]

The DDA provides that organisations may develop action plans to identify discriminatory practices and support the achievement of the Act's objectives.[11] Queensland Rail (QR) and the Department of Transport and Main Roads (TMR) each have a disability action plan.

2.2.2 Disability standards and guidelines

The DDA states that the relevant minister may formulate disability standards, and that it is unlawful to contravene a disability standard.[12] DSAPT, which came into operation on 23 October 2002, applies to all operators providing public transport services, conveyances used to provide public transport services, providers responsible for the supply or maintenance of public transport infrastructure, and all supporting premises and infrastructure.[13]

DSAPT is framed around the concept that public transport services should progressively become more accessible, with target dates provided for increasing compliance with the standards.[14] All new conveyances brought into service after 23 October 2002 must comply with the standards.[15]

Compliance with DSAPT may be achieved by meeting the specifications (technical compliance) or through equivalent access whereby methods, equipment and facilities provide alternative access with an equivalent standard of amenity, availability, comfort, convenience, dignity, price and safety (equivalent access compliance).

To achieve equivalent access compliance, an operator or provider must be able to demonstrate that equivalent access provides services without discrimination 'as far as possible'. If an operator or provider proposes to provide services through equivalent access, they must consult about the proposal with people with disabilities who use the public transport service or representative organisations.[16]

Extracts from DSAPT relevant to the NGR trains are at Appendix 3.

DSAPT is accompanied by the *Disability Standards for Accessible Public Transport Guidelines 2004 (No. 3)* (Cth) (APT Guidelines), which assist in interpreting the standards. Operators and providers must consult the APT Guidelines when interpreting and applying DSAPT.[17]

Australian Standards

DSAPT incorporates a number of Australian Standards for a range of matters such as circulation spaces, locations of signs, grabrails and controls, and toilet module configuration.

Australian Standards detail specifications, procedures and guidelines with the intention of ensuring safe, consistent and reliable products, services and systems.[18] Compliance with Australian Standards is mandatory only when incorporated into legislation, and applies only to the version of the Australian Standard referenced in Commonwealth delegated legislation, such as DSAPT.[19]

While compliance with Australian Standards represents good practice, it does not take precedence over or excuse non-compliance with the disability legislation.

2.2.3 Temporary exemptions

The Australian Human Rights Commission (AHRC) may, on application, grant an exemption from the provisions of the DDA that make it unlawful to discriminate against a person on the basis of their disability. It may also grant an exemption from compliance with some or all of DSAPT.

An exemption from the DDA or DSAPT may be granted, subject to terms and conditions, for up to five years.[20]

2.2.4 Legal consequences of non-compliance

A person aggrieved by acts or practices they allege are unlawful discrimination may lodge a written complaint with the AHRC, which will attempt to conciliate the complaint.[21] If a conciliated outcome cannot be reached, and the complaint is terminated,[a] the complainant may commence proceedings in the Federal Court or Federal Circuit Court.

If the court is satisfied there has been unlawful discrimination, it may make any order it sees fit, including for:

- compensation for any loss or damage suffered because of the discriminatory conduct
- the respondent to not repeat or continue the discrimination
- rectification action to address the complaint.[22]

The court may also grant an interim injunction to maintain the rights of the complainant or affected person pending the determination of the proceedings.[23]

2.3 Citytrain services

The Citytrain network is an integrated passenger and rail service covering South East Queensland. The network includes 152 stations and extends from the centre of Brisbane north to Ferny Grove, Shorncliffe, Doomben, Caboolture, Gympie and Kippa-Ring, south to Beenleigh and Varsity Lakes, east to Cleveland, and west to Richlands, Ipswich, Rosewood and Springfield.[24] In the 2017–18 financial year, 53.66 million passenger trips were taken on the Citytrain network.[25]

[a] One ground on which the AHRC may terminate a complaint is if it is satisfied the complaint involves an issue of public importance that should be considered by the Federal Court (*Australian Human Rights Commission Act 1986* (Cth) s 46PH).

Citytrain services are provided by QR in partnership with TransLink, a division of TMR[b] responsible for planning, managing and delivering integrated public transport in South East Queensland.[26] TMR and QR are parties to a Rail Transport Service Contract, under which TMR collects the fare revenue[c] for passenger services on the Citytrain network and pays QR a fixed amount to deliver the services.[27]

Under this arrangement, for the purpose of the disability legislation, QR is a public transport operator and TMR is a provider of public transport services. Consequently, both entities have obligations to comply with the disability legislation.

2.3.1 Rail infrastructure

Citytrain services operate on narrow gauge track. The narrow gauge constrains the width of trains that may operate on the network, presenting challenges for compliance with the disability legislation.

The interface between trains and station platforms also presents challenges for compliance with the disability legislation, particularly in relation to providing independent access to Citytrain services. Platforms on the Citytrain network vary in height from 810mm to 1050mm; the majority are low-level platforms. Low-level platforms result in a considerable height difference between the platform and the train floor, which can impact on independent boarding for passengers with disabilities.

The width of the gap between the train and platform can also impact on independent boarding. The gap needs to balance safety concerns resulting from track movement (a wider gap prevents incidents) with safety and independent access considerations for passengers (a narrower gap prevents incidents and increases access).[28]

2.3.2 Citytrain fleet

The Citytrain rollingstock fleet, excluding NGR trains, consists of 216 single-deck electric trains:

- 88 Electric Multiple Units (delivered between 1979 and 1987)
- 8 InterCity Express Units (delivered between 1988 and 1989)
- 78 Suburban Multiple Units (delivered between 1994 and 2011)
- 42 Interurban Multiple Units (delivered between 1996 and 2011).

The trains, excluding the InterCity Express Units, are three-car trains that may be coupled to form six-car trains. The majority of the six-car trains are approximately 145 metres in length and, due to the coupling of two three-car trains, have a crew cab at each end and two crew cabs in the middle of the train.[29]

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[b] TransLink was incorporated into the Department of Transport and Main Roads in 2012, when the TransLink Transport Authority was dissolved as a statutory authority.

[c] Public transport is heavily subsidised by the Queensland Government and the fare revenue is less than one-third of the cost of providing the public passenger train services (Queensland Government, *SEQ Fare Review Taskforce Report*).

2.3.3 Current exemptions from the disability legislation

QR, as a member of the Australasian Railway Association (ARA), has the benefit of temporary exemptions from a number of DSAPT standards (granted in 2012), including:

- minimum access path width – for existing trains, the minimum width of internal and external doors may be reduced to 760mm where it is not possible to provide 850mm due to unavoidable design constraints or safety issues
- access paths between doors and allocated spaces and essential facilities – for existing trains, an access path is only required at a single door rather than all doors
- slope of external boarding ramps – staff assistance is not required where an external boarding ramp can only be provided at a gradient greater than 1 in 8 and less than 1 in 4
- provision of assisted boarding devices – an assisted boarding device is only required at a single door rather than all doors of a rail conveyance
- location of signals requesting a boarding device – signals may be located in or within reach from, rather than only in, allocated spaces
- minimum clear doorway openings – toilet door opening widths may be reduced to 760mm where design constraints arising from narrow gauge rail tracks prevent installation of toilet doors with an opening width of 850mm
- provision of a unisex accessible toilet – if toilets are provided, a unisex accessible toilet without airlock is not required in every accessible rail car providing each allocated space has access the toilet
- toilet dimensions and functional requirements – if toilets are configured and maintained so that passengers using mobility aids may enter, position their aids, use the toilets and exit, then compliance with the other requirements is not required.

A range of conditions apply to the temporary exemptions.[30]

While there is some ambiguity in the wording of the exemptions, they apply predominantly to train fleets in existence at the time the decision was made (12 October 2012). Where an exemption could be interpreted to apply to the NGR trains it is important to note that the exemptions do not cover all issues of non-compliance for the NGR trains, TMR does not have the benefit of the exemptions, and that the exemptions expire on 30 September 2020.

2.4 NGR trains

The NGR project involves the design, construction and maintenance, over a 32-year period, of 75 new passenger trains for South East Queensland. The NGR trains are intended to increase the capacity and reliability of the South East Queensland passenger rail network, replacing ageing rollingstock and increasing the size of the train fleet.

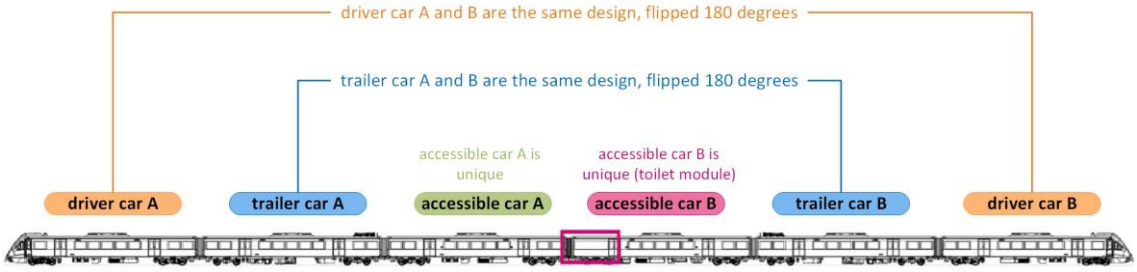
The trains are being delivered through a PPP awarded to Qtectic. On delivery, and formal acceptance, the trains will be owned by TMR and operated by QR.[31]

The first NGR trains entered into passenger service on the Citytrain network on 11 December 2017. As at August 2018, NGR trains are operating on the Gold Coast, Airport, Doomben and Northgate lines.[32]

2.4.1 Train configuration

The NGR train is a single-deck electric train. The train is comprised of six cars and is 147 metres in length (see Figure 1).

Figure 1. NGR train



The train has:

- a crew cab at each end
- two accessible cars in the middle of the six-car set (cars three and four)
- a carrying capacity of 964 people (454 seated, 510 standing)
- four priority seats in each car
- 12 allocated spaces for people using mobility aids, such as wheelchairs (six allocated spaces in each accessible car)
- one unisex accessible toilet with a baby change table
- an assistance request button in the accessible cars.[33]

2.4.2 Non-compliance with DSAPT

In response to concerns raised by the disability sector, a review of the NGR train's compliance with the disability legislation and functional requirements was undertaken in June 2017. It was identified that the NGR train does not comply with the requirements under DSAPT relating to access paths, toilets and the provision of boarding devices. Compliance issues have been identified with the train configuration relating to:

- widths of access paths
  - the path between allocated spaces in the two accessible cars is not compliant
  - the path past the toilet module is not compliant
- extent of access paths
  - the path does not extend between the assisted boarding point door and all allocated spaces and priority seats in the accessible cars
  - the path does not extend between all allocated spaces and priority seats and the toilet
- toilet module
  - the dimension from the centre line of the toilet pan to the far-side wall is not compliant
  - the circulation space may not allow some passengers using a mobility aid to carry out a fully parallel side transfer to the pan[34]
- assisted boarding devices
  - boarding devices are not available at every accessible entrance to the train.[35]

2.4.3 Application for temporary exemptions from disability legislation

On 27 September 2017 the State of Queensland (acting through TMR) and QR made a joint application to the AHRC for temporary exemptions under the disability legislation in relation to the NGR trains. The application sought temporary exemptions, for a period of three years, in relation to non-compliant access paths, toilets and boarding device provision, specifically:

- the width of the access path between the allocated spaces in the two accessible cars and past the toilet module
- the extent of the access path between the single assisted boarding point door and all allocated spaces and priority seats in the accessible cars, and the toilet module
- the availability of a manual or power assisted boarding device at any accessible entrance
- the availability of an accessible toilet for passengers using mobility aids
- the ability for passengers using mobility aids to enter, position their devices and exit the toilet module
- the minimum dimensions of the toilet module, specifically the distance from the centre line of the pan to the far-side wall.[36]

The AHRC invited submissions from interested parties in relation to the application for temporary exemptions. It received 20 submissions. The majority of submitters did not support temporary exemptions for the NGR trains.[37] For example, Queensland Advocacy Incorporated (QAI) submitted:

> *The trains should not be permitted to run until they are DSAPT compliant.*
>
> *…*
>
> *If the Queensland Government had commissioned the trains before it agreed to DSAPT minimums, QAI would support a compromise arrangement provided that the trains were made accessible.*
>
> *No such extenuating circumstance applies here. Queensland is a member of the Australasian Railways Association, and has been party to two previous applications for narrow gauge railway exemptions. The HRC granted those exemptions, and Queensland was aware of the new minimums, yet Queensland then commissioned these trains with access paths even narrower than the exemption-reduced minimums.*[38]

The QR Accessibility Reference Group (QR–ARG) similarly submitted:

> *The [QR]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.*
>
> *…*
>
> *Bearing in mind the deeply flawed process that led to the current debacle, and the egregious waste of two years in which the [QR]ARG's concerns could have been addressed, the ARG does not support the granting of any temporary exemptions.*[39]

The Anti-Discrimination Commission Queensland also submitted that it was 'unable to support the granting of an exemption', stating:

> *It is a grave indictment on the State that a major public works project was procured with apparent disregard for the laws that prohibit discrimination and set out minimum standards for public transport accessibility.*
>
> *…*
>
> *That the Queensland Government would in 2013 commission a fleet of trains that do not fully comply with the Transport Standards, and in other respects are likely to discriminate against people with disabilities, is reprehensible.*[40]

On 29 March 2018 the AHRC gave notice of its decision to not grant temporary exemptions in relation to non-compliant access paths and toilets, and to grant a temporary exemption until 1 October 2020 in relation to the provision of boarding devices. In relation to the decision to refuse to grant temporary exemptions, the notice states:

> *On the material before the Commission [AHRC], it is not clear 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.*
>
> *…*
>
> *While the Commission [AHRC] acknowledges that the Queensland Government has agreed to allocate funds to bring the trains into substantial compliance with the Transport Standards within three years, the Commission [AHRC] is not convinced that this commitment is sufficiently persuasive to suspend the rights of people who might experience discrimination on the NGR trains during this time to make a complaint under the DDA. Submissions received by the Commission [AHRC] during the public consultation period emphasised the discriminatory impact on people with disability of using the pre-rectified NGR trains. A person using a mobility device may not be able to access or use a toilet on a pre-rectified NGR train for up to three years. The Commission [AHRC] considers that this is not a trivial matter. The rectification process proposed by the applicants principally undertakes to meet a legal obligation that has existed since 2002.*[41]

In relation to the decision to grant a temporary exemption regarding the provision of boarding devices, the notice acknowledges that an existing temporary exemption granted to the ARA would apply to QR but not to TMR. It states:

> *If the Commission [AHRC] did not grant this exemption to TMR, it might mean that Queensland Rail would enjoy the benefit of this exemption but TMR would not.*
>
> *The Commission is satisfied that, to avoid a legal inconsistency between Queensland Rail as operator and TMR as provider, it is reasonable to grant TMR a temporary exemption to s 8.2 of the Transport Standards to align it with the temporary exemption already enjoyed by Queensland Rail under the ARA decision. This is in place until 1 October 2020.*[42]

The AHRC emphasised, however, 'that there can be no assumption that further exemptions to s 8.2 [of DSAPT] will be granted in the future'.[43]

Information regarding the temporary exemption granted by the AHRC is at Appendix 5.

2.4.4 Rectification work

The Queensland Government stated in its application to the AHRC for temporary exemptions that funding will be allocated to rectify the non-compliance issues with the NGR trains 'as far as possible' and to 'provide improved functionality'.[44] The application stated that the funded rectification work will include:

- reconfiguring the toilet module to meet the dimension requirements and to improve functionality in line with DSAPT
- dividing the NGR trains into two fleets – a suburban fleet for short distances (40 trains) and an interurban fleet for longer distances (35 trains) – and removing the toilets from the suburban fleet trains and adding a second toilet to the interurban fleet trains
- reconfiguring the seating and allocated spaces in the accessible cars to meet access path width requirements between the assisted boarding door and accessible facilities
- revising train signage and installing additional priority seating, additional grab/handrails and additional accessible buttons and controls to maximise functionality.[45]

The Queensland Government has stated that 'Work to redesign and rectify the trains is underway with the newly designed trains expected to progressively roll-out out in the next 18 to 24 months'.[46]

2.5 Policies, guidelines and frameworks

A range of procurement and project policies, guidelines and frameworks applied to the NGR project at various stages over the life of the project. The key policies, guidelines and frameworks are outlined in the following pages (further detail is at Appendix 6).

2.5.1 Queensland Procurement Policy

The Queensland Procurement Policy (QPP)[d] establishes governance structures for procurement at whole-of-government and agency levels and reinforces the obligations of accountable officers for public resources and for managing their agencies efficiently, effectively and economically.[47]

Agencies[e] are required to comply with the policy by a decision of Cabinet, and departments and statutory bodies must also comply with the QPP under section 19 of the *Financial Performance and Management Standard 2009* and the now repealed *Financial Management Standard 1997*.

Directors-general and chief executive officers (CEOs) are responsible for ensuring procurement processes are managed in accordance with the QPP, including:

- compliance with relevant legislation, policies and agreements
- good governance: structured procurement functions, clear management standards, policies and processes, and appropriate control, monitoring and reporting frameworks
- appropriate procurement capability within their agency
- management of the procurement function at an appropriate senior management level
- procedures that ensure transparent and accountable procurement.[48]

[d] The Queensland Procurement Policy was known as the State Procurement Policy prior to the 2013 version.

[e] Queensland Rail was listed as an entity that must comply with the QPP during the time it was the NGR project lead.

Significant procurement plans must be approved by the director-general or CEO, or their delegate, for the procurement of goods, services and capital projects with high expenditure and/or for which there is a high degree of business risk. The plan must establish the objectives to be achieved from the procurement and:

- specify how procurement supports the achievement of agency procurement objectives
- analyse demand for the procurement and the supply market and the likely impact of the procurement on the market
- evaluate potential supply strategies and identify the preferred strategy
- specify measures for the evaluation of the supply strategy implementation.[49]

Departments and statutory authorities must publish basic details of awarded contracts with a value of $10,000 or more ($100,000 prior to 1 July 2011) within 60 days of the contract date.[50]

The QPP in force to 1 July 2013 required departments and statutory authorities to engage an independent probity advisor or auditor for high-risk procurement of goods and services with a value of $10 million or more and construction with a value of $100 million or more.[51]

2.5.2 Investment Guidelines for Government Owned Corporations

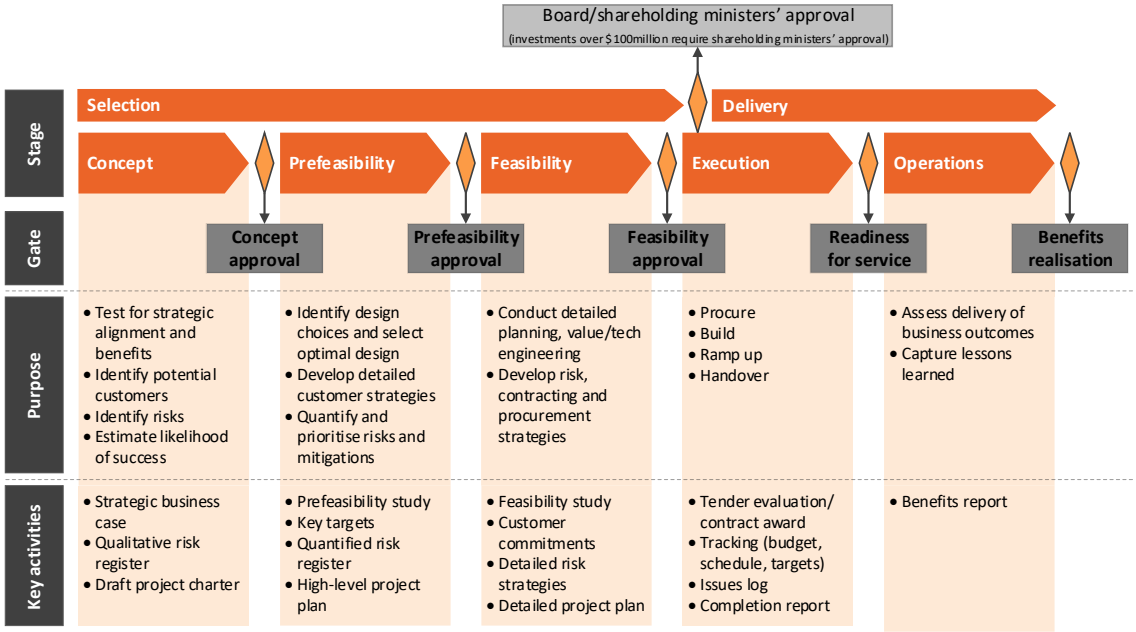
The *Investment Guidelines for Government Owned Corporations* set out six key principles for government owned corporations undertaking investment activities. The principles are:

1. Investments are restricted to commercially viable projects within core business activities.
2. Investments are subject to shareholding minister approval and notification requirements.
3. Information relating to investment decisions must be provided to shareholding ministers (proposals requiring shareholding ministers' approval must be approved by the board before being submitted to the ministers).
4. Appropriate consideration must be given to risks associated with investments.
5. Interstate/overseas investments may be permitted in limited circumstances.
6. Post-approval monitoring applies for significant investment projects and will form the basis of determining future investment approval thresholds.[52]

2.5.3 QR Investment Framework Manual

The QR Investment Framework Manual (QRIFM) sets out the approval processes and related requirements for investment opportunities. Compliance is mandatory. The QRIFM states that the stages shown in Figure 2 are required in selecting and delivering investment projects at QR.

Figure 2. Overview of QR capital investment process



Source: QR Investment Framework Manual

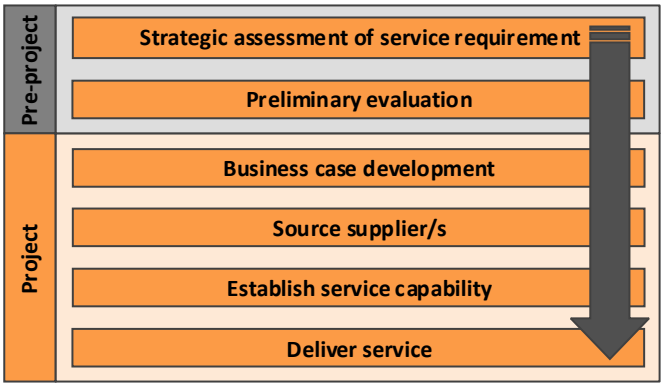
Approval must be obtained for a project to pass from one stage to the next, referred to as a gate. Gates define the work to be completed, set clear expectations for approval to proceed to the next stage, provide for review and external challenge, provide transparency about progress and potential issues, and determine the stage duration and cost.[53]

2.5.4 Queensland project assurance framework

The project assurance framework (PAF) sets the minimum standards for project initiation, evaluation, procurement and assurance across the Queensland public sector. Its aim is to ensure project management is undertaken effectively and delivers value for money to government from project investments.

The PAF provides that the project stages shown in Figure 3 are required in developing and delivering projects in Queensland (further detail on the stages and key steps is at Appendix 6).

Figure 3. Overview of PAF pre-project and project stages



Source: Project Assurance Framework Policy Overview

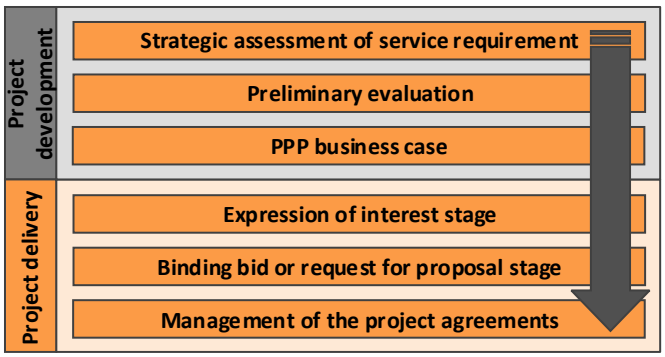
Departments and statutory bodies[f] must have regard to the PAF when preparing evaluations relating to the acquisition, maintenance or improvement of significant assets.[54] Where an agency departs from the stages required by the PAF, the reasons for the departure should be clearly documented and the departure approved by the relevant governance body.

2.5.5 National public-private partnership projects framework

The federal, state and territory governments have endorsed the National Public-Private Partnership Policy and Guidelines as the agreed framework for PPP infrastructure projects in Australia. While the guidelines represent a commitment to broad uniformity between jurisdictions they do provide for specific jurisdictional requirements.

The guidelines state that the project stages shown in Figure 4 are required for PPP projects in Queensland.

Figure 4. Overview of PPP project stages



Source: National PPP Guidelines Volume 6: Jurisdictional Requirements

Each PPP project is to be overseen by, and is the responsibility of, the relevant portfolio minister, with the procuring agency responsible for management and delivery of the project. Senior representatives of the procuring agency, Queensland Treasury, and the Department of Employment, Economic Development and Innovation[g] must be members of the project steering committee and project team.

A comprehensive probity plan must be developed for all PPP projects, and a probity advisor or auditor should be appointed for large, complex projects with a procurement capital cost greater than $100million or goods and services with a value greater than $10million. The probity auditor's final report is to be tabled in parliament.

A summary of the project agreements, signed off by the Auditor-General as a fair reflection of the agreements, is also to be tabled in parliament following financial close.[55]

[f] Government owned corporations, such as QR prior to 2013, are not required to apply the PAF.

[g] Due to machinery of government changes the responsibilities of the Department of Employment, Economic Development and Innovation were transferred to other departments following the 2015 state election.

3 Issues of non-compliance with disability legislation and functional requirements

This chapter provides an overview of issues identified regarding non-compliance with the disability legislation and functional requirements.

3.1 Introduction

The terms of reference required the Commission to investigate circumstances leading up to and associated with the procurement of NGR trains that fail to comply with the disability legislation and functional requirements.

The Commission focussed on issues of non-compliance identified by TMR, raised by the disability sector, or readily identifiable from diagrams and the site visit.

The Commission does not purport to have identified every potential area of non-compliance with the disability legislation and functional requirements. It was not considered necessary for the purpose of the investigation to examine every technical specification and functional need to determine if there were additional areas of non-compliance.

Compliance issues considered by the Commission are outlined in the following pages.

3.2 Non-compliance with DSAPT

3.2.1 Access paths

An access path is a path that allows independent travel for all passengers within the train.[56]

DSAPT states that an access path, with a minimum width of at least 850mm, must permit continuous and unhindered passage through doorways, and between entrances, exits, allocated spaces and other essential facilities for passengers using mobility aids.[57] An access path must extend from the entrance to facilities or designated spaces for passengers with disabilities. If an access path cannot be provided, equivalent access by direct assistance must be provided.[58]

Technical diagrams indicate the NGR train does not comply with the DSAPT specifications regarding the minimum width of access path in the two accessible cars (see Figure 5):

- the path between allocated spaces is 555mm where the allocated spaces include fold-down seats and 615mm where the allocated spaces do not include fold-down seats
- the path between allocated spaces and the opposite seats in accessible car A is 583mm
- the path between rows of seats in accessible car A is 650mm
- the path past the toilet module is 610mm.

Technical diagrams also indicate the train does not comply with the DSAPT specifications regarding the extent of access paths in the two accessible cars:

- the access path does not extend between the assisted boarding point door and all designated spaces for passengers with disabilities in the accessible cars
- the access path does not extend between all designated spaces for passengers with disabilities and the toilet.

There was no evidence presented to the Commission asserting that the requirements for equivalent access compliance regarding the width or extent of access paths had been satisfied before the Commission began.[h]

Figure 5. Non-compliant access paths in accessible cars

The design of the NGR train restricts people with disabilities from manoeuvring within and between the accessibility carriages. Passengers with disabilities who board the train at one entrance are largely limited to the allocated spaces adjacent to that entrance. This is particularly the case in accessible car A.

The dimensions of the access paths may restrict passengers using mobility aids from relocating to another allocated space within the car, not adjacent to their entrance point, or to an allocated space within the other accessible car. Passengers with disabilities who do not board at the entrance adjacent to the toilet would find it difficult, if not impossible, to access the toilet. Relocating to another allocated space or accessing the toilet may require a passenger to disembark and reboard the train using another entrance.[59]

3.2.2 Allocated spaces

DSAPT requires the provision of at least two allocated spaces for each car of the train; allocated spaces may be aggregated to a maximum of eight spaces in one car.

Allocated spaces must measure at least 800mm by 1300mm, outlined by a contrasting strip, and display the international symbol of accessibility.[60] Allocated spaces must be consolidated, if possible, to accommodate larger mobility aids.[61]

Technical diagrams of the NGR train indicate the train does not satisfy the technical compliance requirements of DSAPT regarding the consolidation of allocated spaces. Allocated spaces are positioned at the corners of the vestibules in the accessible cars, with no adjacent allocated spaces facilitating consolidation (see Figure 6).

While DSAPT caveats the requirement with 'if possible' it is unclear why compliance with the requirement would not be possible in the design of the NGR train (although it is noted that this may not be the preferred design from an accessibility perspective).

[h] The Commission notes that the NGR project team has, since the commencement of the Commission, undertaken consultation for the purpose of demonstrating equivalent access compliance for the proposed train layout following rectification work.

There was no evidence presented to the Commission asserting that the requirements for equivalent access compliance regarding the configuration of allocated spaces had been satisfied before the Commission began.[i]

Figure 6. Configuration of allocated spaces in accessible cars

The design of the NGR train regarding the configuration of allocated spaces may adversely affect passengers with larger mobility aids that do not fit within the minimum dimensions of an allocated space, although the fact that the allocated spaces are positioned adjacent to the vestibule could mitigate the adverse impacts.

3.2.3 Accessible toilets

DSAPT states that if toilets are provided on a train, there must be at least one unisex accessible toilet without airlock available to passengers using mobility aids.[62] An accessible toilet must allow passengers using mobility aids to enter, position their aids and exit, and must have:

- a minimum dimension from the centre line of the pan to the near-side wall of 450mm and to the far-side wall of 1150mm
- a minimum dimension from the back wall to the front edge of the pan of 800mm
- a toilet seat of between 460mm and 480mm above the floor
- hand-washing facilities either inside or outside the toilet module.[63]

The intent of DSAPT is for accessible toilets to have sufficient clear space to allow a passenger using a mobility aid to move between the fixtures and to exit the module in a forward direction. However, the APT Guidelines acknowledge that passengers using larger mobility aids may need to exit by reversing.[64]

Technical diagrams of the NGR train indicate the train does not satisfy the technical compliance requirements of DSAPT regarding toilet availability and configuration:

- a toilet is not available to all passengers using mobility aids travelling in accessible car A or in accessible car B at the rear of the car (see Figure 5)
- the dimension from the centre line of the pan to the far-side wall (excluding the door) is at its closest 1138mm due to a slight curve where the door and wall meet (see Figure 7).

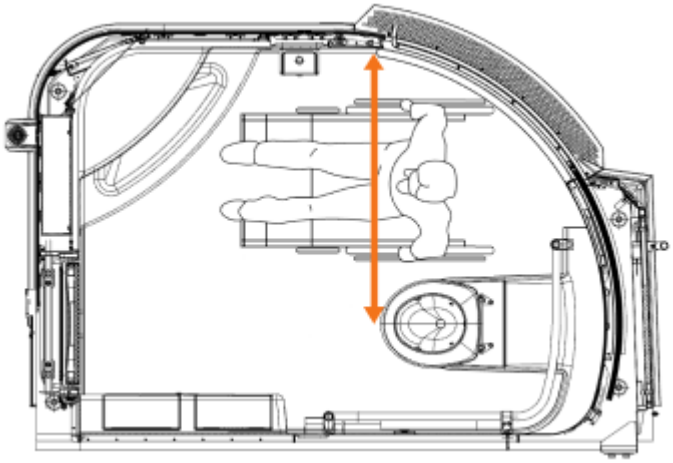
[i] The Commission notes that the NGR project team has, since the commencement of the Commission, undertaken consultation for the purpose of demonstrating equivalent access compliance for the proposed train layout following rectification work.

The design of the NGR train restricts passengers with disabilities from accessing and using the toilet. Passengers with a disability who do not board at the entrance adjacent to the toilet may not be able to access the toilet due to non-compliant access paths and would need to disembark and reboard the train using another entrance.

In relation to the dimensions of the toilet module, the Commission notes that the dimension from the centre line of the pan to far-side wall changes depending on where the measurement is taken, and that TMR and Qtectic have differing views as to the appropriate place to take the measurement. There are also diverging views as to what constitutes the 'far-side wall'.

The Commission has, for the purpose of its investigation, adopted the view that the toilet module does not satisfy the requirements for technical compliance. However, the outcome of the diverging views and whether the module is DSAPT compliant from a contractual perspective is a matter for Qtectic and TMR, and may ultimately be determined by a court examining all relevant circumstances and considerations.

Figure 7. Toilet module



Concerns have also been raised regarding the DSAPT requirement that passengers using mobility aids must be able to enter, position their aids and exit the toilet module, as the configuration may prevent some passengers from carrying out a fully-parallel side transfer to the pan. The configuration would also not be suitable for passengers who require a right-hand transfer.[65]

Passengers unable to safely use the onboard toilet may need to disembark and use a toilet at a station (delaying their travel until the next train arrives).[66]

The Commission notes that passengers using mobility aids have different needs and preferences when transferring from their mobility aid to the pan, and it is unlikely any one toilet module design would accommodate the needs and preferences of all passengers with disabilities. In the absence of a range of toilet modules that accommodate all needs and preferences, TMR and QR would need to rely on equivalent access compliance to demonstrate that a toilet module satisfies the functional requirements of DSAPT and is not discriminatory (as far as possible).

It was suggested to the Commission that the requirements for equivalent access compliance had been satisfied regarding the availability and configuration of the toilet module.[67] However, this was not the position of TMR or QR. As they bear the onus of demonstrating equivalent access compliance, the Commission has, for the purpose of its investigation, adopted the view that the requirements of equivalent access compliance have not been satisfied. Again, whether the toilet module is DSAPT compliant for the purpose of satisfying contractual obligations is a matter for Qtectic and TMR.

3.2.4 Boarding devices

DSAPT states that a manual or power assisted boarding device must be available at any accessible entrance to a train where the vertical rise or gap between the platform and the train exceeds 12mm or the horizontal gap exceeds 40mm.[68] A boarding device must be available for use at all designated stops and deployed if a passenger requests its use.[69]

The intent of DSAPT is for passengers with disabilities to be able to board and alight from trains without assistance. However, it is noted that design constraints may result in operators or providers giving equivalent access through assistance.[70]

The NGR train does not comply with the specifications of DSAPT regarding the provision of boarding devices, as devices are only available at one entrance to the train. This means people with disabilities who require the use of a boarding device can only to board at a single door rather than being able to board and travel in either accessible car.

There was no evidence presented to the Commission asserting that the requirements for equivalent access compliance had been satisfied regarding the provision of boarding devices. However, an exemption from compliance with this requirement is in force until 1 October 2020.

3.2.5 Signage

DSAPT sets out a range of requirements for signage including sign height, illumination and location. The standards provide that if a sign incorporating raised lettering is supplemented with braille characters, the braille must be positioned to the left of the raised lettering.[71]

Inspection of the NGR train identified that the train does not comply with DSAPT specifications regarding the positioning of braille in signage. Braille is positioned under the raised lettering on signs rather than to the left as required by the standards.[j] There was no evidence presented to the Commission asserting that the equivalent access compliance requirements had been satisfied regarding the signage.

3.3 Functional requirements

A range of functional requirement issues have also been raised by the disability sector regarding assisted boarding, grabrails, signage, priority seats, passenger emergency intercoms (PEIs) and assistance request buttons. These issues, while not amounting to non-compliance with DSAPT, may create circumstances that result in disadvantage or discrimination for people with disabilities.

[j] It is noted that Australian Standard 1428.1(2009), with which compliance is not mandatory, includes example signs in which the braille is positioned below words and symbols.

3.3.1 Assisted boarding

As outlined in section 3.2.4 of this report, DSAPT requires that a boarding device be available for use at all designated stops and deployed if a passenger requests its use. However, functional requirements regarding assisted boarding are broader than the provision of boarding devices. Some passengers may require assistance to board or disembark but may not require the use of a boarding device; for example, where a passenger is blind or has low vision.

Assistance to board and disembark from the existing Citytrain fleet is generally provided by the train guard located in a cab in the middle of the train. This aligns with the assisted boarding point on platforms and allows interaction between the guard and passengers requiring assistance. However, the guard cab on the NGR trains is located at the rear of the train, positioning the guard approximately 70 metres from the accessible cars and the assisted boarding point on platforms. The positioning of the guard, and the subsequent limited capacity for guards and passengers to interact, led to concerns within the disability sector that adequate assistance may not be provided for passengers with disabilities, particularly those with hidden disabilities such as a vision or hearing impairment.

An interim boarding assistance model has been introduced by QR for the NGR trains. Under this model, assistance to board and disembark the NGR trains is primarily provided by station staff, with assistance provided by the guard where station staff are not available. However, concerns have been raised regarding assistance from station staff rather than the guard, including communication of the destination and inconsistent approaches between different trains.

A procedure where assistance is provided by station staff requires the passenger to advise the station staff of their intended destination and for the staff to then contact the destination station to advise that the passenger requires assistance to disembark. Some concerns have been raised regarding the resulting uncertainty as to whether the message has been conveyed and the process involved if the passenger wished to change their destination mid journey.

Further, an inconsistent approach, where sometimes assistance is provided by the guard and sometimes by station staff, may result in confusion with people unsure who they should ask for assistance and subsequently not receiving the assistance required to board or disembark.

Concerns regarding the location of the guard cab was a principal concern raised in submissions to the AHRC and the Commission.[72] For example, QAI noted in their submission to the AHRC:

> *The mid train guard cab location is not a DSAPT issue, but as the inevitable service failures accrue due to the guard in car 6 being stationed 70m from the platform assisted boarding point it will become a DDA issue.*
>
> *…*
>
> *The isolation of the guard from assisted boarding point will diminish service levels for people who require assistance … Customers will be overlooked or forgotten, left on the train or left behind on the platform.* [73]

Similarly, Blind Citizens Australia (BCA) stated in its submission to the Commission:

> *…the placement of the guard at the rear of the train places the safety of passengers with disabilities of all types at risk … One BCA member in Victoria lost an arm and a leg … when he mistakenly stepped in between two carriages thinking it was a doorway. There was no guard on the train. While … NGR trains will still carry a guard, placement of the guard at the rear of the train will mean that the guard will not be able to respond quickly in the event of an emergency…*[74]

3.3.2 Grabrails

DSAPT provides that grabrails must be provided in allocated spaces and in the toilet module behind and to the side of the pan.[75] No issues were identified regarding compliance with DSAPT in relation to the provision of grabrails; however, additional grabrails may improve the functionality of the NGR train for people with disabilities. For example, additional grabrails in the toilet module near the washbasin would improve use of the facility for passengers who require support to stand or balance, particularly in a moving rail car.

3.3.3 Signage

As outlined in section 3.2.5 of this report, DSAPT sets out the requirements for signage on trains. However, functional requirements regarding signs are broader than the specifications provided in DSAPT, and concerns have been raised regarding whether there are sufficient braille signs for passengers with vision impairments to navigate the train.[76] For example, there is no braille incorporated into the sign for the emergency door release and consequently passengers with vision impairments cannot identify the button and its purpose.

Additionally, the height of the signage for the PEI and assistance request button is reportedly too low for passengers to comfortably read the braille incorporated in the signage.[77]

3.3.4 Gangway tread plate

DSAPT states that the ground and floor surfaces in train cars must comply with Australian Standard AS1428.2(1992), which incorporates requirements under Australian Standard AS1428.1(2001).[78] The Commission identified no issues of non-compliance with DSAPT in relation to ground and floor surfaces.

However, it is noted that a subsequent version of the Australian Standard, AS1428.1(2009) includes additional functional requirements to improve accessibility, which the NGR train does not comply with in relation to the inter-car gangway (see section 2.2.2**Error! Reference source not found.** for information about the Australian Standards incorporated into DSAPT).

Under the revised standard, soft flexible material on floor surfaces must have a maximum vertical face of 3mm or a rounded bevelled edge of 5mm, or if above that a maximum gradient of 1 in 8 and a total maximum height of 10mm.[79] Variation documentation for the design of the NGR train indicates the gangway tread plate has a gradient of 1 in 6 and a height of 42mm.[80]

3.3.5 Priority seating

DSAPT provides that at least two seats in each car must be provided as priority seating for passengers with disabilities and other passengers requiring special assistance.[81] The NGR train complies with DSAPT in relation to the provision of priority seating; however, the design of the train has inconsistent priority seating configurations between the cars.

Priority seats are adjacent to the doors in all cars except the accessible cars, where they are located beside the allocated spaces.

Priority seats are also consistently positioned relative to the front and rear doors in all cars except accessible car A. In the majority of cars, when boarding from the left side of the train in the direction of travel, priority seats are located on the right near-side of the front door and left far-side of the rear door. In accessible car A, when boarding from the left side of the train in the direction of travel, priority seats are located on the left far-side of the front door and right near-side of the rear door (see Figure 8).

Figure 8. Priority seating locations in the six cars of the NGR trains

Concerns have been raised that the different priority seating placement may be confusing and create navigational difficulties for passengers who are blind or have low vision. Vision Australia noted in its submission to the AHRC the importance of consistency in design:

> *People who are blind or have low vision require consistency in design, as they cannot easily identify changes in priority seat arrangements.*[82]

Concerns have also been raised that there is limited priority seating in close proximity to the toilet. This means that passengers who are ambulant but have restricted mobility or a vision impairment, may have to navigate the length of the car or move between cars to access the toilet.[83]

Further, a fire extinguisher located beneath priority seats in accessible car A restricts a passenger with a seeing eye dog from positioning their dog under the seat. This raises concerns about the safety of the dog and other passengers.[84]

3.3.6 Passenger emergency intercoms and assistance request buttons

PEIs are located beside each door and in each allocated space in the accessible cars. The intercoms activate a visual and audio alert to the train driver and guard and provide a direct method for passengers to communicate with them. Assistance request buttons are located in each allocated space in the accessible cars. The button alerts the driver and guard that a passenger at that location requires assistance but does not provide a mechanism for the passenger to communicate with the guard.

Concerns have been raised that the assistance request buttons do not allow communication between the passenger and the guard. Passengers using the button may be unsure if their request has been received and if it has been, how assistance will be rendered.[85]

While the PEI allows communication, the use of the word 'emergency' may deter its use for general assistance.[86] Additionally, the small size and nature of the PEI may also limit its use by passengers who need to activate the button using their palm or arm.

Further concerns have been raised that PEIs or assistance request buttons are not accessible from the priority seats.[87] Passengers with disabilities seated in priority seats who require assistance would need to move to a PEI and remain standing to communicate with the driver or guard.

3.3.7 Hearing augmentation

DSAPT states that if a public address system is installed in a train a listening system to aid hearing impaired passengers (a hearing aid loop), covering at least 10 percent of the enclosed space, must be available and the area appropriately signed. Passengers who have a hearing impairment must be able to receive a message equivalent to passengers without a hearing impairment.

The NGR train complies with DSAPT in relation to the provision of hearing aid loops that covers at least 10 percent of each car but concerns have been raised about the locations of the loops in each car. Hearing aid loops cover only two of the 24 priority seats, and three of the 12 allocated spaces (see Figure 9).

Figure 9. Hearing aid loop locations in the six cars of the NGR trains

Further, the hearing aid loops do not cover the areas surrounding the rear vestibule of accessible car A or the front vestibule of accessible car B, where passengers with a hearing impairment tend to board, due to the centrally located hearing aid loop at the assisted boarding point on platforms.[88]

4 Procurement process for the NGR trains

The terms of reference required the Commission to have regard to the procurement process for the new generation rollingstock trains relating to compliance with the disability legislation and functional requirements. This chapter examines the procurement process for the new generation rollingstock trains, including changes to the project lead and procurement model and the impacts on accessibility.

4.1 Introduction

Public procurement is the purchasing of goods or services to support government and public authority operations. The procurement process incorporates a range of activities, from identifying business needs and preparing a business case to assessing market interest and capability, developing procurement strategies and performance requirements, requesting tenders, negotiating and awarding a contract. Public procurement processes are subject to government policies, statutes and regulations.

Fundamental principles of public procurement include:

- value for money – procurement should provide the optimum combination of cost, benefits, quality, risk and timeliness
- accountability – public servants and others involved in procurement processes must be responsible for their decisions and actions, and resulting outcomes
- procedural fairness – requirements must be objective and unbiased and proponents and other stakeholders must be able to rely on information provided by the procuring agent
- transparency – information on the procurement process should be available to all stakeholders, except where there are legitimate reasons for information being confidential
- open and fair competition – proponents should have a clear understanding of the requirements and how they will be evaluated, and proposals must be assessed against the stipulated requirements and contracts awarded to compliant offers that best meet the specifications
- economy – procurement processes should be cost-effective for public authorities and prospective suppliers.[89]

Procurement of the NGR trains spanned five years from the call for expressions of interest (EOIs) to awarding the contract, with numerous organisational and political changes during this time. A chronology of key events and decisions is outlined at Appendix 7, and a summary of the key entities involved in the procurement process is at Appendix 8 .

4.2 Lead-up to procurement

In June 2008, the *South East Queensland Infrastructure Plan and Program 2008–2026* identified that an additional 58 three-car trains would be required to meet forecast demand growth across the Citytrain network. The Queensland Government allocated funding for the acquisition of 58 three-car trains in the 2008–09 budget.[90]

Historically, QR had a sole sourcing arrangement to purchase rollingstock from EDI Rail-Bombardier on a 'design and build' basis, with maintenance undertaken by QR. However, in September 2008 QR commissioned a study on procurement arrangements that found it might obtain improved value for money through a competitive procurement process.[91]

On 13 October 2008 the QR Executive General Manager Passenger Services approved funding to investigate procurement options for new rollingstock, undertake preliminary planning, and develop a business case for procurement.

The Cabinet Budget Review Committee (CBRC) endorsed commencing the procurement of new rollingstock on 9 December 2008.[92] Minutes from QR Board meetings indicate that approval was not sought from the QR Board, and the Board was not advised that EOIs would be sought.

4.3 Expressions of interest stage

An EOI for the design and construction of up to 58 three-car trains was publicly advertised on 17 December 2008, with documentation available from 18 December 2008.[93] The request for EOIs included an option for an additional 80 three-car trains, a possible total of 138 trains for initial delivery, and a further 90 three-car trains for staged delivery at later dates.

The request for EOIs also invited information from respondents regarding other value-add options that could benefit QR, such as financing and contracting arrangements.[94]

An industry briefing for registered parties was held on 30 January 2009.[95]

Accessibility requirements

In describing the rollingstock for Citytrain services the request for EOIs states:

> *QR … is required to comply with state government access requirements for persons with disabilities. Amongst other things, this has impacts upon door sizes and openings, corridor spacings within the carriage, and for priority seating requirements at locations near to the vestibule.*[96]

Similarly, in outlining the typical performance parameters of rollingstock, the request for EOIs states under passenger requirements:

> *Compliant with standards for people with disabilities.*[97]

EOI close and evaluation

Five complying EOIs were received by the closing date of 27 February 2009.

An evaluation panel comprised of representatives from QR assessed the EOIs in accordance with the evaluation plan. Following the assessment, the panel recommended that three proponents be shortlisted to progress to the request for proposal (RFP) stage. The shortlisted proponents were UGL Limited, Bombardier Transport Australia (Bombardier) and AdvanceRail.

The evaluation panel also noted sufficient market interest in a whole-of-life solution (design, construct, finance, maintain) to include such an option in the RFP.[98]

Evaluation of the EOIs was finalised in May 2009.[99]

On 20 November 2009, six months after the evaluation was completed, the three shortlisted proponents were advised they would progress to the RFP stage of the procurement.

The QR Board approved the release of the RFP to the shortlisted proponents on 8 December 2009.

4.4 Project health check

In December 2009 Ernst & Young was engaged to perform a high-level project health check following concerns raised within QR and by parties associated with the NGR project about project governance, compliance with the QRIFM and the general health of the project. The check was to examine issues regarding the robustness of the process, governance, gating points, stakeholder management, and advisors' views of the project's management.[100]

The report, provided in February 2010, identified a range of issues and made a series of recommendations. The issues identified during the health check are outlined under the relevant sections of this report. Concerns significant to the procurement process included:

- an RFP process substantially below what would be expected of a comparable project
- the procurement agenda being driven by strong personal views of project members
- the resignation of the probity advisor in December 2009 with no replacement appointed
- apparent pressure to go to market with documentation not finalised
- unresolved documentary and process issues that should have been finalised months prior
- advisors having difficulty understanding the project's actual timeframes
- an incomplete and not appropriately customised probity plan
- documents required under the QPP not having the expected rigour.[101]

4.5 First request for proposals

In October 2010 CBRC approved the release of the RFP to the three shortlisted proponents,[102] 10 months after the QR Board had approved the RFP's release.

QR issued an RFP to the three shortlisted proponents on 22 December 2010, two years after the EOI was released to the market. The RFP differed from the original request for EOIs and was for the:

- design and construction of up to 200 three-car trains or 100 six-car trains, or a combination, with an option to procure additional trains in the future
- provision of maintenance, overhaul and cleaning services for the trains for a period of up to 30 years from the date the first train was provisionally accepted
- design and construction of a new depot and provision of whole-of life depot maintenance
- design and construction of simulators and other project equipment and related maintenance services.[103]

The performance specification issued with the RFP required the configuration of the trains to include a full-width crew cab at each end of the train and, for six-car trains, an intermediate guard cab located in the centre of the train. However, the specification also noted the long-term objective of progressing to driver-only operations and accordingly required the trains to be readily reconfigurable, including the ability to remove the intermediate guard cab. [104]

The performance specification also indicated a split fleet, comprised of suburban trains and interurban trains, with one toilet module only required on the interurban trains.[105]

Accessibility requirements

The performance specification required that the passenger compartment be designed to be fully accessible to people with disabilities and comply with DSAPT.[106]

Appendix 9 outlines specifications relevant to the disability legislation and functional requirements, including specifications relating to access paths, allocated spaces, toilet modules, boarding devices and signs.

Proposal close and preliminary evaluation

During the RFP period two of the three proponents had changes to the make-up of their consortia, with two organisations withdrawing from the procurement process.[107] At the request of one of the consortia the RFP period was extended by eight weeks to 8 July 2011.[108]

Three proposals were received by the RFP closing date, and each proponent was subsequently required to participate in a proposal presentation regarding their proposal. Meetings were held from 11 to 13 July 2011.[109]

An evaluation panel, comprised of QR staff with assistance from external professional advisors, assessed the technical, financial and commercial aspects of the proposals in accordance with the evaluation plan. The proposals were assessed against a range of criteria with four evaluation teams considering local participation, legal risk, value and FIT, and providing advice to the evaluation panel. The FIT evaluation team included an assessment of the proposals in relation to DSAPT and accessibility and identified varying degrees of compliance from 'fully neglected the applicability of DSAPT 2002 as a standard'[110] to 'full acceptance of the DSAPT-Std'.[111]

Following an assessment of the three proposals, the evaluation panel recommended two proponents progress to the negotiation phase, with the third proponent suspended from further evaluation. The preliminary evaluation of the proposals was finalised on 1 December 2011.[112]

On 1 December 2011 CBRC considered a detailed business case for the procurement of the NGR trains, noting an outcome of the business case was the procurement of 150 three-car trains on a 'design, build, maintain' basis.[113]

On 6 January 2012 the two shortlisted proponents, Bombardier and AdvanceRail, were advised they had been selected to progress to the negotiation phase of the RFP process,[114] and UGL Limited was advised that its involvement in the RFP process was suspended.[115]

Amendments to performance specifications

The performance specification for the NGR train was amended during the preliminary evaluation period, including changes relevant to compliance with the disability legislation and functional requirements.

On 20 May 2011 QR issued a notice of change and a revised performance specification that, among other amendments, required one toilet module on each three-car interurban train and two toilets on each six-car interurban train (rather than one toilet module on all interurban trains).[116] This amendment appears to correct an anomaly in the original performance specification that resulted in a six-car interurban train being required to have one toilet while an interurban train comprised of two three-car trains coupled together would be required to have two toilets (one in each three-car train).[117]

QR then issued a subsequent request for clarification on 20 October 2011 advising that amended specifications would require six-car trains with an intermediate guard cab and two toilets on each interurban train (the option for three-car trains was removed).[118] The reason for this amendment appears to be primarily based on increasing the seating and carrying capacity of the trains.[119]

While the amendment stipulated that the 'Project is for six-car multiple units only' and that 'the six-car set it (sic) to have two toilets',[120] implying that each six-car train was to have two toilets, from other documentation, it is apparent that the requirement for two toilets applied only to the interurban trains.[121]

Ministerial and senior executive involvement

The former Deputy Premier, Treasurer and Minister for State Development and Trade, Mr Andrew Fraser, and the former Minister for Transport and Multicultural Affairs, the Honourable Annastacia Palaszczuk MP, met with the chairman of one of the proponents on 11 November 2011.

Although, the purpose of the meeting was to discuss initiatives such as the Gold Coast Light Rail and future opportunities in Queensland, rather than the NGR project, the meeting occurred while the organisation was a proponent in the procurement process.[122]

At the time of the meeting, QR's shareholding ministers were the former Minister for Finance and the Arts and the former Minister for Transport and Multicultural Affairs. QR was not an area of portfolio responsibility for the former Deputy Premier, Treasurer and Minister for State Development and Trade.[123]

The NGR project team provided advice to the office of the former Minister for Transport and Multicultural Affairs recommending that the meeting not proceed due to probity issues. However, as the meeting did proceed, the NGR project's probity advisor conducted a probity session with the minister's office prior to the meeting being held.[124]

The former QR CEO also met with the proponent's chairman on 11 November 2011. The purpose of the meeting was, again, not to discuss the NGR project; however, the meeting occurred while the chairman's organisation was a proponent in the procurement process being undertaken by QR. The CEO did not seek or receive probity advice prior to meeting.[125]

4.6 Project pause and restructure

On 8 May 2012, following the state election on 24 March 2012, the new Minister for Transport and Main Roads requested that the NGR project be put on hold pending an independent commission of audit into the state's finances and consideration of whether the project's 'funding and delivery method provides the best overall transport and financial outcome'.[126]

As part of the review of the NGR project, Queensland Treasury Corporation (QTC) was engaged to independently assess alternative procurement financing options.[127] In considering the suitability of the financing options QTC took into account the budget impact, change risk, credit rating, off-balance sheet capability and value for money. While QTC found that an availability PPP financing model could provide additional benefits, it also noted that there were risks in introducing a significant change late in the procurement process.[128]

Following the review of the NGR project, it was recommended, among other things, that the project lead change from QR to TMR and that discussions be held with the two proponents about transitioning to an availability PPP model. In September 2012 CBRC approved Projects Queensland (PQ) becoming the project lead, managing the procurement process on TMR's behalf, and endorsed discussions with the proponents. CBRC also noted that TMR would refine the scope of the project to reduce costs, with proposed changes including reducing the number of toilets on the trains from two to one and removing the intermediary guard cab.[129]

Both proponents were reported to have responded positively to an availability PPP model and CBRC endorsed progressing the availability PPP model in November 2012.[130] On 4 December 2012 the two proponents were advised that the pause on procurement had been lifted and updated RFP documents reflecting changes to the project would be provided.[131]

Ministerial involvement

The former Minister for Transport and Main Roads, Mr Scott Emerson, wrote to one of the proponents on 15 November 2012 requesting the return of the executed transfer notice to facilitate the transfer of the procurement process from QR to TMR.

In the correspondence, the former minister also responded to the proponent's request for a meeting regarding a probity issue and offered to meet the proponent with TMR representatives and the probity advisor present.[132] From the information available to the Commission, it does not appear that a meeting subsequently occurred.

At the time the correspondence was sent, the former Minister for Transport and Main Roads was a shareholding minister of QR and the responsible minister for TMR.[133]

Amendments to performance specifications

The specification for the NGR trains was amended following the project pause, with PQ issuing two requests for clarification relevant to compliance with the disability legislation and functional requirements on 21 December 2012. The requests for clarification advised that amended specifications would require no intermediate guard cab on the trains and one toilet on interurban trains (rather than two toilets) located at the leading end of accessible car B.[134]

The removal of the intermediate guard cab and the reduction in toilets was primarily a cost-saving measure.[135] The stipulation that the toilet must be located at the leading end of accessible car B ensured the toilet location was aligned with the existing boarding point for passengers with disabilities. The associated requirement for an access path past the toilet module that 'facilitated an unrestricted able-bodied pedestrian walkway',[136] conceded that the amendments would result in an access path that was not DSAPT compliant.

Market interest in new model

On 11 March 2013, Downer EDI, which had withdrawn as a member of one of the consortia involved in the procurement process in 2011, requested that consideration be given to its re-inclusion in the process for the procurement of the NGR trains under the availability PPP model. TMR, as project lead, declined Downer EDI's request on 25 March 2013.[137]

4.7 Second request for proposals

PQ issued the revised RFP to the two proponents, Bombardier and AdvanceRail, on 22 March 2013, more than two years after the first RFP was issued. The RFP was updated to reflect decisions to:

- make TMR the project principal in place of QR and appoint PQ as the project manager to deliver the project on behalf of TMR
- amend the delivery and funding model to an availability PPP model
- standardise the fleet to require one toilet on each train (rather than only on interurban trains)
- relax the requirements for local industry participation in the supply of rollingstock
- confirm the preferred site for the new depot as Wulkuraka.

The RFP was for the proponents to make available sufficient rollingstock to provide 72 daily services via six-car trains, on an availability PPP basis, for a period of 32 years. Under the availability PPP the proponent was to:

- design, construct, supply, test and commission the trains and associated equipment (including simulators) and make them available to the State or its operators
- design, construct, fit-out, commission and maintain a new depot
- provide availability and maintenance services
- maintain the trains and associated equipment
- return the trains, associated equipment and the new depot on termination or expiry of the project deed in the required condition
- secure sufficient finance to perform its obligations under the project documents.[138]

The performance specification issued with the RFP required the configuration of the trains to include a full-width crew cab at each end of the train and one toilet module at the leading end of accessible car B.[139]

Accessibility requirements

The specifications relevant to the disability legislation and functional requirements outlined in the performance specification were broadly consistent with the specification issued with the first RFP in 2010 (see section 4.5). The most substantial change was the specification for one toilet in each train located at the leading end of accessible car B and additional requirements regarding allocated spaces. The revised specification stipulated the allocated spaces must be aggregated in cars three and four and:

- allocated spaces must include solutions for safely securing wheelchairs and mobility aids
- the size and number of allocated spaces shall be in accordance with DSAPT
- the number of allocated spaces paired across the centreline of the car (restricting movement in the main passenger area) must be minimised
- each allocated space must have direct access to the vestibule and a door
- the number of allocated spaces with a direct path to the toilet must be maximised
- seating nearest to allocated spaces shall be fixed seats facing towards the space to facilitate interaction with people accompanying the person using the space.[140]

The revised specification also stipulated that each vestibule must contain at least two priority seats, that a locker for storing an access ramp must be in accessible car B rather than the crew cabs, and that one access ramp must be supplied with each train.[141]

Proposal close and evaluation

Proposals were received from the two shortlisted proponents by the final closing date of 19 August 2013.

An evaluation panel, comprised of representatives from PQ, TMR, QR and an external consultant, evaluated the proposals in accordance with the evaluation plan. Similar to the first RFP, the proposals were assessed against a range of criteria, with four evaluation teams considering local participation, legal risk, value and FIT, and providing advice to the evaluation panel.

In assessing the proposals, and their compliance with the various specifications, the evaluation panel noted:

> *The danger in an output based Performance Specification is that many areas may not be tested until detailed design and/or the rollingstock is on the network.*[142]

Following an initial assessment of the proposals, the evaluation panel recommended the selection of Bombardier as the preferred proponent, subject to the successful resolution of some commercial matters unrelated to accessibility, and for further detailed negotiation prior to a final evaluation.[143] The initial evaluation of the proposals was finalised on 8 October 2013.

The probity advisor confirmed that the evaluation was conducted in accordance with the evaluation plan, probity plan, terms and conditions of the RFP, QPP and TMR procurement policies.[144]

CBRC endorsed the recommendation to award preferred proponent status to Bombardier on 17 October 2013 and authorised the former Minister for Transport and Main Roads, Mr Scott Emerson, or his delegate, to execute the relevant project documents.[145]

After further negotiation and correspondence with both proponents, the results of the initial evaluation were ratified by the evaluation panel on 15 November 2013 and the panel confirmed its recommendation of Bombardier as the preferred proponent.[146]

Bombardier's proposal

Bombardier's proposal confirmed that the NGR trains 'will be compliant to the requirements of DSAPT'[147] and noted that a clause-by-clause assessment had been completed against the requirements of DSAPT.[148] The proposal also indicated the trains satisfied the QR Safety and Environment Management System (SEMS) *MD/10/134 - Locomotive and Passenger Vehicle Access* by making provisions for passengers with accessibility requirements.[149] Responses relevant to the disability legislation and functional requirements are outlined in Appendix 10.

However, in relation to seating and access paths in the accessible cars the proposal stated:

> *…due to technical limitations of the structure gauge it is not possible to satisfy all requirements collectively of the performance specification and associated standards (DSAPT).*[150]

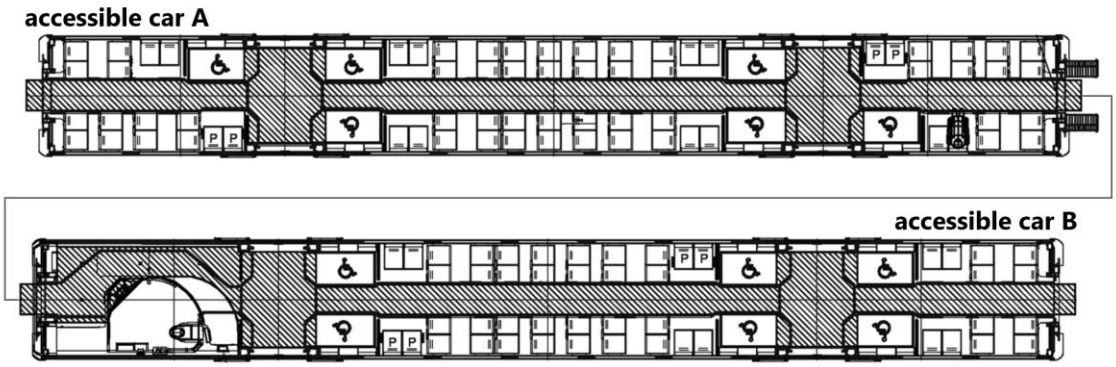
Bombardier provided three options for seating layouts outlining the technical restrictions and compliance with the performance specification and DSAPT for each option. Option one had predominantly transverse seating down both sides of the accessible cars. Option two had predominantly transverse seating down both sides of accessible car A and one side of accessible car B with longitudinal seating down the central area of one side of accessible car B. Option three had transverse seating in the front and central areas of both sides of accessible car A and at the rear of accessible car B, with longitudinal seating in the rear of accessible car A and down the front and central areas of both sides of accessible car B.

None of the three options proposed by Bombardier was fully compliant with the performance specification and DSAPT in relation to access paths.

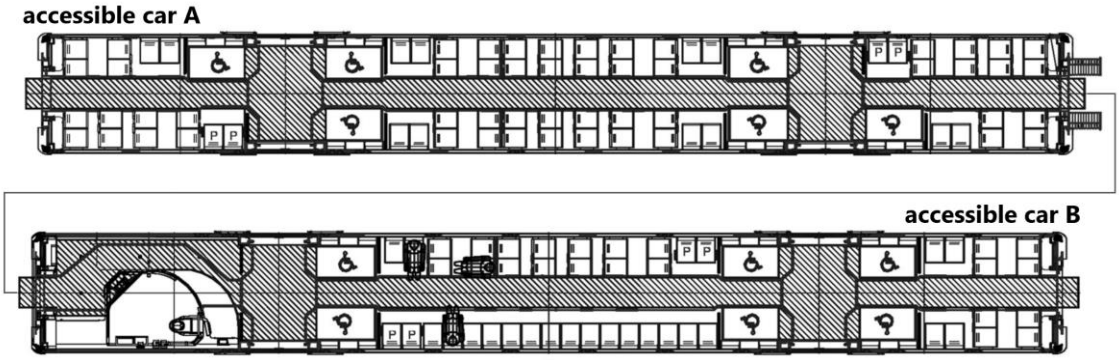
The seating layouts proposed by the three options is shown in Figure 10.

Figure 10. Seating layout options

Option one



Option two



Option three

All three options provide a technically compliant access path to the toilet only from the two allocated spaces at the front vestibule in accessible car B. Access to the toilet module is restricted from accessible car A by the width of the path past the toilet module and from the allocated spaces at the rear of accessible car B by the width of the access path between the allocated spaces at the front vestibule. The maximum path width between the allocated spaces is 660mm under options one and two and 800mm under option three (the omission of flip-up seats in four of the allocated spaces increases the available space).

Bombardier noted in the proposal:

> *…a DSAPT compliant access path (850mm) from each multipurpose bay [allocated space] … to the DSAPT compliant toilet module cannot be achieved due to the technical limitations of the structure gauge.*[151]

None of the options provide for a technically compliant access path between all of the allocated spaces at the front and rear vestibules of the accessible cars.

Table 1 provides an overview of each option's compliance with relevant performance specifications and the DSAPT provisions relating to access paths.

Table 1. Compliance with performance specifications and DSAPT – layout options

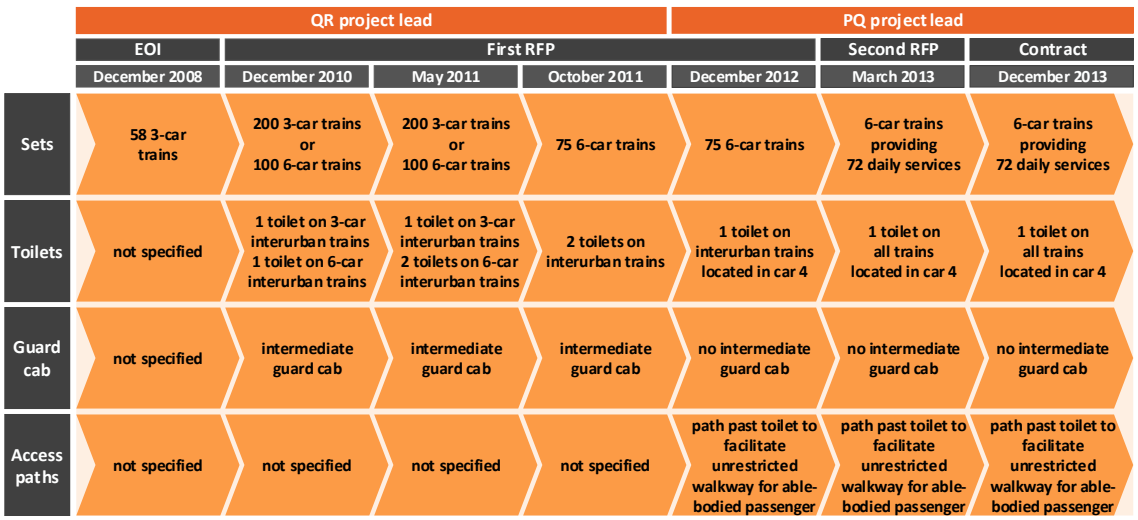
Requirements	Option one	Option two	Option three
Toilet module			
Performance specification 8.11.1 – the toilet module shall be located at the leading end of accessible car B	compliant	compliant	compliant
DSAPT section 15.3 – if toilets are provided there must be at least one accessible toilet available to passengers using mobility aids	non-compliant (access from two allocated spaces)	non-compliant (access from two allocated spaces)	non-compliant (access from two allocated spaces)
Access paths			
DSAPT section 2.6 – access paths must be provided between entrances, exits, allocated spaces and essential facilities with a minimum width of 850mm	non-compliant	non-compliant	non-compliant
▪ path width past the toilet module	670mm	670mm	670mm
▪ path width between allocated spaces	660mm	660mm	800mm
▪ path width between seats in centre of accessible car A (aisle between vestibules)	670mm	670mm	670mm
▪ path width between seats in centre of accessible car B (aisle between vestibules)	670mm	800mm	960mm
DSAPT section 2.8 – access paths must extend from the entrance to facilities or spaces provided for passengers with disabilities	non-compliant	non-compliant	non-compliant
Performance specification 8.4.2(g) – each allocated space shall have direct access to the vestibule and a door	compliant	compliant	compliant
Performance specification 8.4.2(j) – the number of allocated spaces with a direct path to the toilet shall be maximised	two spaces have access	two spaces have access	two spaces have access

Requirements	Option one	Option two	Option three
Allocated spaces			
Performance specification 8.4.2(a) – fold-down seats shall be installed in all allocated spaces	compliant	compliant	non-compliant
Performance specification 8.4.2(f) – the number of allocated spaces paired across the centreline of the car (restricting movement in the main passenger area) shall be minimised	two out of 12 spaces not paired	two out of 12 spaces not paired	two out of 12 spaces not paired
Performance specification 8.4.2(f) – all allocated spaces shall be in the accessible cars	compliant	compliant	compliant
Performance specification 8.4.2(h) – seating nearest to the allocated spaces shall be fixed seating facing towards the allocated space	non-compliant	non-compliant	non-compliant
DSAPT section 9.1 – the minimum size to an allocated space is 1300mm by 800mm	compliant	compliant	compliant
DSAPT section 9.6 – at least two allocated spaces must be provided for each car	compliant	compliant	compliant
DSAPT section 9.7 – allocated spaces are to be consolidated, if possible, to accommodate larger mobility aids	non-compliant (no consolidated spaces)	non-compliant (no consolidated spaces)	non-compliant (no consolidated spaces)

4.8 Technical requirements

Between 2008 and 2013 there were numerous changes to the specifications for the NGR trains. Key changes relevant to compliance with the disability legislation and functional requirements are outlined in Figure 11 (see sections 4.5 and 4.6 for further details regarding the changes).

Figure 11. Overview of key specification changes



4.9 Procurement finalisation and project handover

On 20 December 2013 the Under Treasurer wrote to the Director-General of TMR to formalise the handover of the NGR project from PQ to TMR. The letter stated that the 'project deed will properly represent an acceptable allocation of risk and provide the basis for delivery of a value for money outcome for the State'. The letter noted a number of inherent risks that would need to be carefully managed and requirements that would need to be fulfilled early in the delivery phase of the project.[152]

Similarly, the Project Manager wrote to the General Manager (Roads, Rail and Ports System Management) to outline the outstanding issues and provide advice on the next steps for addressing the issues following handover of the project.[153]

The Director-General of TMR informed the Commission that it was on the basis of the advice from the Under Treasurer, in conjunction with advice from the Project Manager, the NGR project's legal and financial advisors and the General Manager (Roads, Rail and Ports System Management), who was the project owner during the procurement phase, that he executed the project deed on behalf of the State.[154]

Compliance with disability legislation and functional requirements was not identified as an issue or risk in the handover correspondence.

4.9.1 Projects Queensland's end project report

Following execution of the project deed on 20 December 2013 and financial close on 16 January 2014, PQ prepared an End Project Report to close out its role in the project as the procuring agent.

The End Project Report provides a summary of the project's performance against the objectives identified when PQ began managing procurement of the trains. The key learnings for the project included two procurement related matters:

> *Two shortlisted proponents was not sufficient, although the team was able to maintain competitive tension (but gamesmanship occurred, eg on probity matters)*
>
> *Significant difficulties were created with bidders by changing the procurement process so late in an existing process (one proponent was better able to adapt to the change).*[155]

4.10 Findings and conclusions

Procurement of the NGR trains was not a model process. The process was unnecessarily prolonged and marred by delays, disruptions, and failures to adhere to policies, guidelines and frameworks. Procurement of trains that complied with disability legislation and functional requirements was impeded by decisions to specify requirements that were non-compliant, a general acquiescence to non-compliance and a flawed understanding of DSAPT requirements.

Protracted timeframes

The procurement process took five years from EOI to contract execution, substantially longer than would be typical of a comparable infrastructure project. The National PPP Guidelines suggest the process from EOI to contract execution should take 12 to 18 months. While the Commission notes that the NGR project was subject to a 'project pause' for six months, the procurement process had been underway for more than three years at the time the pause occurred.

Prior to the pause, the NGR project, led by QR, was characterised by a lack of rigour, continual slippages and missed milestones (see Appendix 11 for an overview of planned procurement milestones at various stages of the process). The project health check undertaken by Ernst & Young, one year after the release of the EOI, highlighted the poor state of the project. It noted that the 'RFP process is substantially below what would reasonably be expected of a comparable procurement project'.

Another year lapsed following the health check before the first RFP was released, and the project was still underway 16 months later when the project pause occurred.

The protracted process for the procurement of the NGR trains under QR's lead, and the effect of this on the cumulative project timeframe, was not reflective of best practice, and the commitment of time and resources for such an extended period was not cost-effective for either QR or the proponents involved.

The project pause, placing procurement on hold for six months while a review was undertaken, and the subsequent changes to the procurement model and project lead, further delayed completion of the procurement process. Recommencing the RFP process under the availability PPP model extended the procurement timelines while the proponents made necessary changes to their commercial arrangements and revised their proposals to meet the requirements of a PPP model.[156]

In the Commission's view, the lengthy process resulted in increased pressure to proceed with one of the two short-listed proponents, even with designs that did not demonstrate technical compliance with disability legislation and functional requirements. There was a reluctance to recommence the procurement process after five years by calling for new tenders, given the time and money invested in the process and the substantial delays that starting again would mean for delivery of new rollingstock.

The prolonged procurement process may also have contributed to the withdrawal of organisations from two of the proponents' consortia in mid-2011, two years into the process, with unknown impacts on competition and potential design options.

Disruptions and limited competition

The project pause and subsequent changes to the procurement model and project lead delayed completion of the procurement process and created disruption and discontinuity.

Changing the procurement model to an availability PPP procurement so late in the process created disruptions for the project team. It required the recommencement of the RFP phase, and caused difficulties for the two shortlisted proponents with one reportedly better able to adapt to the change as they revised their proposals.[157]

The timing of the change also prevented other parties who were interested in bidding under the PPP model from participating in the process. Downer EDI requested re-inclusion in the process under the new model, and other parties may have been similarly interested in tendering for the contract given that it was four years since market interest was tested with the EOI. Restricting the field to the two shortlisted proponents for such a significant change to the procurement model may have been challenged by other potential suppliers. However, the Commission notes that the process contracts were in place with the two shortlisted proponents, which potentially limited the State's capacity to reopen the bidding process.[158]

While the Commission makes no finding on the appropriateness or value for money of an availability PPP model for the procurement of the NGR trains, in the Commission's view, changing to a PPP model so late in the procurement process was disruptive. This view was shared by a range of stakeholders interviewed by the Commission, including the probity auditor.[159]

It is also significant to note that PQ's End of Project report identified that two proponents were not sufficient, and that the limited competition resulted in 'gamesmanship' during the second RFP process.[160] Given the substantial change in the procurement model, and the length of time since the EOI, returning to the open market when the procurement model was changed may have resulted in new bidders, increased competition and different design outcomes.

Changing the project lead from QR to PQ (acting on behalf of TMR) so late in the procurement process was also disruptive and created animosity between the agencies. Some QR staff believed the project should have remained with QR.[161] The disruption, the inherent break in continuity, and resulting animosity may have contributed to noncompliance through relevant information not being transferred, noting that key members of the QR project team were retained on the project, and information not being shared across agencies in subsequent phases of the project.

In the Commission's view, the late stage changes resulted in delay, disruption and increased risk and were not reflective of best practice procurement. The role the changes played in relation to the procurement of non-compliant trains is, however, not determinable. It is unclear whether continuing with the same procurement model and retaining QR as the project lead, particularly given QR's ongoing involvement in the project, would have produced different compliance outcomes.

Non-compliant technical requirements

The need for DSAPT compliance was recognised in the performance specification with the requirement that the design of the NGR trains 'complies with the requirements of DSAPT'. However, this was contradicted and confused by other specifications that meant the design would not satisfy the requirements for technical compliance. Indeed, the performance specification for the second RFP conceded non-compliance with the specification that the access path past the toilet module facilitate 'an unrestricted **able-bodied** pedestrian walkway' (emphasis added).[162]

The critical issue for compliance with DSAPT was the reduction in the number of toilets on the trains. The decision to require only one toilet located at the leading end of accessible car B, made both technical compliance and equivalent access compliance impossible.

The width restrictions of a narrow-gauge vehicle on the Citytrain network meant that it was not possible to comply with both the minimum dimension requirements for the toilet module and the minimum width requirement for the access path past the toilet module, thereby restricting access to the toilet module for passengers using mobility aids to passengers located in accessible car B.

While compliance with DSAPT can be achieved through equivalent access compliance where technical compliance is not possible or desirable from an accessibility perspective, it is highly doubtful this could be demonstrated in relation to the provision of one toilet at the leading end of accessible car B.

The proposed approach to provide access to the toilet for passengers with disabilities travelling in accessible car A was for the passenger to contact the guard to request to use the toilet, for the passenger to then be assisted to disembark at the next station and to reboard the train in accessible car B. Although this approach would provide access, it would not, in the Commission's view, satisfy the criteria for equivalent access compliance, particularly regarding the need for equivalence of convenience and dignity.

The decision to include only one toilet module at the leading end of accessible car B resulted in a fundamentally non-compliant design. Other specifications, such as the configuration of the allocated spaces, resulted in technical non-compliance; however, they were open to equivalent access compliance, subject to further consideration during the design phase and consultation with the disability sector.

The decision to remove the intermediate guard cab did not result in non-compliance with DSAPT and the effect of this decision from a functional requirement perspective is dependent on how boarding assistance is subsequently provided.

The Commission was advised that the critical decision to reduce the number of toilets on the NGR train, as well as the decision to remove the intermediate guard cab, was driven by the former Director-General of TMR, Mr Michael Caltabiano.[163] The proposed reduction in the number of toilets and removal of the guard cab was noted by CBRC in September 2012,[164] and the decision to include one toilet on each train and remove the guard cab was subsequently endorsed by the Transport Executive Committee and the former Minister for Transport and Main Roads.[165]

In the Commission's view, the decision to request a non-compliant train through the procurement process and to then accept a proposal based on a non-compliant design and enter into a project deed on that basis was seriously flawed. However, the Commission notes, as discussed below, that these decisions were endorsed on the basis of incomplete information, as non-compliance issues were not escalated to senior decision makers.

CBRC and ministerial decisions

CBRC and the former Minister for Transport and Main Roads, who made decisions regarding the procurement of the NGR trains, including the decision to approve a preferred proponent and award a contract on the basis of a non-compliant design proposal, cannot fairly be blamed for the decisions. Documents presented to the former minister and consequently to CBRC recommending that Bombardier be selected as the preferred proponent and awarded the contract did not raise concerns regarding compliance with the disability legislation or functional requirements.

While the former minister and CBRC members could have made further inquiries to test the validity of the advice, they were entitled to rely and act upon the advice of senior public servants that they believed was the result of proper consideration.

It is imperative that information provided to decision-makers is accurate and comprehensive. In addition to the absence of any information regarding non-compliances, the Commission identified several instances of inaccurate and ambiguous information in the material prepared for CBRC's consideration regarding proposed changes to the project lead and procurement model. For example, the material stated that the NGR project was for the procurement of 150 trains, when in fact the RFP was for 75 trains. It also stated that reducing the number of toilets would result in cost savings but did not detail that only a portion of the NGR fleet (20 percent) would have toilets.[166] While these inaccuracies and ambiguities may not have influenced the decisions or outcomes, they are reflective of a flawed process.

Flawed understanding and application of DSAPT

It was apparent to the Commission, from the documents provided and interviews conducted, that the NGR project team was aware of the disability legislation during the procurement process and the fact the disability legislation applied to the NGR trains.

What the NGR project team lacked was a detailed understanding of the application of the requirements under DSAPT, resulting in confused and contradictory performance specifications. The team also did not understand how compliance could be achieved through equivalent access compliance and did not appreciate the possible legal consequences of non-compliance.

While compliance could, for some elements of the train design, have been achieved through equivalent access compliance, this was not contemplated in the performance specification or the project deed. Nor was there evidence of a plan or intention for the NGR project team to pursue equivalent access compliance. Rather, there appeared to be an acquiescence that the NGR trains would not be 100 percent compliant and that this was acceptable.

In the Commission's view, this acquiescence to non-compliance resulted in issues not being escalated and senior decision-makers not being adequately informed about non-compliance issues and the potential consequences. While this approach permeated the entire procurement process, the lack of information provided to senior decision-makers about non-compliance was particularly relevant at the critical junctures of deciding to reduce the number of toilets on the trains, recommending a preferred proponent, and executing the project deed.

While the NGR project team, including the project manager, was aware of non-compliances at these critical junctures[167] the Commission found no evidence these issues had been escalated and senior decision-makers advised. Senior decision-makers were not advised that the performance specifications and resulting preferred proponent design were not compliant with the disability legislation, were not advised of options to address the non-compliance, and were not advised of the consequences of proceeding with procuring non-compliant trains.

The Director-General of TMR, former Executive Director of Projects Queensland, former Minister for Transport and Main Roads and former Treasurer and Minister for Trade all advised the Commission that they were not aware of compliance issues regarding the disability legislation and functional requirements.

This was perpetuated into the project delivery phase, with non-compliance with disability legislation and functional requirements not identified as an issue or risk in the handover process for the design and delivery phase of the NGR project to consider and address. As a result, the Director-General of TMR remained unaware of the compliance issues as TMR began leading the delivery phase of the project.

Recommendation 1

The Commission recommends that the Queensland Government produces guidelines regarding the application of the requirements under the disability legislation, the mechanisms for compliance and the potential consequences of non-compliance. These guidelines should be provided to all procurement officers, and employees involved in planning or designing public transport infrastructure.

Recommendation 2

The Commission recommends that all procurement officers and senior executives who may be involved in the procurement of infrastructure to which the disability legislation applies, receive training to make sure they are aware of the legislation and can ensure its proper application.

Recommendation 3

The Commission recommends that regular updates about the disability legislation and any changes to the requirements be provided to procurement officers engaged in public authorities.

Non-compliance with procurement policies, guidelines and frameworks

A range of policies, guidelines and frameworks applied to the NGR project at various stages (see section 2.5 for information about the policies, guidelines and framework). The degree to which the project complied with these policies, guidelines and frameworks was variable.

The health check undertaken by Ernst & Young in December 2009 found that while documents required under the QPP were produced, they did not have the rigour expected for a procurement process of the scope and size of the NGR project. These documents, particularly the significant procurement plan, are intended to guide and inform procurement processes to ensure appropriate planning and preparation is undertaken to achieve the required outcomes in an accountable and transparent manner. Tokenistic compliance through the production of poor-quality documentation undermines the intent of the policy.

Another area of concern relates to disclosure requirements under the National PPP Guidelines. The guidelines, as they apply specifically to Queensland, require the responsible minister to table in parliament a summary of the project agreements, signed off by the Auditor-General as a fair reflection of the agreements. They also require the responsible minister to table the probity auditor's final report.[168] The former Minister for Transport and Main Roads did not table a summary of the NGR project agreements or the probity auditor's final report.

The Commission identified only three PPP projects where the agreement summary and probity auditor/advisor final reports had been tabled as required by the National PPP Guidelines. The Commission is of the view that tabling these documents supports accountability and transparency in PPP procurement processes; however, if it is not the intention of government that the documents be tabled, this should be reflected in the National PPP Guidelines. Retaining the requirement in the National PPP Guidelines but having a practice of non-compliance creates at best confusion and at worst a culture of ambivalence or disregard for the policies, guidelines and frameworks governing procurement processes.

Public authorities' practices regarding adherence to policies, guidelines and frameworks are particularly relevant given the recent amendment to the QPP to include compliance with the DDA as a government target for procurement activities. While the Commission supports the amendment to the QPP to emphasise DDA compliance as a fundamental consideration in procurement processes, it also notes that the practical effect of the inclusion is dependent on the QPP being applied, and compliance being monitored and enforced.

Appropriate monitoring and enforcement mechanisms must be in place to ensure procurement processes comply with the DDA and all governing policies, guidelines and frameworks, and legislative requirements.

Recommendation 4

The Commission recommends that training on procurement policies, guidelines and frameworks and the requirements under the disability legislation, be provided to directors-general and relevant chief executive officers as the parties responsible for ensuring the polices, guidelines and frameworks are applied within their organisations.

Recommendation 5

The Commission recommends that templates used to seek Cabinet Budget Review Committee endorsement regarding procurements be updated to require information on the procurement's compliance with the disability legislation.

Recommendation 6

The Commission recommends that the Queensland Government either requires and enforces the tabling in parliament of the project agreement summary and probity auditor/advisor final report, or requests the removal of the requirement from the National Public-Private Partnership Guidelines as they apply to Queensland.

Additional guidance in procurement policies and infrastructure guides

As mentioned, the Commission supports the recent amendment to the QPP to include compliance with the DDA as a government target. However, the Commission notes that no information is included in the relevant 'How to apply this principle' sections of the QPP to provide guidance about the application of the requirement.

This is particularly relevant given the Commission's findings that the NGR project team was, throughout the project, aware of the need to comply with the DDA but failed to effectively implement arrangements to achieve compliance. It may be that in some cases the project team simply did not know how to manage compliance issues.

The inclusion of additional guidance regarding the application of the requirement to comply with the DDA in the QPP may enhance implementation of the requirement. For example, the guidance could state:

> *Agencies will ensure processes are in place to manage accessibility considerations, including compliance with the Disability Discrimination Act 1992 (Cth) and other functional requirements. For significant procurements, an accessibility compliance plan should be developed.*

The minimum requirements for agency procurement plans could also be amended to include a requirement for 'strategies to manage and enhance accessibility through the procurement process'.

Recommendation 7

The Commission recommends that the Queensland Procurement Policy be amended to provide guidance on measures to ensure compliance with the *Disability Discrimination Act 1992* (Cth) in relevant 'How to apply this principle' sections of the policy.

The Commission notes that TransLink has developed a Public Transport Infrastructure Manual (PTIM) as the 'overarching reference tool for the planning and design of public transport infrastructure' for all Queensland public transport services.[169] Under the PTIM public transport infrastructure is defined as infrastructure for or associated with the provision of public transport, including facilities such as bus and railway stations, paths and set-down areas. The PTIM defines the elements of good facilities, including the application of the disability legislation, and is intended to be used when developing new facilities and to assist with evaluating existing facilities.[170]

The PTIM has modal infrastructure chapters providing guidance for bus stops, bus stations and taxi facilities, but there is no modal infrastructure chapter for railway stations. The PTIM also focusses on facilities, it does not provide planning and design guidance for conveyances that provide public transport services, such as trains.

In the Commission's view, providing planning and design guidance for a wider range of public transport facilities and for public transport conveyances would provide a more complete reference tool for planning, designing and implementing public transport services on the TransLink network.

Recommendation 8

The Commission recommends that the Public Transport Infrastructure Manual be updated to include modal infrastructure chapters for all relevant public transport facilities, including railway stations, to ensure it provides a comprehensive reference tool for the entire TransLink network.

Recommendation 9

The Commission recommends that the Public Transport Infrastructure Manual be updated, or a similar document created, to provide information to guide the planning and design of public transport conveyances.

Ministerial and executive involvement

The former Minister for Transport and Multicultural Affairs, the Honourable Annastacia Palaszczuk MP, met with the chairman of one of the proponents on 11 November 2011. At the time of the meeting, the Honourable Annastacia Palaszczuk MP was a shareholding minister for QR.

On 15 November 2012 the former Minister for Transport and Main Roads, Mr Scott Emerson, wrote to one of the proponents requesting the return of the executed transfer notice and responding to the proponent's request for a meeting. At the time the correspondence was sent, Mr Emerson was a shareholding minister for QR and the responsible minister for TMR.

While the meeting and correspondence did not, in the Commission's view, affect the outcome of the procurement process, a cautious approach should be taken by ministers engaging directly with proponents during an active procurement process within an area of their ministerial responsibility. Procurement processes need to be, and be perceived to be, transparent and free from undue influence.

Senior executives of public authorities engaging directly with proponents during a procurement process, except for a formal procurement reason, should similarly exercise caution. Advice from the probity advisor should be sought prior to any meeting and ideally the probity advisor should be present during the meeting.

Recommendation 10

The Commission recommends that the Queensland Procurement Policy emphasises the importance of senior executives not directly engaging with proponents during a procurement process except for a formal procurement reason. If engagement is necessary, senior executives should obtain probity advice and ideally have the probity advisor present at the meeting.

5 Design approval process under the project deed

The terms of reference directed the Commission to have regard to the design approval process under the contract including the review of scale mock-ups and processes adopted to ensure compliance with the disability legislation. This chapter examines the technical requirements and design approval process under the project deed for the new generation rollingstock project.

5.1 Introduction

The State (acting through TMR) and NGR Project Company Pty Ltd (Qtectic) entered into a project deed on 20 December 2013 for Qtectic to, among other things, design, construct, test, supply, commission and deliver the NGR trains and maintain them to ensure their availability during the term of the deed (32 years unless terminated earlier).[171] The commencement date for the 32-year term was 15 January 2014.

Under this type of contract, once the project deed was signed design responsibility for the NGR trains passed to Qtectic, based on the design requirements detailed in the performance specification, with the project team reviewing and approving the design. Qtectic's responsibility for design under this type of contract is much greater than in traditional contracts.

There are advantages and disadvantages to a design and construct model, including:

- a degree of certainty over cost (as long as the performance specifications are comprehensive and accurate)
- potential for reduced construction time, with some design and construction elements able to run concurrently (construction begins before the entire design plans are completed)
- the buyer is required to commit to a concept design at an early stage, prior to the completion of detailed designs
- cost savings may not be achieved if the buyer undertakes detailed checking of the design and technical requirements
- the potential for suppliers to interpret the performance specification in a way that achieves strict compliance at the lowest cost with less than optimal design outcomes.[172]

Design of the NGR trains from commencement of the contract to the approval of the final design module lasted two years.

5.2 Design approval process

The NGR trains were procured based on performance specifications. The broad parameters for the design of the NGR trains were defined by the technical requirements outlined in the project deed, with the detail of how Qtectic would construct the trains in accordance with the requirements reviewed and refined through the design approval process.

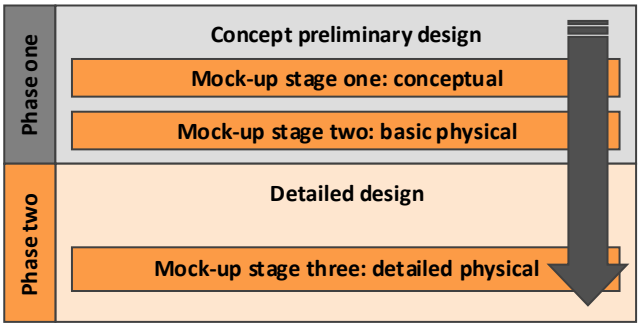
The project deed requires Qtectic to design, construct, test, supply, commission and deliver each NGR train so it is fault free, satisfies the acceptance criteria and is constructed in accordance with the approved design. To be 'fault free' the train must comply with all provisions of the project deed including the 'Rollingstock Technical Requirements', which is defined to mean both the performance specification and Qtectic's proposal.[173]

5.2.1 Overview of design process

The project deed provides for two design phases for the trains: concept preliminary design and detailed design.[174] There are three mock-up stages for the passenger compartment and toilet module; two within the concept design phase and one within the detailed design phase (see Figure 12). The three mock-up stages are:

- stage one: conceptual mock-up – drawings and/or 3D computer renderings to give a general appreciation of the design and illustrate any identified constraints
- stage two: basic physical mock-up – finished shell illustrating the structure, spatial concepts and suitability of access and egress
- stage three: detailed physical mock-up – full size, fully finished mock-ups equipped with actual equipment and materials identical to the final design configuration
  - the passenger compartment must have at least half the interior covered including door, vestibule area, allocated spaces, seating styles and inter-car gangway
  - the toilet module may be incorporated with the passenger compartment mock-up.[175]

Figure 12. Design phases



Design approval

Qtectic is required to prepare, and submit for approval, design documentation:

- reasonably necessary to:
  - explain and amplify the performance specifications, Qtectic's proposals and any variations
  - enable Qtectic to execute and complete the design and construction of the trains
- required by the performance specifications or Qtectic's proposal
- to provide details of selections for materials, finishes, fittings or another relevant matter
- of a critical nature for reasons of safety, complexity or interfacing requirements.[176]

TMR is required to return the documentation marked 'approved', 'approved except as noted' or 'not approved' within 20 business days, with Qtectic then taking the appropriate action:

- 'approved' – execute and complete the elements shown in the design documentation
- 'approved except as noted' – execute and complete the elements shown in the design documentation adjusted to reflect comments
- 'not approved' – revise and then resubmit the design documentation.[177]

Permitted design changes

The project deed provides that TMR could have made permitted design changes at any time prior to the relevant design freeze date. Design changes were permitted if they were consistent with, and within the scope of, the technical requirements or consistent with, and within scope of, the performance specifications, even if they were inconsistent with Qtectic's proposal.[178]

This allowed TMR to make changes under the deed to aspects of the passenger compartments and toilet module until the relevant freeze dates (see Table 2).[k]

Table 2. Permitted design changes and freeze dates

Permitted changes		Design freeze dates[l]
Passenger compartment	Toilet module	
▪ overall floor plan and layout ▪ general location of key equipment (handrails, PEIs etc) ▪ location and layout of allocated spaces ▪ 'DSAPT'	▪ overall and key dimensions ▪ overall floor plan and layout ▪ general location of key equipment (handrails, PEIs etc) ▪ 'DSAPT'	11 June 2014
▪ general location of main equipment and controls ▪ key dimensions ▪ layout of allocated spaces ▪ seat locations	▪ key dimensions ▪ general location of main equipment and controls ▪ location and general design of doors	6 October 2014
▪ all controls ▪ internal and external fixtures and fittings (handrails etc)	▪ all controls ▪ internal and external fixtures and fittings (handrails etc)	28 May 2015

5.2.2 Phase one – concept preliminary design

Mock-up stage one: conceptual

The conceptual mock-up presentation was held on 25 March 2014 and was attended by eleven staff from QR and three staff from TMR. The presentation comprised a slideshow including drawings and 3D rendered images of the passenger compartment and toilet.

Relevant to the Commission's terms of reference, the presentation set out accessible car layout options one and three from Qtectic's proposal (see section 4.7), and noted that the toilet module was designed to AS1428.1(2001) rather than the updated 2009 version (see section 2.2.2 for information about the Australian Standards incorporated into DSAPT).[179]

Action items resulting from the presentation included:

- Qtectic supplying 2D drawings of the path past the toilet indicating its height and width
- TMR reviewing the path past the toilet to look at movement of customers and crew
- Qtectic supplying drawings with dimensions highlighting paths, doors and locations of PEIs for the two seating layout options

[k] Design freeze dates for aspects of the passenger compartments and toilet module were two months after the submission of the relevant mock-up or, for items not included in a mock-up, 20 business days after TMR was given information to enable it to make an informed decision.

[l] These dates have been calculated based on the information available to the Commission.

- TMR reviewing accessible car layout options and commenting on the preferred option
- TMR reviewing the sizes of ramps used to assist passengers to board and disembark
- Qtectic examining if the low-level PEI in the toilet module could be moved closer to the pan
- Qtectic reviewing whether circulation space would be increased by relocating the sharps bin in the toilet module.[180]

Design documentation request for approval

Qtectic submitted a request for approval of design documentation for mock-up stage one on 10 April 2014.[181] TMR responded to the request on 22 April 2014 indicating it did not have sufficient information to make a decision, and requesting a design verification matrix and justification for recommending seating layout option three.[182]

Qtectic subsequently provided additional design documentation including the reasons for recommending seating layout option three.[183] Qtectic advised that while the option was not fully compliant with DSAPT it was considered the 'optimal arrangement' given the constraints.[184]

The mock-up was 'approved with comments' on 23 May 2014. While TMR noted that some matters remain unresolved, progression to produce the stage two mock-up was approved 'to better facilitate discussion and final endorsement with stakeholders of the design'.[185]

TMR later provided a Mock-up Review Record on 13 June 2014 setting out the unresolved matters referred to in the design documentation approval. The record included the following comments regarding the design of the passenger compartment and toilet modules:

- whether the removal of flip-up seats in some of the allocated spaces in accessible car B would result in a wider aisle
- clarification about the locations of allocated spaces in relation to the requirement in the performance specification to minimise the number of allocated spaces paired across the centreline of the car
- the rationale behind changes to the bin unit and sharps container in the toilet module.[186]

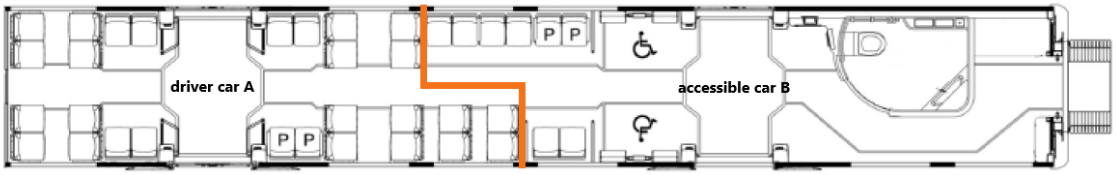
Mock-up stage two: basic physical

The basic physical mock-up inspection was held on 5 August 2014 and was attended by staff from QR and TMR and representatives from the disability sector.[187]

The mock-up of the passenger compartment was a basic timber construction to illustrate the structure, spatial concepts and suitability of access and egress. The mock-up was designed as a hybrid layout of the driver car A and accessible car B rather than representing an actual car in the train (see Figure 13). The hybrid layout was intended to display the various seating configurations present across the cars.[188]

The toilet module mock-up, also a basic timber construction, represented the module's critical dimensions and major equipment. The mock-up of the toilet module was incorporated into the passenger compartment to allow a more realistic review.[189]

Figure 13. Basic physical mock-up design



Source: New Generation Rollingstock Project: Stage 2 Mock-up Review (28 July 2014).

Design documentation request for approval

Qtectic submitted a request for approval of design documentation for mock-up stage two on 12 August 2014. The correspondence included advice from Qtectic regarding the unresolved matters from the stage one mock-up, including that:

- the removal of flip-up seats from the allocated spaces in accessible car B resulted in an aisle width of 640mm compared with 555mm where flip-seats were included
- the pairing of allocated spaces across the car centreline was believed to be the optimum solution considering other performance specification requirements
- changes to the bin unit and sharps container in the toilet module were made based on advice during the mock-up presentation in an effort to increase circulation space.[190]

TMR and Qtectic subsequently exchanged correspondence regarding a range of issues unrelated to compliance with the disability legislation or functional requirements.

The mock-up was 'approved with comments' on 8 January 2015. Comments provided by TMR included changes to improve signage readability for people with vision impairments.[191]

Concept preliminary design phase design documentation approval

On 10 October 2014 Qtectic submitted a request for approval of design documentation for the concept preliminary design phase relating to the passenger seats, passenger compartment interior and toilet module.[192] Relevantly, the design documentation advised:

- the dimensions of the allocated spaces were compliant with DSAPT
- the toilet module was compliant with DSAPT
- six allocated spaces had a compliant access path to the toilet (based on other passenger assumptions)
- the passenger interior was designed to comply with requirements under DSAPT[193]
- handrails on the exterior and interior of the toilet module were DSAPT compliant
- one of the PEIs in the toilet module was at DSAPT height.[194]

On 7 November 2014 TMR advised that the request was not approved. One reason given for this decision was the absence of certain information including matters relating to compliance with the disability legislation and functional requirements.[195]

Qtectic subsequently separated the design documentation into three sub-packages: passenger seats, passenger compartment interior and toilet module. Qtectic submitted a request for approval of the design documentation for passenger seats on 23 January 2015, for the passenger compartment interior on 28 January 2015 and for the toilet module on 5 February 2015.[196]

The three sub-packages were 'approved with comments' on 20 February 2015:

- comments on the passenger seats design sub-package were not relevant to compliance with disability legislation or functional requirements[197]
- comments on the passenger compartment interior design sub-package included a request for confirmation that passengers in wheelchairs could access the emergency door release[198]
- comments on the toilet module design sub-package included a request for an updated full assessment of compliance with the disability legislation.[199]

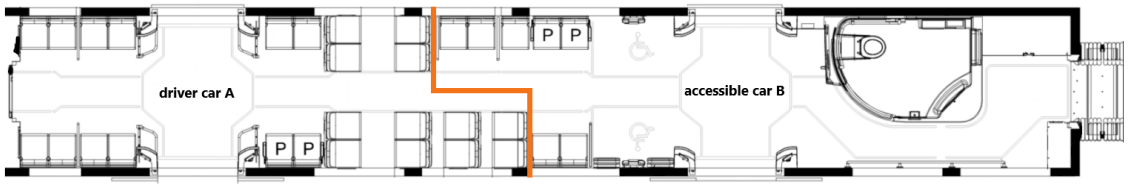
5.2.3 Phase two – detailed design

Mock-up stage three: detailed physical

Detailed mock-up inspections were held from 26 March 2015, initially attended by staff from QR and TMR. A subsequent inspection was held on 31 March 2015 involving the QR Accessibility Team (see section 6.2.1), TMR and representatives from the disability sector.[200]

The passenger compartment mock-up, incorporating the toilet module mock-up, was a full-sized construction using the equipment and material proposed for the final design configuration. The hybrid style of car layout used in the stage two mock-up was continued in the stage three mock-up (see Figure 14).[201]

Figure 14. Stage three mock-up layout



Source: New Generation Rollingstock Project: Mock-up Stage 3 Review (19 March 2015).

The mock-up documentation noted a number of critical dimensions for the seating layout, including that the width of the access path between transverse seats in accessible car A was 650mm and the width of the access path past the toilet was 618mm.[202]

The documentation also noted the following in relation to DSAPT compliance:

- access to communications and emergency equipment has been verified to comply with DSAPT requirements
- PEIs and assistance request buttons in the allocated spaces have been located within the range of 900mm–1100mm under DSAPT
- the toilet module mock-up will assist to verify the design meets DSAPT requirements. [203]

Design documentation request for approval

Qtectic submitted a request for approval of design documentation for mock-up stage three on 27 March 2015. The correspondence included advice from Qtectic regarding TMR's comments from the stage two mock-up, including that signage would be compliant with DSAPT.[204]

The stage three mock-up design documentation was 'approved with comments' on 27 April 2015. Comments provided by TMR, incorporating feedback from the disability sector, included references to: toilet door control buttons , passenger information displays and posters, colour contrasts for floors and overhead hand grips, wording on signs and decals, and mirror placement in toilet module.[205]

TMR confirmed that all outstanding issues regarding the stage three mock-up had been resolved on 18 January 2016.[206]

Detailed design phase design documentation approval

During March and April 2015 Qtectic submitted requests for approval of design documentation relevant to compliance with disability legislation and functional requirements for the detailed design phase.

Qtectic submitted a request for approval of design documentation for the passenger compartment interior on 27 March 2015.[207] The detailed design documentation was 'approved with comments' on 6 May 2015; comments included a concern that there was no partition between the priority seats and allocated space in accessible car B.[208]

On 10 April 2015 Qtectic submitted a request for approval of design documentation for the passenger seats.[209] This design documentation was 'approved with comments' on 7 May 2015; comments were not relevant to compliance with disability legislation or functional requirements.[210]

Qtectic submitted a request for approval of design documentation for the toilet module on 27 April 2015.[211] TMR advised that the request was not approved on 25 May 2015, as it considered that the submission contained significant unresolved issues and a number of immature concepts not compatible with a detailed design review.[212] Qtectic subsequently resubmitted a request for approval of the design documentation on 30 July 2015.[213] The resubmitted detailed design documentation was 'approved with comments' on 27 August 2015. Comments included advice that the handrail in the toilet module was not compliant with Australian Standard AS1428.1.[214]

5.3 Variations to the project deed

The project deed allows TMR to propose a variation to the deed by serving a written notice on Qtectic. Qtectic undertakes an initial appraisal to determine, among other things, if the variation is technically feasible and the estimated cost of implementing it. TMR may then decide whether to proceed with the variation.[215]

Similarly, the deed allows Qtectic to propose a variation by serving a written notice on TMR. Following an assessment of the effects of the proposed variation, TMR may accept or reject the variation.[216]

There have been numerous TMR and Qtectic variations to the project deed on a range of matters. Variations relevant to compliance with the disability legislation and functional requirements are outlined in Table 3.

Table 3. Variations relevant to the disability legislation and functional requirements

Variation number	Nature of the variation	Status	Compliance
0054	**Position of braille on signage** Qtectic requested a concession for non-compliant signs in relation to the positioning of braille. Qtectic proposed a variation for braille to be positioned below the raised lettering in signage rather than to the left of raised lettering as required by DSAPT.	Accepted by TMR 10 August 2015	Variation not compliant with DSAPT
0064	**Access paths to the toilet** Qtectic requested a concession for a non-compliant access path to the toilet module from the allocated spaces in accessible car A and the rear of accessible car B. Qtectic indicated it could not provide an access path of a compliant width due to narrow gauge restrictions and the quantity of seats required by the contract.	Accepted by TMR 1 March 2016	Variation not compliant with DSAPT
0065	**Seats adjacent to allocated spaces** Qtectic requested a concession against compliance with the performance specification that seats adjacent to allocated spaces must face the allocated space to provide travelling companions access to passengers using the allocated space. Qtectic proposed that half of the allocated spaces have adjacent seats facing the centre of the car rather than the allocated space.	Accepted by TMR 9 December 2015	Variation has advantages and disadvantages regarding functionality
0077	**Gangway tread plates** Qtectic requested a concession for non-compliance with DSAPT regarding the tread plate in the inter-car gangway. Qtectic indicated that a slope greater than 1 in 8 and a height of greater than 10mm was required to reduce the likelihood of the tread plate lifting. (The Commission notes the requirement for a maximum gradient of 1 in 8 and a maximum height of 10mm are in fact not DSAPT requirements)	Accepted by TMR 17 August 2017	Variation not compliant with functional requirements
0090	**Assistance request button** TMR proposed a variation to increase functionality of the assistance request buttons to enable the driver or guard to interact with a passenger seeking assistance in order to clarify the nature of the request and advise the passenger of the response.	Approved by TMR to proceed on 6 May 2015; however, final terms of the variation are being negotiated	Variation improves functionality
0091	**Extension of hearing aid loop** TMR proposed a variation to extend the hearing aid loops to cover the allocated spaces and toilet in the accessible cars and the priority seats in other cars.	Withdrawn by TMR 30 May 2018 due to technical difficulties	Not progressed (variation would have improved functionality)

5.4 Acceptance of the NGR trains

The project deed requires Qtectic to obtain preliminary acceptance, provisional acceptance and final acceptance of each train in accordance with the master program, rollingstock works program, and rollingstock technical requirements.[217]

If TMR determines the train meets the relevant criteria for each acceptance stage, it must issue an acceptance certificate. If the train does not meet the criteria, TMR must issue:

- for preliminary or provisional acceptance, either a rejection certificate detailing the required rectification work or a qualified preliminary/provisional acceptance certificate
- for final acceptance, a rejection certificate. [218]

NGR trains currently in service have been issued a qualified provisional acceptance certificate (QPAC), subject to the terms of the QPAC deed,[m] including that the issue of a QPAC is subject to DSAPT compliance issues and that TMR may issue a compliance direction for Qtectic to perform rectification work in relation to these issues.[219]

TMR has issued a compliance direction in relation to the toilet modules on the NGR trains.[220] As noted in section 3.2.3 of this report, while the Commission has taken the view, for the purpose of the investigation, that the toilet module is not compliant, whether the module is compliant from a contractual perspective is a matter for Qtectic and TMR and may ultimately be determined by a court examining all relevant circumstances.

5.5 NGR project health check

In early 2017 the Assurance Team within TMR's Program Delivery and Operations Branch conducted a health check of the delivery phase of the NGR project. Its key findings relevant to design and the project deed under the Commission's terms of reference included that:

- all but some minor dimensions had been delivered in accordance with DSAPT
- progress of the design in the early stages was slow
- under a PPP model, a risk-based approach was indicated rather than strict measurement of compliance against technical standards
- well-intentioned but rigid and cumbersome technical and operational processes at QR have hampered the resolution of technical issues.[221]

5.6 Findings and conclusions

The design approval process for the NGR trains was not a model process. The design of trains that complied with disability legislation and functional requirements was hampered by technical requirements in the project deed that specified design elements that were not compliant with DSAPT, anda flawed understanding of the DSAPT requirements.

Uncertain technical requirements

The project deed requires Qtectic to design and construct NGR trains that, among other things, comply with the rollingstock technical requirements; however, in some respects these requirements are inconsistent and uncertain.

[m] This is a deed of amendment to the project deed for the qualified provisional acceptance of NGR trains.

The performance specifications, captured in the definition of technical requirements under the deed, include contradictory requirements regarding compliance with disability legislation. The specification required that the passenger compartments comply with the requirements of DSAPT but also required an allocated space configuration that was not DSAPT compliant and a path past the toilet that facilitated an 'able-bodied pedestrian walkway'.[222]

This uncertainty was compounded by the incorporation of Qtectic's proposal,[n] with three design options, in the definition of technical requirements. Incorporating the proposal along with the performance specification resulted in further inconsistencies between the obligations imposed under the deed, as Qtectic's proposal detailed designs that were not DSAPT compliant (see section 4.7).

It is not unusual for inconsistencies to arise as a result of incorporating a specification and proposal in the terms of a contract; such an approach is commonly used to swiftly finalise an arrangement where developing a single, agreed specification would be time consuming. However, the approach, in conjunction with the inconsistences contained in the performance specification itself gives rise to risks of uncertainty regarding the parties' contractual obligations.

Where inconsistencies result in a dispute about whether a party has complied with its obligations, the dispute is subject to negotiation between the parties and dispute resolution procedures under the deed, and could ultimately be decided by a court.

The Commission does not intend to offer a determinative view on the proper interpretation of the project deed and parties' resulting obligations. However, the Commission does note that the inconsistencies may have impacted on the effectiveness and outcomes of the design process.

Recommendation 11

The Commission recommends that procurement performance specifications developed by the State not contain inconsistent requirements.

Recommendation 12

The Commission recommends that technical requirements under a project deed be defined based on a single agreed specification, where practicable, to minimise the potential for inconsistencies and uncertainty in interpreting contractual obligations.

Non-compliant technical requirements under the project deed

The design approval process for the NGR trains started from a non-compliant position in relation to the disability legislation.

The technical requirements under the project deed included non-compliant elements, which meant that designing the trains in accordance with the deed resulted in technical non-compliance with the disability legislation. These technical requirements included:

- a specification for one toilet module in each train located at the leading end of accessible car B, resulting in non-compliance with the requirement that the toilet must be available to passengers using mobility aids

[n] The proposal was originally submitted by Bombardier during the RFP process prior to the formation of Qtectic.

- a specification that each allocated space must have direct access to a vestibule and a door, resulting in non-compliance with the requirement that allocated spaces must be consolidated if possible, to accommodate larger mobility aids
- various specifications regarding the positioning of the toilet module, the configuration of allocated spaces, and seating capacity, resulting in non-compliance with the requirements for the minimum width of access paths and the extent of access paths.

The capacity for the NGR project team to make changes during the design process was constrained by these technical requirements. A variation would have been required to address most of the issues of non-compliance with the disability legislation, as outlined in Table 4, and the majority of issues with functional requirements.

Table 4. Options to change design elements not compliant with the disability legislation

Compliance issue	Permitted design change	Variation required
Configuration of allocated spaces	No	Yes
Number and location of toilet modules	No	Yes
Dimensions of the toilet module	Yes, before 11 June 2014	On or after 11 June 2014
Width of access path past the toilet	No	Yes
Width of access path between allocated spaces	No	Yes
Width of access path between seats and between seats and allocated spaces in accessible car A	No	Yes

A number of stakeholders interviewed by the Commission advised that during the design approval phase, the NGR project team was focussed on delivering the NGR trains to meet the technical requirements outlined in the deed.[223] For example, in relation to the provision of one toilet at the leading end of accessible car B and the non-compliant access path from accessible car A, the General Manager (New Generation Rollingstock) advised:

> *…that's the challenge that we all had. People had knowingly set out the specification for a train including a toilet in the middle … with an able-bodied walkway past it … that was the decision made there. My job, and Qtectic's job, was to deliver on that specification.*[224]

This was also evident in the NGR project team accepting Qtectic's request for a concession for non-compliance with DSAPT regarding the access path to the toilet module. In the project team's view, the concession did not change the design of the trains or increase the risk to the project as the performance specification under the deed had conceded that the path would not be technically compliant as it would 'facilitate an unrestricted **able-bodied** pedestrian walkway' (emphasis added).[225]

The Commission accepts the position that in some respects TMR 'inherited' a train design that was not compliant with the disability legislation when it became project lead in 2014, and that the technical requirements under the deed made ensuring compliance through the design approval process more complex. However, in the Commission's view, the NGR project team under TMR's lead could and should have taken action during the design process to address compliance issues. As a minimum, the program steering committee should have been informed of the non-compliances, the risks associated with the non-compliances, and the options for resolution.

The NGR project team, including the initial Program Director, was aware of non-compliance issues regarding the technical requirements from the commencement of the delivery phase of the project. However, the Commission found no evidence that these issues, excluding Qtectic's requests for concessions for non-compliance with DSAPT,[o] were escalated to the project's governing bodies during the design approval phase. The Director-General of TMR advised the Commission that he was not aware of any compliance issues regarding the NGR trains until correspondence was received from a member of the disability sector in early 2016.

Recommendation 13

The Commission recommends that an accessibility compliance report be produced prior to the finalisation of the design process for public transport infrastructure. The report should identify all relevant provisions of the *Disability Standards for Accessible Public Transport 2002* (Cth) and how compliance with each provision is achieved (technical compliance or equivalent access compliance) or how a non-compliance will be managed. The compliance report should be provided to the project steering committee or equivalent governance body.

Recommendation 14

The Commission recommends that, where compliance with the *Disability Standards for Accessible Public Transport 2002* (Cth) will be achieved through equivalent access compliance, the process for demonstrating equivalent access, including consultation with the disability sector, be completed prior to finalisation of the design process.

Flawed understanding and application of DSAPT

It was apparent to the Commission that the NGR project team was aware during the design process that the requirements under the disability legislation applied to the NGR trains. However, it appears that the project team responsible for this phase of the project either accepted that the NGR trains would be non-compliant due to the technical requirements agreed to under the project deed or believed that QR would achieve compliance through direct assistance or equivalent access mechanisms.[226]

In the Commission's view, the capacity for the NGR project team to manage non-compliances with the disability legislation through the design approval process was limited by a flawed understanding of the DSAPT requirements. The project team, and the QR technical experts, did not appear to have a detailed understanding of the requirements under DSAPT or of how equivalent access compliance could be pursued for some of the technically non-compliant elements. They also did not seem fully appreciate the possible consequences of non-compliance.

The NGR project team's and QR technical experts' limited understanding of the application of DSAPT is perhaps best demonstrated by reference to Qtectic's requests for variations regarding access paths and the gangway tread plate.

[o] The Commission notes that Qtectic's request for concessions for non-compliance with DSAPT regarding braille on signage and access paths were presented to the program control group for consideration.

The NGR project team sought advice from QR on Qtectic's request for a concession for the non-compliant access path to the toilet module from the allocated spaces in accessible car A and the rear of accessible car B. The formal response from QR focussed on the operational aspects of the change, primarily it would appear because key QR staff believed the proposed access path was in fact DSAPT compliant.

In internal correspondence discussing the variation request, it was noted that 'there is some debate as to how non-compliant the design is'. It was also noted:

> *The standard [DSAPT] requires there be an unhindered access path of 850 mm between entrances, exits, allocated spaces and other essential facilities (It is presumed that a toilet is considered an essential facility, but I can't find this defined anywhere). The fixed components in the saloon are located such that they provide an unhindered path of 1010 mm width between handrails, from the allocated spaces at the far end of the saloon to the toilet, so this is compliant.*
>
> *…*
>
> *The standard [DSAPT] does not require that every allocated space has an access path to a toilet, so the allocated spaces in the MA car [accessible car A] are not non-compliant.*[227]

Similarly, in other internal correspondence it was stated:

> *DSAPT only requires a (sic) access pathway from the entrance of a conveyance to the allocated space or toilet, not from one car to another.*[228]

These comments indicate a flawed understanding of the requirements of DSAPT. This misunderstanding and subsequent belief that the proposed train design was compliant in relation to access paths would likely have contributed to the poor management of compliance issues. There would have been no perceived need to seek to resolve or escalate matters that were mistakenly believed to be compliant.

The NGR project team also sought advice from QR in relation to Qtectic's request for a concession for non-compliance with part 10 of DSAPT (as referenced in section 6.3.2(2) of *SEMS/MD/10/134 – Locomotive and Passenger Vehicle Access*) regarding gangway treadplates.

Neither QR staff in providing advice on the proposed concession nor the NGR project team in granting the concession identified that the design was not non-compliant with DSAPT. The requirement for a maximum gradient of 1 in 8 and a maximum height of 10mm are outlined in Australian Standard 1428.1(2009) but are not DSAPT specifications as this version of the Australian Standard is not incorporated into DSAPT (see section 2.2.2 for information about the incorporation of Australian Standards).

Although the requirements of Australian Standard 1428.1(2009) are relevant considerations in evaluating functional requirements and the accessibility of the NGR trains, non-compliance with these requirements does not represent non-compliance with DSAPT. The failure of both the NGR project team and QR technical experts to identify this issue again demonstrates a flawed understanding of DSAPT.

The Commission notes, however, that the latest version of the Australian Standard reflects more contemporary specifications than the 2001 version, and supports their consideration in the design of the trains. In the Commission's view, incorporating the latest version of the Australian Standards in DSAPT would ensure DSAPT specifications are fit-for-purpose and reflect contemporary innovations, technologies and community needs. It would also reduce confusion about the required standards.

The NGR project team's capacity to effectively manage non-compliances was further limited by a failure to recognise how equivalent access compliance could be used in relation to some design elements. Where technical non-compliances with the disability legislation were properly recognised during the design process, there appeared to be a lack of understanding within the project team and QR technical experts about how the equivalent access provisions could be properly applied to resolve the issues.

The NGR project team's lack of understanding about equivalent access provisions can again be demonstrated by reference to Qtectic variation requests. The requested concession for non-compliant signs regarding the positioning of braille is a matter of technical non-compliance that, in the Commission's view, could easily have been addressed through equivalent access compliance. There is no evidence that this occurred.

Conversely, there was a belief that equivalent access compliance could be achieved in relation to the requested concession for the non-compliant access path to the toilet module, which in the Commission's view is not achievable.

The Commission notes that the QR technical experts and Accessibility Team had some knowledge of equivalent access; however, the Commission has concerns regarding their understanding of the elements that must be satisfied to effectively use the provisions. Of particular concern in this regard was the assumption that equivalent access compliance could be achieved in relation to the inaccessibility of the toilet from accessible car A by assisting a passenger to disembark at the next station and to reboard the train in accessible car B.[229] As noted in section 4.10, in the Commission's view, this approach would not satisfy the criteria for equivalent access compliance, particularly regarding the need for equivalence of convenience and dignity.

Effectively using the equivalent access provisions during the design approval process would, in the Commission's view, have resolved a number of technical non-compliance matters before the trains were constructed, and a proper application of the provisions would have highlighted that some matters could not be resolved through equivalent access compliance and should have been escalated.

The Commission notes that the equivalent access provisions have subsequently been recognised and used by the NGR project team to pursue equivalent access compliance for the proposed NGR train layout following rectification work.

While, in the Commission's view, compliance issues with disability legislation and functional requirements were not effectively managed during the design approval phase, the Commission acknowledges that these issues are one component of a large project that had a myriad of design considerations including safety and environmental matters critical for the safe and effective running of the trains.

Recommendation 15

The Commission recommends that employees who are involved in planning or designing public transport infrastructure, or who evaluate or provide advice on public transport infrastructure, receive training to ensure they understand the disability legislation.

Recommendation 16

The Commission recommends that the Queensland Government requests that the *Disability Standards for Accessible Public Transport 2002 (Cth)* be amended to incorporate the latest versions of the relevant Australian Standards.

6 Stakeholder management and consultation

The terms of reference directed the Commissioner to have regard to the engagement with the disability sector. This chapter examines the consultation undertaken with key stakeholders during the new generation rollingstock project.

6.1 Introduction

Early and effective communication is an essential element of any major infrastructure project. Consultation provides an opportunity for stakeholders to receive information and give feedback; stakeholders can gain an understanding of the project, ask questions, raise concerns and make suggestions to help shape the delivery of project outcomes.

Stakeholders are generally categorised as internal and external. Internal stakeholders come from within the organisation; they are generally employees from various areas with an interest in the project. External stakeholders are those outside the organisation, such as other organisations and customers who have a vested interest in the project.

Effective consultation enhances good decision making and project outcomes. Failure to consult, or tokenistic consultation, can cause significant problems including delays, additional costs, public criticism and damaged stakeholder relationships.

The key elements of an effective consultation process include:

- involving the right people – consultation should be targeted to those most affected by the project
- using the right approach – interactions should be tailored to stakeholders' interests, objectives and expertise, with information presented in an understandable and appropriate format
- managing expectations – the purpose of the consultation and the role of the stakeholders should be clear from the outset, stakeholders should have a clear understanding of how their feedback will be used and their degree of influence
- using the information – consultation and any issues raised should be documented and the information gathered used to inform project outcomes.[230]

The degree and effectiveness of consultation undertaken with key stakeholders varied during the NGR project.

6.2 Consultation during procurement phase

6.2.1 Queensland Rail project lead

Internal Queensland Rail consultation

QR has a dedicated Accessibility Team to support the organisation in delivering accessible rail services for passengers with disabilities. The Accessibility Team's role includes:

- engaging with peak disability organisations and passengers with disabilities, including providing strategic leadership to the QR–ARG
- providing accessibility advice and input to major infrastructure and rollingstock projects
- responding to passenger feedback regarding accessibility
- providing advice to staff on accessible services for passengers with disabilities, including the requirements of the disability legislation.[231]

Despite QR having a dedicated Accessibility Team, there appears to have been no structured, formal engagement by the NGR project with the Accessibility Team while QR was the project lead. The Accessibility Team offered input and advice from September 2010[232] but, while the project team sought its input on ad hoc issues,[233] there was no regular formal engagement. Nor was the Accessibility Team requested to engage with the disability sector on behalf of the NGR project.

External consultation

Cross-agency consultation

QR engaged TransLink, as the statutory authority responsible for managing South East Queensland's public transport system, in the NGR project from its commencement. TransLink was a representative on the project control group while QR was the project lead.[234]

Disability sector consultation

QR established a reference group for passengers with disabilities in March 2003; the QR–ARG. The aim of the QR–ARG is to provide a forum for QR to engage with people with disabilities and the disability sector to obtain input into the design and provision of non-discriminatory and accessible services. Membership is based on principles of cross-sectional representation to ensure the spectrum of concerns and interests are represented, incorporated and balanced. The QR–ARG meets quarterly.[235]

The draft Communications Plan[p] for the NGR project identified disability groups as a key external stakeholder.[236] Despite this, and despite having an established reference group, there appears to have been no consultation with the disability sector regarding the NGR project while QR was the project lead.

Two instances were identified where general consultation about train design was undertaken. The first occurred in October 2009 when focus groups provided feedback on the design and environment of trains on the Citytrain network for a study QR had commissioned regarding its rollingstock.[237]

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[p] The Commission was unable to locate a finalised version of the plan.

The second occurred at the QR–ARG meeting on 24 September 2012, when design concepts for future trains on the Citytrain network were discussed.[238] During this discussion, the QR–ARG provided feedback that most passengers using mobility aids would find it difficult to navigate the gangway between cars and expressed a preference for allocated spaces to not be configured longitudinally to facilitate ease of access to the spaces and inclusive travel for passengers with a companion.[239]

Project health check

As outlined in section 4.4, Ernst & Young undertook a high-level health check of the NGR project in December 2009. Issues it identified relating to stakeholder management and consultation included:

- stakeholder management not occurring in line with a detailed strategy or plan
- an incomplete and unapproved stakeholder list
- concerns from internal stakeholders that actions were ineffective in addressing issues
- management of some internal stakeholder issues reflecting the personal views of some project team members rather than a robust assessment of issues.[240]

6.2.2 Projects Queensland project lead

External consultation

Cross-agency consultation

While QR was engaged to provide technical advice to the NGR project team wile PQ was the project lead, there appears to have been no formal engagement with the QR Accessibility Team. The project team did not seek input or advice from the Accessibility Team regarding the performance specifications for the NGR trains.

Disability sector consultation

There was no consultation with the disability sector regarding the NGR project while PQ was the project lead. No evidence was identified of PQ or TMR undertaking any consultation, and while QR held regular QR–ARG meetings during this time the project was not discussed with the group.

6.3 Consultation during design approval phase

6.3.1 Cross-agency consultation

Queensland Rail including the Accessibility Team

The NGR project team engaged QR, including the Accessibility Team, to provide technical advice and feedback on the train design and proposed variations. Representatives from QR, including members of the Accessibility Team, were present at each of the mock-up inspections through the design approval process. The NGR project team also sought advice from QR on design documentation provided by Qtectic for approval and, on variations proposed by both Qtectic and TMR. Additionally, some variations proposed by TMR were at the request of QR.[241]

The NGR project team engaged the Accessibility Team to facilitate consultation with the QR–ARG at the stage two and stage three design mock-up inspections. The Commission found no evidence that the Accessibility Team was engaged to specifically undertake a compliance assessment of the train design during the design approval process, nor was there any evidence the Accessibility Team proactively undertook such an audit during the design approval process after it identified problems during the mock-up inspections.[242]

QR had responsibility under the governance arrangements for the operational readiness of the NGR trains including boarding assistance models (see chapter 7).

6.3.2 Disability sector consultation

Mock-up inspections

The QR–ARG was consulted for the first time in relation to the NGR project at the stage two mock-up inspection on 5 August 2014 (see section 5.2.2 for details of the stage two mock-up). The consultation was facilitated by the QR Accessibility Team and the QR record of the consultation noted that feedback about the size, layout and proposed location of features included the following comments:

- good circulation room in the toilet module
- good circulation room in the vestibule to better accommodate larger mobility aids
- preference for two rather than three door control buttons in the toilet module
- aisle would be difficult for people with guide dogs or using mobility scooters to navigate.[243]

Following the stage two mock-up inspection, there were three QR–ARG meetings before the stage three mock-up inspection. Records of these meetings indicated information on the NGR project was not proactively provided to the QR–ARG, with discussion about the project occurring at these meetings only at the instigation of the QR–ARG members.[244]

The QR–ARG was consulted again at the stage three mock-up inspection on 31 March 2015 (see section 5.2.35.2.2 for details of the stage three mock-up). The consultation was once again facilitated by the QR Accessibility Team, and the QR record of the consultation noted that feedback about the size, layout and proposed location of features included comments that:

- the space available beneath priority seating was good for guide dogs
- bathroom sink provided exceptional leg/knee clearance
- white text on a black background was preferred for passenger information displays
- consideration should be given to putting assistance request buttons at every door to assist passengers with disabilities who may not travel in the accessible cars.[245]

The QR–ARG was critical of the timing of the engagement with the disability sector for the mock-up inspections. In its submission to the AHRC regarding the application for temporary exemptions it noted:

> *These sessions were held post procurement when the NGR design was a fait accompli. The [QR]ARG was only able to comment on fit out rather than design ... Unfortunately, the [QR]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.*[246]

A presentation on the specifications and dimensions of the toilet module and access paths for the NGR trains was given to the QR–ARG by current program director on 18 January 2016.[247] Following this presentation, the QR–ARG was critical of the information it had been provided during the mock-up inspection process. One member noted in correspondence to the former Minister for Transport and the Commonwealth Games:

> *Disability sector representatives were shown a mock up of carriage four [accessible car B] in March of 2015, but have never been shown a mock up of carriage three [accessible car A]. Naively, we believed that carriages three [accessible car A] and four [accessible car B] would be mirror images of each other.*[248]

TMR Accessibility Reference Group

TMR established a multi-modal accessibility reference group in late 2014; establishing the group was a key action in TMR's *Disability Action Plan – Improving Access to 2017*. The purpose of the TMR Accessibility Reference Group (TMR–ARG) is to provide a consultative forum for TMR, industry and disability stakeholders to discuss issues relating to improving the accessibility of the public transport network. Membership is comprised of TMR, QR, local government bodies, transport industry bodies and disability sector groups. The TMR–ARG meets quarterly.[249]

There appears to have been no consultation with the TMR–ARG regarding the NGR project during the design approval phase; however, as there is a substantial overlap between members of the TMR–ARG and the QR–ARG, TMR–ARG members were involved in the mock-up inspections.

6.4 Consultation on assisted boarding

The design of the NGR trains, with the guard cab located at the end of the train, necessitated the development of a new boarding assistance model for the trains. QR began consulting with the QR–ARG regarding boarding assistance for the NGR trains on 26 August 2015.

A range of boarding assistance options were provided for initial consideration by the QR–ARG including assistance provided by station staff, using a platform assistance request button to speak to a customer communications officer who would advise the guard that assistance was required, and assistance provided by the guard based on a visual identification using closed-circuit television of passengers requiring assistance.[250]

An assisted boarding workshop with the QR–ARG was subsequently held on 25 September 2015. Three options were proposed by the workshop participants:

- additional on-board customer service staff to provide boarding assistance
- guard role to take on a more customer focus outside the guard cab
- increase station staff to provide assistance at the platform boarding point.[251]

The boarding assistance model was discussed at the QR–ARG meetings in November 2015, February 2016, June 2016, November 2016, February 2017 and May 2017 with no decision made by QR. The QR–ARG expressed increasing frustration at the continued delays in QR finalising the boarding assistance model.[252]

An interim boarding assistance model and associated funding was approved by CBRC on 24 May 2017.[253] Under the approved interim model, boarding assistance would be provided by station staff for NGR trains from first to last service at most stations for the lines the trains were proposed to operate on, with guards providing boarding assistance at other stations.

The approved model was presented to the QR–ARG on 27 June 2017, 22 months after consultation on the model first commenced.[254] A trial of the approved boarding assistance model was held at Roma Street Station on 6 December 2017, and 15 members of the QR–ARG attended the trial.[255]

The location of the guard cab at the rear of the train and the boarding assistance model continues to be an area of concern for passengers requiring boarding assistance.[256]

6.5 Consultation about compliance issues and options

In response to concerns raised by the disability sector, the NGR project team commenced a review of the NGR train's compliance with the disability legislation and functional requirements in June 2017. An external consultant specialising in accessibility was engaged to provide advice and assistance to the NGR project team through this process. As part of the review the project team consulted with the QR–ARG to gain a better understanding of the disability sector's key concerns regarding the design of the trains and to seek the group's input and feedback regarding options to address compliance and functional issues.

Following initial engagement with the QR–ARG, the NGR project team provided the group with an *Accessibility Options Development and Selection – Preliminary Options Discussion Paper* on 6 July 2017 for its consideration and comment. The project team subsequently developed an *Accessibility Options Development and Selection – Preliminary Options Report*, which was provided to the QR–ARG for feedback on 18 August 2017. The report categorised key concerns and options for resolution into three categories: toilet module, access paths and train accessibility.[257]

A QR–ARG member provided positive feedback to the Commission about this consultation:

> *…consultation … was good to excellent because engineers who'd actually designed the train in the first place were part and parcel of the process …[they] were in the room and we were explaining to them why it was we were proposing what we were asking ... and the engineers were gracious enough and sensible enough to actually listen to us, go away to achieve the outcome and that's why it's been a good consultation.*[258]

The *Final Options Report*, incorporating the QR–ARG's feedback and further investigation and assessment of the options, was developed. It recommended:

- reconfiguration of the location of equipment and controls within the toilet module
- splitting the NGR train fleet - removing the toilet module from suburban trains and adding a second toilet module in interurban trains
- changing the location of priority seating
- reviewing the location of PEIs
- adding information and braille to some signage
- installing additional grabrails
- maximising the functionality of buttons and controls.[259]

On 21 September 2017 CBRC endorsed the progression of the recommended options to Qtectic for a detailed assessment of costs and timeframes.[260]

The final options report did not recommend the installation of an intermediate guard cab as a mechanism to address concerns regarding assisted boarding. In correspondence to one member of the QR–ARG, on 22 September 2017 the former Deputy Premier, Minister for Transport and Minister for Infrastructure and Planning, the Honourable Jackie Trad MP, advised:

> *I understand that there was an overarching preference for guard's cabs to be installed in the middle of the NGR trains. This option was considered in depth and in balancing all requirements it was decided that no guard cab will be installed as major changes to the whole train (not just the middle cars) would be required and costs are extremely high.*[261]

6.5.1 Application for temporary exemptions

As outlined in section 2.4.3 of this report, on 27 September 2017 the State of Queensland (acting through TMR) and QR made a joint application to the AHRC for temporary exemptions from compliance with the disability legislation.

The General Manager (New Generation Rollingstock) advised the Commission that the intention of applying for the exemptions was to cover the operation of the trains on the network while the rectification work was undertaken.[262] However, despite the NGR project team's engagement with the QR–ARG regarding options to resolve compliance issues, no consultation was undertaken with the group regarding the intention to apply for temporary exemptions.

The QR–ARG was advised of the exemption application on 24 October 2017, nearly one month after the application was made.[263] The lack of engagement and the impact on the group's relationship with TMR and QR was commented on to the Commission by one member:

> *What happened was the relationship between Queensland Rail and to a lesser degree, TMR eroded the moment we found out that the State of Queensland had applied for the exemption of the Human Rights Commission. We knew nothing about it whatsoever.*
>
> *…*
>
> *What would have worked, however is if Queensland Rail or TMR had actually said to us, 'look we're doing this and here's the reason why'.*[264]

See section 6.7 for further QR–ARG comments regarding consultation on this issue.

6.6 Consultation about rectification work

The NGR project team, supported by an external accessibility expert, began another round of consultation with the disability sector in May 2018 to further consider options to rectify compliance issues with the NGR trains.[265]

A project working group (PWG) was formed on 23 May 2018 to develop recommendations regarding:

- reconfiguring the toilet module to meet the dimension requirements and improve functionality in line with DSAPT
- reconfiguring the seating and allocated spaces in the accessible cars to meet path width requirements between the door and accessible facilities, enhance manoeuvrability to allocated spaces, and improve accessibility along paths to allocated spaces
- revising signage and installing additional priority seating, additional grab/handrails and additional accessible buttons and controls to maximise functionality.[266]

The PWG comprised of six members drawn from the QR–ARG and TMR–ARG and was chaired by the General Manager (New Generation Rollingstock). The PWG worked with representatives from the NGR project team, Qtectic and Bombardier to ensure the recommended design maximised functionality for all passengers, considering technical, operational and safety constraints.[267]

The PWG met weekly from 5 June to 17 July 2018. A co-design process was employed, incorporating meetings, site visits and the provision of technical diagrams in the consultation process and 'creating a broad scope for feedback and recommendations'.[268] The engagement process included a functional trial of the proposed new toilet module to verify the module's functional compliance. The NGR project engaged the Hopkins Centre at Griffith University to conduct the trial, which involved 34 members of the disability sector who use mobility aids.[269]

The Commission was advised that the PWG chose to focus on functionality rather than technical compliance as 'sticking to the dimensions and technical specifications can lead to outcomes that are less functional'.[270] The PWG finalised its recommendations report on 6 August 2018. It made 30 recommendations, 28 of which were determined to be technically feasible.[271] However, in line with the group's focus on functionality, not all recommendations achieved technical compliance.

At the time of writing this report, the recommendations had not been considered by the Queensland Government.

6.7 Evaluation of engagement

TMR conducted a phone survey with the members of the PWG to gather feedback on the engagement process following consultation about rectification of the NGR trains.

The PWG members advised that engagement with the disability sector regarding the NGR trains prior to and during the procurement process and during design approval process was 'poor'. Feedback included comments that:

- *There was a general feeling of frustration and disappointment around the project. If consultation had happened years ago, there would not be a lot of the issues ...*
- *In general my perception of the whole project was very much that the horse had bolted … it was a bit of a shock that the reference group members hadn't been consulted prior.*
- *The relationship started very poorly – it was very much 'talk to the hand' for a couple of years. We were treated with great disrespect and like fools ...*[272]

Conversely, the PWG members provided positive feedback on the engagement process for consultation regarding rectification of the NGR trains. Feedback included comments that:

- *[The] process has been perfectly good – it couldn't have been much better.*
- *The PWG process has proven you can have government employees working alongside stakeholders quite successfully.*
- *[The highlight was] simple for me – it's merely the act of engagement itself.*
- *The thing that struck me as beneficial was having the engineer and designer there ... Being able to get into technical stuff around where things could and could not be done – instead of saying 'no that can't be done' – but showing on the plans – 'this is why you can't move this too much' – was really beneficial.*[273]

However, the PWG was critical of the application to the AHRC for temporary exemptions being made while engagement with the disability sector about rectification was ongoing and without consultation with the sector. Feedback on this issue included comments that:

- *The application to the Human Rights Commission really threw a lot of us. I was pretty shocked that had been applied for.*
- *We felt we had been dudded.*
- *There was a lot of defensiveness. There was two distinct groups – TMR and QR versus the [QR]ARG. It was almost an 'us against them' feeling.*[274]

6.8 Consultation for equivalent access

The NGR project team conducted additional consultation with the disability sector in September 2018 to demonstrate equivalent access compliance for the recommended modified design.

This consultation involved representatives from the disability sector considering three alternative designs for the layout of the accessible cars and assessing each design against the seven criteria defined under DSAPT for equivalent access (amenity, availability, comfort, convenience, dignity, price and safety).[275]

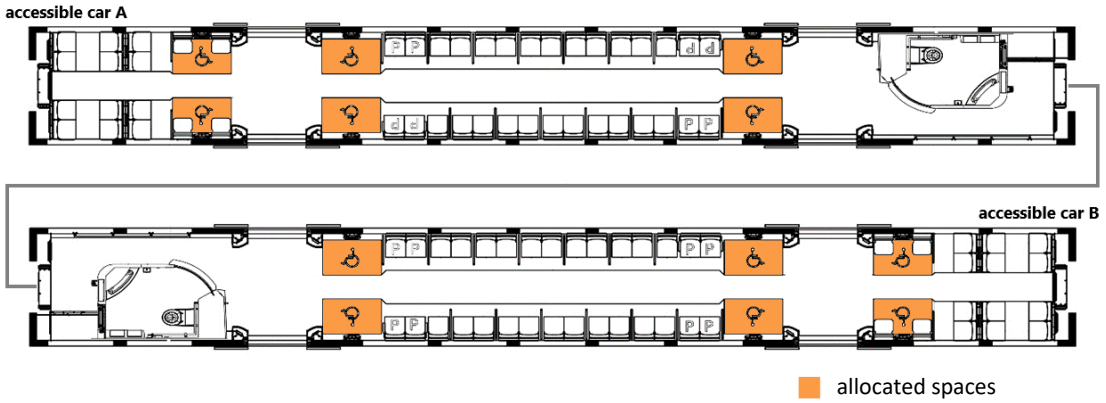
Layout option one used the existing layout of accessible car B with the inclusion of additional priority seating; accessible car A is the accessible car B design flipped 180 degrees. The access path between accessible spaces and past the toilet modules in this design option are not wide enough to achieve technical compliance.

Layout options two and three position the allocated spaces longitudinally along one side of the cars, with crash barriers between the spaces, and longitudinal seats along the opposite side in option two and single transverse seats along the opposite side in option three. The access path between accessible spaces and the seating opposite in these options is wide enough to achieve technical compliance, but the path past the toilet modules does not meet the minimum width requirement.[276]

The three alternative designs are shown in Figure 15.

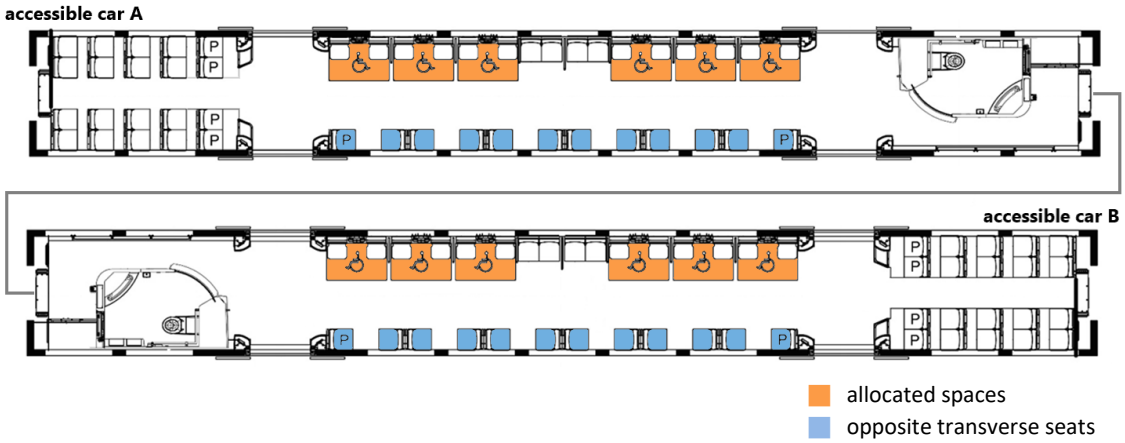
Figure 15. Alternative layout options

Layout option one



Layout option two

Layout option three



The consultation and rating process found that layout option one achieved the highest scores for each of the equivalent access criteria and was 'the most accessible, the most functional and the most inclusive car layout'.[277] While the layout option did not achieve technical compliance, the group indicated that it provided equivalent or superior access to the dimensional requirements specified by DSAPT.

As a result of this consultation process the NGR project team was satisfied that DSAPT equivalent access compliance was achieved where technical compliance was not.[278]

The issues of non-compliance with disability legislation and functional requirements outlined in chapter 3 of this report and the Commissioner's view on whether the proposed rectification work in will achieve technical or equivalent access compliance are outlined in Appendix 12.

6.9 Findings and conclusions

Inadequate consultation during procurement process

In the Commissions' view, consultation during the procurement phase of the NGR project was inadequate.

The Commission notes that QR undertook some general consultation with the disability sector regarding future train designs in September 2012 and acknowledges that preferences regarding the configuration of allocated spaces were reflected in the revised performance specification released in May 2013 and in the final design of the trains. However, no consultation was undertaken with the disability sector regarding the NGR trains, and the NGR project team failed to formally engage the QR Accessibility Team to strengthen its knowledge of the disability legislation and functional requirements.

The project health check undertaken by Ernst & Young in December 2009 highlighted a range of issues regarding stakeholder management and consultation, including an incomplete and unapproved stakeholder list and stakeholder management not occurring in line with a detailed strategy or plan.[279] Ernst & Young's subsequent pre-RFP probity audit in August 2010 noted that QR had implemented the recommendation to develop a detailed stakeholder consultation plan.[280] Despite this, in the Commission's view, the consultation and stakeholder management in relation to compliance with disability legislation and functional requirements remained problematic and inadequate during the procurement process.

While there are strict confidentiality and probity requirements in procurement processes, in the Commission's view, this did not preclude consultation with key stakeholders to inform performance specifications. Undertaking genuine, early consultation about NGR train design from an accessibility perspective prior to or early in the procurement process, without disclosing confidential information, would have facilitated a greater understanding of accessibility considerations and preferences. This could then have informed performance specifications, requests for changes and negotiations about proponents' proposals, and highlighted key accessibility requirements for consideration through the procurement and design approval process.

Recommendation 17

The Commission recommends that the Queensland Government implements processes to ensure genuine, early consultation is undertaken with the disability sector regarding the procurement of public transport infrastructure.

Recommendation 18

The Commission recommends that a stakeholder consultation plan detailing how consultation will be undertaken with the disability sector be developed at the commencement of all major public transport procurement projects. The stakeholder consultation plan should be provided to the project steering committee or equivalent governance body.

Limited consultation during the design phase

Consultation during the design approval phase of the NGR project was slightly improved, in that some consultation occurred; however, in the Commission's view, the consultation was limited and flawed.

Consultation with the disability sector during this phase of the project consisted of the QR–ARG attending the stage two and three mock-up inspections and consultation regarding the assisted boarding model for the NGR trains, all of which was facilitated by the QR Accessibility Team.

Feedback from the QR–ARG suggests that its members were not given sufficient information at the mock-up inspections to make fully informed comments. For example, the members were not advised that only one of the accessible cars would contain a toilet module. They consequently assumed the mock-up was representative of both accessible cars.[281] Feedback also suggested that the purpose of the consultation was not clearly articulated to the QR–ARG, with members only becoming aware at the stage three mock-up that key design features were fixed and design elements that they were requesting changes to were 'non-negotiable'.

Additionally, a decision was not made on the interim boarding assistance model for 22 months after the QR–ARG was first consulted. This was a significant delay during which the QR–ARG members were left wondering what would happen in relation to a key area of concern.

Recommendation 19

The Commission recommends that consultation with the disability sector about the design of public transport infrastructure (undertaken before, during or after procurement) be structured around the obligations of the disability legislation and functional requirements.

Good consultation to understand issues and progress rectification work

Consultation was substantially improved following the design approval stage when the NGR project team sought to understand compliance issues escalated by the disability sector, and subsequently engaged with the sector regarding rectification of the trains. The purpose and scope of the consultation were clearly defined, a variety of engagement methods were used, and technical experts were present to provide information and answer questions. The consultation process and feedback were clearly documented and used to inform recommendations to rectify the NGR trains and substantiate the position that equivalent access compliance had been achieved.

This consultation process included a range of effective elements that could be incorporated in future consultation processes for the procurement of major public transport infrastructure.

However, the Commission notes the NGR project team's failure to consult regarding the decision to make an application to the AHRC for temporary exemptions, and the adverse this had on the relationship and consultation process.

Recommendation 20

The Commission recommends that, where compliance with the disability legislation for public transport infrastructure will be achieved through equivalent access compliance, a formal consultation process assessing the design against the equivalent access criteria be undertaken and documented.

7 Governance

The terms of reference directed the Commission to have regard to the governance arrangements relating to procurement of the new generation rollingstock trains. This chapter examines the various governance arrangements in place over the life of the new generation rollingstock project.

7.1 Introduction

Governance is the framework of rules, relationships, systems and processes through which authority is exercised and controlled. Effective governance provides the mechanisms for ensuring good decisions and for holding management and decision makers to account.

Corporate governance represents the tangible structure that supports an entity in achieving its strategic and operational objectives by embedding strong internal controls and processes that effectively drive its activities, guide its employees and influence its workplace culture.[282] Similarly, project governance supports projects in effectively achieving their objectives by setting and overseeing direction and providing a decision-making framework.

The key elements of effective governance arrangements are:

- transparency – roles and responsibilities are clearly defined and documented, conflicts of interest are managed, and decisions are documented and shared with the project team
- leadership – senior executives agree on project outcomes and demonstrate a shared commitment to the arrangements
- accountability – reporting arrangements are defined with a shared understanding of responsibilities
- efficiency – processes focus on achieving results with a minimum of duplication
- responsiveness – arrangements facilitate proactive and prompt management and escalation of risks and issues.[283]

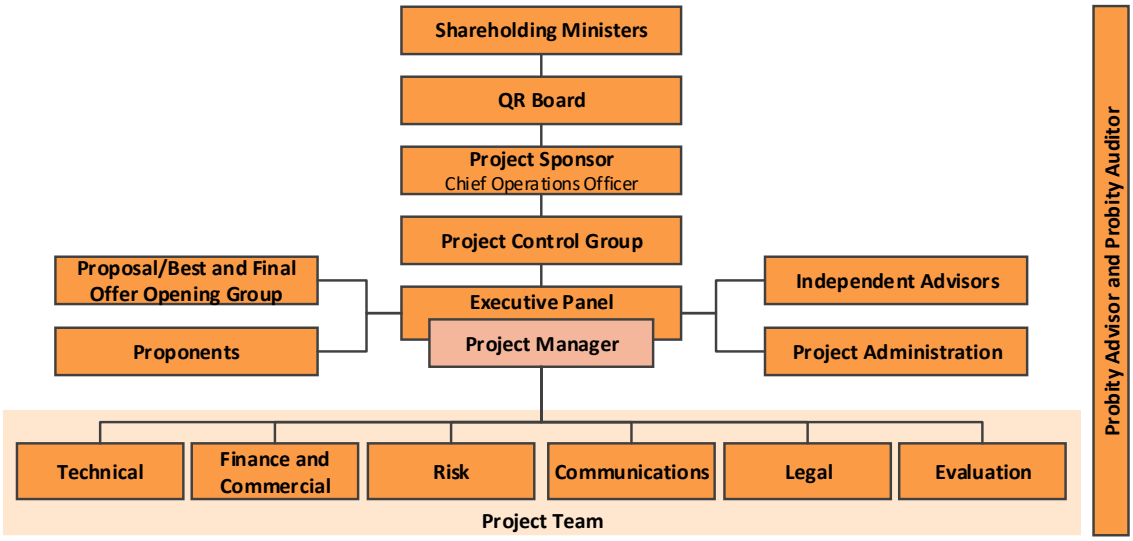
The NGR project has been subject to multiple governance arrangements since it began in 2008, with arrangements altered as the project lead changed and the project progressed through different phases.

7.2 Queensland Rail project lead

As the project lead, QR established governance arrangements setting out the governance principles and practices for the project.[284]

Figure 16 shows the governance structure implemented by QR.

Figure 16. QR – NGR project governance structure



Source: Project Governance Framework – New Generation Rollingstock Project (2010).

The QR Board was responsible for the overall performance and good governance of QR. The CEO was the ultimate trustee for the project to the QR Board and was the official project endorser. The project sponsor, the chief operations officer, was accountable to the project endorser for the success of the NGR project and provided leadership to the project.

The project control group (PCG) provided guidance to the project sponsor on the management of the project. The PCG was comprised of senior managers from QR, a TransLink representative, the project manager and an external consultant who chaired the group. Under the terms of reference, the chair was accountable for final decision-making. The PCG oversaw the project and had delegated authority to make approvals regarding the project's direction. The PCG also provided governance, leadership and strategic direction to the project manager.

The executive panel, comprised of the project manager and several QR managers, was responsible for the direction and management of the project team in relation to procurement tasks and activities. The project manager was responsible for the management and coordination of the project, providing advice and recommendations of the project progress to the PCG and implementing processes to identify and manage risks, and escalating matters to the PCG and project sponsor.[285]

Decision and approval process

Under the governance arrangements project approvals were to be made in accordance with the major capital investment approval process under the QRIFM (see section 2.5.3).[286]

Table 5 outlines the approval and notification requirements for the QRIFM stage gates.

Table 5. QRIFM approval and notification requirements

Stage gates	Approval	Notification
To concept stage	Executive General Manager	Nil
Concept to prefeasibility	CEO/CFO	QR Board (discretion of CEO/CFO)
Prefeasibility to feasibility	CEO/CFO	QR Board QR Treasury (if over $100million)
Feasibility to execution	QR Board and shareholding ministers	QR Treasury
Execution to operation	Executive General Manager	Investment Advisory Team CEO

The NGR project concept was approved in July 2009 and progressions from concept to prefeasibility and from prefeasibility to feasibility were approved by the CEO in October and November 2009 respectively.[287] The QR Board was advised of the approval for the NGR project to progress from the prefeasibility to feasibility stage in board papers prepared for the meeting on 8 December 2009.[288]

7.2.1 Project health check

As outlined in section 4.4 of this report, Ernst & Young undertook a high-level health check of the NGR project in December 2009. It identified issues relating to project governance including:

- a lack of focus on demonstrated compliance with the QRIFM
  - timing of gate reviews not followed, with approvals late or overlapping project timelines
  - reports required at each gate review not being produced
  - no independent peer review during prefeasibility and feasibility gate reviews
- the procurement agenda being driven by strong personal views of project members
- a substantial portion of the project being driven by external consultants
- diminished effectiveness of the PCG due to members not fully appreciating their roles, insufficient time to review documents, lack of follow-through on actions and the absence of subcommittees to deal with issues
- incomplete documents, such as risk registers and stakeholder plans.[289]

Ernst & Young considered QR's actions in response to the recommendations from the health check report during a pre-RFP probity audit conducted in August 2010. Of significance from a governance perspective was its finding that the NGR project was operating under the view that the QRIFM gate review to progress to the execution stage was not required until immediately prior to awarding the contract. Ernst & Young suggested the review should be completed prior to the release of the RFP, which would also be consistent with other gateway review processes including the PAF.

Ernst & Young noted that the NGR project subsequently developed a stage gate report, which the Investment Advisory Team signed-off on 15 September 2010, but which was treated not as a gate review but as a review within the feasibility stage.[290]

7.2.2 Turnover

During the time QR was the NGR project lead, there was a high turnover of positions with critical governance responsibilities. Table 6 outlines turnover in key positions in QR and shareholding ministers or ministers responsible for transport from the start of the project in 2008 to when PQ became the project lead in November 2012,[q] and over the course of the entire project.

Table 6. Turnover of executive management and shareholding/responsible ministers

Position	Number of office holders[r]	
	QR lead 2008–2012	Entire project 2008–2017
Chairman of the QR Board	3	6
CEO	3	7
Shareholding/responsible ministers	7	13

Source: QR Annual Reports 2008–2009 to 2012–2013

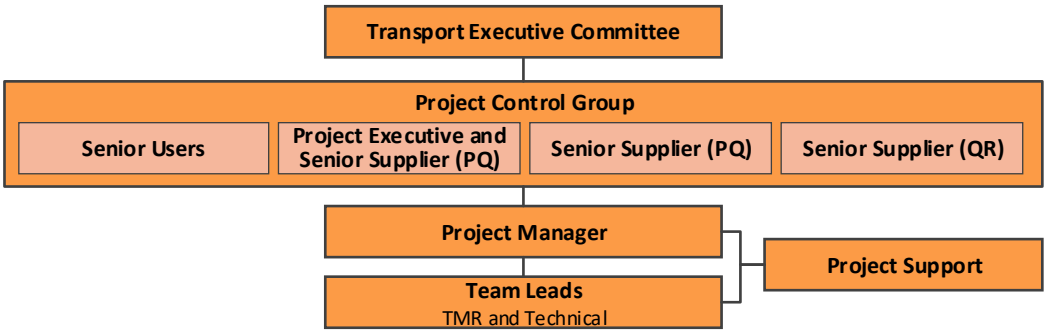
There were also 19 separate directors who served on the QR Board from the start of the project in 2008 to when PQ became the project lead in November 2012. Significantly, a loss of extensive corporate knowledge from the QR Board occurred when several board members moved to QR National on its separating from QR on 1 July 2010.

7.3 Projects Queensland project lead

PQ became the project lead for the NGR project in November 2012, appointed as the procuring agent on behalf of TMR. Accordingly, PQ established governance arrangements for the management of the NGR project procurement process.

Figure 17 shows the governance structure implemented by PQ.

Figure 17. Governance structure 2012



Source: Project Control Group terms of reference New Generation Rollingstock Project (2013).

The Transport Executive Committee (TEC), a cross-departmental committee comprised of representatives from TMR, QR, Queensland Treasury and the Department of the Premier and Cabinet, assumed the role of the steering committee for the project and provided strategic direction.

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[q] CBRC approved the change in project principal on 20 September 2012 and the procurement process recommenced in December 2012; the Commission has considered the intervening period a transition phase for the transfer of the project from QR to PQ (acting on behalf of TMR).

[r] Where an office holder left the office then resumed the role after an intervening period, this has been treated as a separate office holder for counting purposes.

The PCG was accountable for the success of the project, providing overall direction and management. Decisions of the PCG were to be made by consensus; however, the chair (senior supplier (PQ)), could escalate matters to TEC, the Under Treasurer, Treasurer, Minister for Transport, CBRC or Cabinet for a decision or advice.

The PCG membership comprised of representatives from PQ, TMR and QR, each of whom had individual responsibilities within their respective project roles. The project executive was ultimately responsible for the success of the project. They provided leadership and direction, were the ultimate decision-maker, and reported on progress to TEC. The senior users were responsible for ensuring the project achieved the desired results, and the senior suppliers were responsible for the technical integrity of the project.

The project manager had authority to manage the project on a day-to-day basis and was responsible for ensuring the project team achieved its objectives, and for keeping the PCG informed of the project's progress. The team leads were responsible for ensuring the delivery of their team products.[291]

7.4 Department of Transport and Main Roads project lead

In late 2013, in preparation for the execution of the project deed, TMR commissioned Indec Consulting to review the proposed structure for the delivery phase of the project to ensure there was appropriate resourcing, structure and management of interfaces and risks.

Key risks identified by the review, relevant to the Commission's terms of reference, included:

- neither TMR nor QR had the full skillset (technical, commercial, cultural change and program delivery) to deliver the project
- misunderstandings of the performance specification requirements
- delays due to inadequate or inappropriate resourcing, design variations and approval of design submissions
- the need for QR to introduce significantly more contract performance thinking in their practices compared to existing in-house maintenance approaches.[292]

Following the execution of the project deed in December 2013, TMR assumed responsibility for delivering the NGR project. The delivery phase included the NGR project (design, construction, delivery and maintenance of the NGR trains) and the QR operational readiness program including business systems and the NGR boarding assistance model.

TMR and QR entered into a service level agreement (SLA) for QR to provide advisory services to support the delivery of the NGR project.

TMR developed governance arrangements for this phase of the NGR project, which were reviewed and revised over the course of the delivery phase of the project.

Service level agreement

The SLA was an agreement for QR to provide advisory services to TMR in relation to the design, construction, testing, commissioning and handover of the NGR trains.

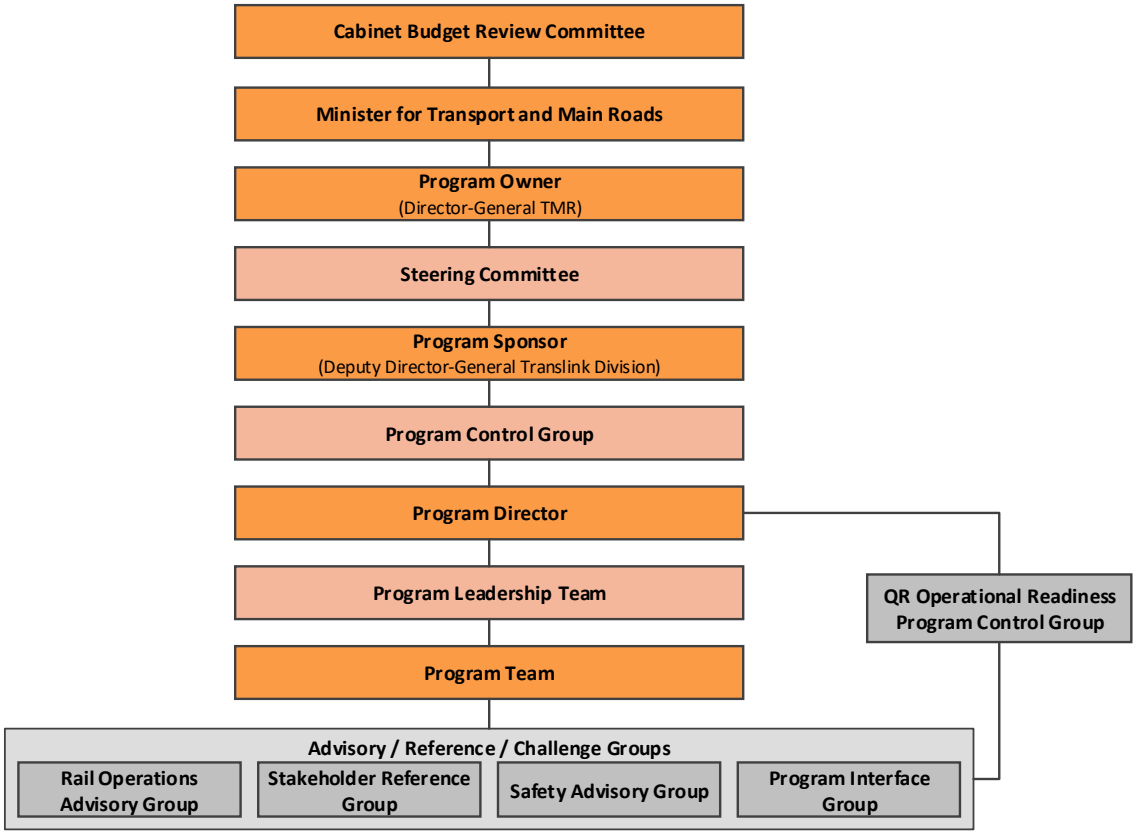
The SLA outlined the roles and responsibilities for TMR and QR from March 2014, making it clear that TMR was responsible for delivering the NGR project and that QR agreed to provide advisory services including:

- providing key personnel to assist the NGR project team
- responding to requests for information relating to QR specific issues
- providing engineering and technical advice regarding compliance with QR SEMS standards
- undertaking technical reviews relating to QR SEMS compliance, train crew interface, crew cab ergonomics, fitness for purpose, performance specification conformance for safety related issues, and compatibility with QR network assets
- ensuring availability of personnel to provide advisory services relating to the engineering aspects of testing and commissioning the trains
- providing a monthly report detailing a summary of activities, key risks for resolution and costs incurred.[293]

TMR governance structure – 2014

The governance structure implemented by TMR at the commencement of the delivery phase is outlined in Figure 18. To ensure continuity and the preservation of project knowledge, key staff from QR were seconded to TMR to continue working on the NGR project.

Figure 18. Governance structure 2014



Source: New Generation Rollingstock – Delivery Phase Governance Framework (April 2014).

The project owner was ultimately accountable for the delivery phase of the project. The project customer chaired the program steering committee (PSC), which provided guidance and assistance to the program owner for the management and delivery of the program. The PSC performed the strategic decision-making role for the NGR project.

The program sponsor provided advice and direction to the program director. The program sponsor chaired the PCG, which provided governance, leadership and strategic direction to the program and performed the day-to-day decision-making role for the project. A decision of the PCG was to be unanimous; where a decision could not be made, the issue was escalated to the program steering committee.

The program director was responsible for the performance of the project, and reported on program progress to the PSC, PCG and QR Operational Readiness Program Control Group (QROR–PCG). The program leadership team, chaired by the program director, managed key deliverables for the program, while the QROR–PCG represented QR and provided formal QR responses in relation to operational, safety and engineering decisions.[294]

Decision and approval process

Under the governance arrangements NGR project approvals were subject to internal TMR approval processes.

Decisions and approvals made or given by the program sponsor, as required by the program director, were to be endorsed in writing and the project sponsor, could at their discretion, require additional senior management endorsement. The program sponsor could take any request for a decision or approval to the PCG for advice.

Each decision or approval was to be recorded in the appropriate register.[295]

TMR governance structure – 2015

Following a review by the NGR project, the governance arrangements were revised in February 2015. The primary groups, committees, roles and responsibilities remained largely unchanged, although there were some changes to the membership of groups and committees.

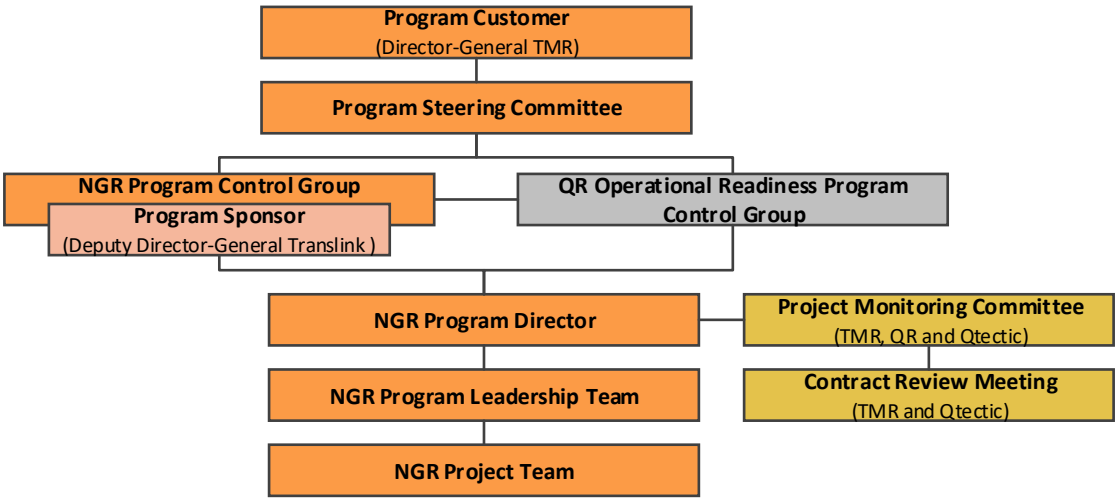
The key changes in the revised arrangements were:

- restructuring the reporting arrangements for the QROR–PCG
- including the state representative[s] with responsibility for ensuring the NGR project met its operational, functional and service delivery requirements and realised project benefits (the state representative was not shown in the governance structure)
- including interfaces between TMR, QR and Qtectic:
  - project monitoring committee, comprised of representatives from TMR, QR and Qtectic, to monitor implementation of project activities and compliance with respective obligations (required under the project deed)
  - contract review meeting between TMR and Qtectic (required under the project deed).[296]

Figure 19 shows the revised governance structure.

[s] The state representative was required under the project deed for notification and communication requirements.

Figure 19. Governance structure 2015



Source: Governance Framework - New Generation Program (February 2015).

The decision and approval process was unchanged under the revised governance arrangements.

Independent review of governance arrangements

In November 2016 TMR commissioned an independent review of the project governance arrangements. The review report made a range of recommendations; however, the findings and recommendations did not suggest significant changes were required to the governance arrangements. The report noted that the recommendations were 'intended to complement the current governance arrangements'.[297]

Recommendations relevant to the Commission's terms of reference included:

- nominating a person within TMR and QR to be the single point of accountability for maintaining relationships between parties to the project
- the PSC periodically undertaking a review of its functions and accountabilities
- avoiding adding any additional layers or oversight to the existing arrangements.[298]

While the report acknowledged that different arrangements might be implemented if the project was started again, it also noted that at the project's current stage, any significant changes to the governance structure would likely be unnecessarily disruptive and costly.[299]

TMR governance structure – 2017

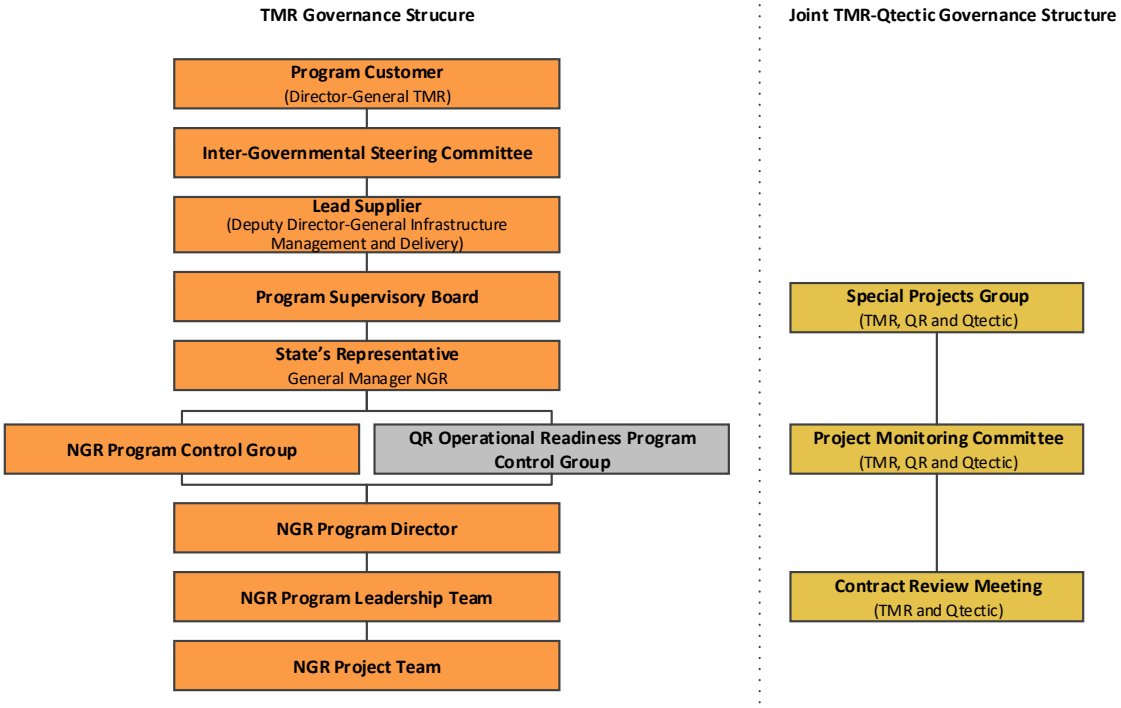
Following the independent review in November 2016, TMR's governance arrangements were revised in January 2017. The key roles and their responsibilities remained largely unchanged in the revised governance arrangements (the project sponsor was renamed lead supplier), but there were changes to the structure and membership of governance groups and committees.

The key changes included:

- distinguishing two governance structures, one internal to TMR and a joint TMR–Qtectic structure
- renaming the PSC as the inter-governmental steering committee (the core responsibilities of the committee were largely unchanged and retained representation from TMR, QR and Queensland Treasury)
- introducing a program supervisory board (PSB), comprised of senior managers from TMR and QR and chaired by the lead supplier, to provide high-level governance of the program across TMR and QR, with the responsibility and authority to direct the project
- making the state's representative the chair of the PCG
- establishing a special projects group, comprised of representatives from TMR, QR, Qtectic and Bombardier, to discuss matters relating to the project.[300]

The revised governance structure is outlined in Figure 20.

Figure 20. Governance structure 2017



Source: Governance Framework - New Generation Program (January 2017).

The decision and approval process was not substantially changed under the revised governance arrangements. Minor amendments were made to reflect terminology changes.

NGR project health check

As outlined in section 5.5 of this report, a health check of the delivery phase of the NGR project was conducted in early 2017. Key findings relevant to governance under the Commission's terms of reference included that:

- a number of misunderstandings regarding roles and responsibilities resulted from the changes to the project principal and procurement model
- roles and responsibilities of the parties could have been more clearly defined
- project team members had a clear understanding of their activities
- management processes were sufficiently robust to deal with contingencies and time, scope and cost variations
- behavioural change was needed, and senior management oversight required to ensure the alignment of individuals' behaviours with the success of the project
- the leadership team understood the risks and their risk management responsibilities
- a comprehensive risk management plan had been implemented and project risks coherently and consistently communicated with centralised documentation.

The health check recommended that QR appoint a senior executive to lead all aspects of delivery of the NGR project from a QR perspective.[301]

Minor changes were subsequently made to the governance arrangements in June 2017 to introduce a single point of accountability in QR for the project with the inclusion of the General Manager (Major Projects) as a member of the inter-governmental steering committee and the removal of the Chief Operating Officer (QR) as a member of the PSB.[302]

Rail Transport Services Contract variation

The Rail Transport Services Contract between TMR and QR was varied on 12 May 2016 to regulate TMR's and QR's respective roles and obligations in relation to the NGR project. Relevant to the Commission's terms of reference, the variations included amendments to specify that QR:

- review the mock-ups and models as part of the design review under the project deed[303]
- meet with Qtectic and/or TMR, as requested by TMR, to facilitate the review of Qtectic's design documentation[304]
- notify TMR of any design documentation it reasonably considered critical for reasons of safety, accreditation, complexity or interfacing requirements[305]
- provide technical advice to TMR, as requested, in relation to a permitted design change and/or review a permitted design change[306]
- may request that TMR propose a variation by providing written notice[307]
- assist TMR, if requested, in preparing and progressing variations and responding to and progressing a Qtectic variation[308]
- assess the provisional acceptance criteria it has been asked to review for each train presented for provisional acceptance[309]
- inspect the train and all supporting information, on request, and assist TMR in assessing whether the train meets the final acceptance criteria.[310]

7.5 Findings and conclusions

The Commission found no fundamental flaws in the NGR project's governance arrangements as they related to the Commission's terms of reference. However, weaknesses were identified in the performance of key roles, in engaging appropriate accessibility expertise, and in the relationship between QR and the NGR project team under TMR's lead.

Structured, well-documented governance arrangements alone are not sufficient. Good governance requires the right people, performing their roles effectively.

> *Projects involve people. No amount of good planning or control will help if the wrong people are involved, if the right people are not involved or if people involved do not know what's expected of them or what to expect of others.*[311]

Inadequate oversight by the QR Board

The QR Board was ultimately accountable for the operation and delivery of the NGR project while QR was the project lead, for QR's contribution to the project while PQ and TMR were the project lead, and for ensuring operational readiness while TMR was the project lead.

Consistent with previous investigations of QR projects and practices, the Commission found that insufficient information was provided to the QR Board regarding the NGR project. Regular updates were not provided regarding the project's progress, and the Board was not made aware of slippages and missed project milestones.

This was particularly evident in relation to the first RFP. The Board approved the release of the RFP on 8 December 2009 but was not subsequently advised that the release of the RFP was delayed by one year.

The Commission found no evidence the QR Board questioned the progress of the NGR project or the reasons for the continual delivery delays. In the Commission's view, the QR Board did not effectively oversee the NGR project. More effective oversight may have resulted in a much more efficient procurement process, with unknown effects on compliance issues.

Recommendation 21

The Commission recommends that regular reporting to the Queensland Rail Board be implemented on the status of all major projects that Queensland Rail is leading or on which it is partnering with another agency for project delivery.

Project manager / program director

The various governance frameworks for the NGR project had a common element; the presence of a project manager/program director role. This role was critical to the success of the project, being responsible for operational management, including risk management, and regularly advising key governance bodies of the project's status and progress.

While QR and PQ were the project lead, the project manager was responsible for informing the PCG of the project's status. While TMR was the project lead, the program director was responsible for informing the steering committee, PCG and QROR-PCG of the project's status.

The project manager/program director role has been held by three people over the course of the NGR project. All incumbents advised the Commission that they were aware of compliance issues with the disability legislation; however, there appears to have been a persistent failure to inform the project governing bodies and senior executives of the issues and associated risks and consequences.

The Commission does acknowledge that compliance issues with disability legislation and functional requirements were one component of a large and complex project that experienced disruptions and significant change.

Additionally, while the following discussion focusses on the project manager/program director position due to the role's particular responsibilities, the Commission notes that any member of the project team or staff associated with the project could have escalated compliance issues, either through the project governance structure or the operational reporting lines within QR, PQ or TMR.

Project manager – QR project lead

While QR was the project lead there were no substantial issues of non-compliance with the disability legislation. There were no inherent compliance issues in the performance specification, and the procurement process had not progressed to the stage where potential issues regarding design proposals would become apparent.

Project manager – PQ project lead

The PQ project manager advised the Commission that he was aware of compliance issues while performing that role; however, it was apparent to the Commission that his knowledge of the issues was limited. He stated that his understanding was that compliance issues were matters of ongoing discussion with the proponents from the first RFP process, including discussion of alternative options to achieve compliance.[312]

His understanding of the consequences of non-compliance was also limited. He stated: 'As a layman, I could understand there'd be numerous consequences' but he wasn't aware of the consequences articulated in the legislation.[313]

There is no evidence the project manager endeavoured to better understand the issues or consequences to ensure that any associated risks were appropriately managed or escalated to the project's governing bodies. The project executive, who was a member of the PCG, and the Director-General of TMR, who was a member of TEC, advised the Commission that they were not advised of any issues regarding the NGR trains not complying with disability legislation.[314]

Further, the project manager did not raise any issues of non-compliance in his handover correspondence for the project or when the Director-General of TMR sought his advice prior to executing the project deed.[315]

In the Commission's view, the failure of the project manager to fully appreciate and escalate the compliance issues may have contributed to the procurement of trains that did not comply with the disability legislation and functional requirements.

Program director – TMR project lead

Two individuals have held the position of program director while TMR has been the project lead.

The initial program director, who had been the project manager while QR was the project lead, was appointed to the role in February 2014 after TMR became the project lead. He had remained involved in the project as the QR technical leader while PQ was the project lead.

The initial program director advised the Commission that he had a 'reasonable understanding' of DSAPT and was aware of the issues regarding non-compliance with disability legislation under the project deed and the potential consequences of non-compliance.[316] There is, however, no evidence that he took any action to address the issues of non-compliance or to escalate the issues to the project's governing bodies or program owner during the design approval phase.

The Director-General of TMR, who was a member of the PSC and the program owner, advised the Commission that he could not recall the initial program director raising any issues regarding the NGR trains not complying with disability legislation. He said that if issues had been raised, he 'would have done something about it'.[317]

The Commission was also advised of concerns regarding the initial program director's management and communication.[318] One team member described his management of the project as 'secretive' and lacking in transparency, resulting in the team not 'really knowing what was going on, and why'.[319] Another team member noted that there was a 'lack of clarity' regarding project responsibilities under the initial program director's leadership, which improved under subsequent leadership.[320]

The General Manager (New Generation Rollingstock) advised the Commission that there were concerns in relation to a lack of transparency and visibility regarding decision-making and senior management not being kept informed about project progress and issues. The initial program director was removed from the role in September 2014.[321]

The initial program director refuted that there were issues with his management and communication and advised that he had been left out of project discussions and decisions. He also stated that he had escalated compliance issues.[322]

The Commission acknowledges the initial program director's statements that he escalated compliance issues but found no evidence to support these assertions during the design approval phase.[t] In the Commission's view, the initial program director's failure to effectively manage the project team, to address compliance issues during the design approval phase, and to escalate the issues to senior decision-makers contributed to non-compliances not being appropriately addressed through the design approval process.

Following the initial program director's departure, the current program director was appointed in October 2014. The current program director advised the Commission that he first became aware of issues regarding non-compliance in April 2015, when Qtectic requested a concession for non-compliant access paths. He subsequently raised this request for variation with the PCG for consideration.[323]

In relation to the request for a concession regarding access paths, the Commission notes that the current program director did not consider it to be an issue because QR had advised the NGR project team that non-compliance would be overcome through its operating model for the NGR trains.[324]

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[t] Documents produced to the Commission indicate the initial program director raised compliance issues in his previous roles as QR project manager and technical lead but found no evidence that he raised issues during the design approval phase.

Additionally, the Commission notes that some members of the PCG were also members of the PSC and could therefore have independently raised the compliance issue regarding access paths at a PSC meeting; any member of the PCG could have recommended that this issue be escalated to the PSC.

The issues of non-compliance regarding the NGR trains are, however, broader than the request for a concession regarding access paths.

The Commission acknowledges that at the stage of the project when the current program director became aware of compliance issues, the capacity to change the design of the trains to address non-compliances was restricted.

The Commission also notes that the current program director's understanding of the compliance issues with the disability legislation was limited and that he relied on QR technical experts and Qtectic's advice in relation to compliance. However, in the Commission's view, the current program director had an obligation to ensure potential non-compliances and alternative mechanisms for compliance were properly examined and to inform the PCG and PSC of non-compliances, the associated risks, and alternative mechanisms for compliance.

Recommendation 22

The Commission recommends that a plan for compliance with the disability legislation and functional requirements be developed at the start of major public transport procurement projects. The compliance plan should be provided to the project steering committee or equivalent governance body.

Accessibility expertise

The NGR project failed throughout the procurement and design approval phases to engage an accessibility expert to provide advice on the application of the disability legislation and functional requirements, the mechanisms for achieving compliance, and the possible consequences of non-compliance. This lack of expert knowledge of the disability legislation and functional requirements significantly limited the capacity of the project team to effectively manage the trains' compliance.

The project team had general knowledge of the disability legislation; however, the team's level of knowledge was not sufficient to effectively manage compliance issues. The team did not have a detailed understanding of the requirements under DSAPT and did not recognise that equivalent access compliance could be pursued for some design elements.

Internal QR correspondence indicates the principal QR technical experts did not understand the application of DSAPT requirements regarding access paths and toilet availability,[325] which were key compliance issues for the NGR trains. Similarly, internal QR correspondence indicates the Accessibility Team may not have recognised the significance of the toilet only being accessible from two allocated spaces.

The correspondence stated:

> *The state should be informed of the residual risk attached to this in relation to compliance with disability discrimination legislation. However, in my opinion this risk is minimal due to mitigating factors such as: design/width constraints; balancing access path widths with seating requirements; impact of other customers during peak/off-peak; and, opportunities for service delivery/direct assistance to provide equivalent access.*[326]

While reference to 'equivalent access' was noted in internal communications, there was no evidence that formally pursing equivalent access compliance was ever proposed or indeed that there was an understanding that such an option was available or what was involved.

The Commission notes that the NGR project team could have more effectively used the QR Accessibility Team through formal engagement during the project. However, the Commission has concerns regarding the Accessibility Team's level of expertise, ability to influence decisions, and lack of proactivity in addressing or escalating issues and undertaking compliance assessments. Given these concerns, while formal engagement with the Accessibility Team may have bolstered the project team's understanding of accessibility matters, in the Commission's view, an external consultant with a greater sphere of influence should have been engaged to provide expert accessibility advice.

External consultants were engaged throughout the procurement process to provide advice on probity, legal, commercial and technical matters, and an accessibility expert, subject to the same confidentiality and probity restrictions as other consultants, should similarly have been engaged to provide advice on the disability legislation and functional requirements. An accessibility expert should also have been retained to provide advice to the NGR project team during the design approval phase.

The Commission notes that the project team did engage an external accessibility consultant to provide advice and support to the team during the consultation and options development processes for the rectification of non-compliance issues in 2017–2018. The effectiveness of these processes supports the Commission's view that an accessibility consultant, with expert knowledge of disability legislation and accessibility matters, would have been valuable during the procurement and design phases of the project.

The Commission acknowledges TMR's efforts to address the issues that emerged through the NGR project and to prevent the reoccurrence of similar issues through the creation of the Integrated Accessible Transport Network (IATN) in April 2018. The IATN, led by a newly-appointed Executive General Manager, is a three-year program to ensure TMR's products and services are integrated and accessible.[327]

The Commission supports the implementation of the IATN, but emphasises the importance of TMR ensuring accessibility is adequately embedded within TMR's core business and procurement processes within the three-year period to ensure accessibility continues to be a priority at the completion of the IATN program.

The Commission similarly acknowledges QR's recognition of the importance of improving accessibility through the creation of a new senior leadership position, Senior Manager Accessibility, to provide specialist cross-functional leadership across QR. The new position was filled in September 2018.[328]

Recommendation 23

The Commission recommends that an appropriate accessibility expert (an agency employee or a consultant) be formally engaged at the start of all procurement projects where the disability legislation will apply to goods or services procured, or the services subsequently provided by the goods procured.

Fractured relationships and role performance

It was apparent to the Commission from documents reviewed and interviews conducted that the relationship between TMR and QR has been marred by distrust. The decision to remove QR as the project lead created a degree of resentment and animosity that resulted in a competitive rather than collaborative relationship during the delivery phase of the project.

Despite numerous documents, including governance frameworks, service level agreements and interface deeds, outlining the respective roles of QR and TMR for the delivery phase of the NGR project there were ongoing tensions regarding each party's responsibilities, particularly in relation to design approval and stakeholder consultation.

The Commission notes that the documents outlining responsibilities did not comprehensively cover every activity for the project and that this may have created a degree of uncertainty, but also notes that this is not unusual for cross-agency projects. In the Commission's view, governance arrangements and agreements are not intended to define responsibility for every activity but rather form the overarching framework of responsibilities, with successful project delivery dependent on cooperation between the parties.

This is particularly relevant for the delivery of the NGR project, as both QR and TMR have an ongoing role and obligations regarding the operation of the NGR trains on the Citytrain network:

> *Ultimately both parties have the responsibility to ensure that the train is fit for purpose and safe and reliable to operate as both parties are impacted if this is not the case.*[329]

In the Commission's view, this tense and competitive relationship hindered the effective management and resolution of compliance issues. An environment where the prevailing consideration is carefully distinguishing responsibilities and defending positions rather than working together to achieve a common goal is not conducive to positive project outcomes or the prompt and effective management of issues.

A Whole of Business Review of Queensland Rail undertaken in 2017 as a recommendation of the Queensland Rail Train Crewing Practices Commission of Inquiry, identified a general lack of trust and partnership between QR and TMR had developed with the changing relationship and the removal of some responsibilities from QR. The review noted that this is resulting in major project interfaces, such as the NGR project, not working as effectively as they need to.[330]

The tensions created by removing QR as the project lead and the consequent allocation of responsibilities between QR and the TMR-led project team were compounded by the changed responsibilities for QR inherent in the procurement model.

The move away from the traditional procurement model, irrespective of the project lead, represented a significant shift for QR. QR had itself identified a number of risks associated with the changed approach including that its mindset may be inadequate to deal with the processes required under a non-traditional procurement model.[331] Similar risks were identified by Indec Consulting in late 2013 as part of its review of the proposed project structure, particularly the need for QR to introduce significantly more contract performance thinking in its practices compared to existing in-house maintenance approaches.[332]

The NGR project health check undertaken in May 2017 noted that QR was applying 'a rigid, traditional approach to technical compliance' in 'a non-traditional procurement' and that this had hampered the NGR project team. In the Commission's view, the potential for compliance issues to be addressed during the design phase was hindered by QR not effectively adapting to its role under the new procurement and project model as was applicable to the Commission's terms of reference.[333]

The Commission also notes the recommendation of the Queensland Rail Train Crewing Practices Commission of Inquiry, accepted by government, to confirm that TMR has accountability for all major capital projects and for QR to be accountable for operational readiness and project acceptance of rail projects. The Commission supports this recommendation but notes that work will need to be undertaken to improve the relationship between TMR and QR if future projects are to be delivered effectively.

Recommendation 24

The Commission recommends that a comprehensive cultural assessment be undertaken and action plans developed to foster a collaborative working arrangement between Queensland Rail and the Department of Transport and Main Roads.

Appendix 1 Terms of reference

Commissions of Inquiry Order (No. 1) 2018

Short title

This Order in Council may be cited as the Commissions of Inquiry Order (No. 1) 2018.

Commencement

This Order in Council commences on 1 August 2018.

Appointment of commission

(a) The Governor in Council hereby appoints Mr Michael Forde to make full and careful inquiry in an independent manner into the circumstances leading up to and associated with the procurement through a Public Private Partnership of New Generation Rollingstock (NGR) trains which fail to comply with:

  (i) the Disability Legislation; and

  (ii) functional requirements.

(b) In making such inquiry, the commission is to have regard to:

  (i) the procurement process for the NGR trains related to compliance with the Disability Legislation and functional requirements, including project milestones, technical specifications, project sponsor arrangements and governance

  (ii) respective obligations of contractual parties, governance arrangements and entities involved in procurement of the NGR trains

  (iii) 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 Legislation

  (iv) decisions made by respective Governments, Statutory authorities and Departments which caused or contributed to non-compliance with Disability Legislation, and any reasons provided for those decisions.

Procedure

The commission:

(a) may receive any document or other material relevant to the terms of reference that the commission considers appropriate

(b) may conduct interviews if required with any person who has information relevant to the terms of reference either with the person's consent or pursuant to a requirement under section 5 of the Commissions of Inquiry Act 1950

(c) may request and receive submissions from relevant parties

(d) may not conduct hearings

(e) may conduct proceedings using any technology that allows reasonably contemporaneous and continuous communication.

Commission to report

(a) And directs the commission to make full and faithful report on the terms of reference and transmit the report to the Premier and Minister for Trade by 3 December 2018.

(b) Without limiting the scope of any report arising out of the inquiry, it should include:

(i) an executive summary of the commission's findings and recommendations;

(ii) a chronology of the procurement of the NGR trains;

(iii) any factual findings in respect of the procurement processes and decisions which caused or contributed to noncompliance with the Disability Legislation and functional requirements;

(iv) any recommendations to ensure that future procurement by government, including of rail infrastructure in the context of a narrow-gauge rail network:

(A) involves consultation with the disability sector;

(B) takes into account functionality; and

(C) complies with all relevant disability standards; considering changes implemented to date in response to the identified non-compliance with the Disability Legislation.

Application of the Commissions of Inquiry Act 1950

Pursuant to section 4(2) of the Commissions of Inquiry Act 1950 it is declared that the provisions of that Act shall apply for the purposes of the inquiry other than the following:

section 4A (Interaction of commission with courts)

section 5B (Attendance of prisoner, patient or forensic disability client before commission)

section 13 (Powers of chairperson if a judge of the Supreme Court)

section 16A (Power of tribunal as to exclusion of public)

section 18 (Power to sit at any time and place)

section 19C (Authority to use listening devices)

section 21 (Examination of witnesses by counsel)

Definitions

In this order in council –

Disability Legislation means the *Disability Discrimination Act 1992* (Cth) and the *Disability Standards for Accessible Public Transport 2002* (Cth).

Terms of reference means the subject matter of the inquiry specified in paragraph 3.

ENDNOTES

1. Made by the Governor in Council on 26 July 2018.

2. Notified in the Gazette on 27 July 2018.

3. Not required to be laid before the Legislative Assembly.

4. The administrating agency is the Department of the Premier and Cabinet.

Appendix 2 Commission establishment and operations

Establishment

Prior to the Commission's commencement, office premises at level 18, 53 Albert Street, Brisbane were obtained, key personnel were recruited, administrative arrangements were put in place and other preparations were made.

Evidence collection

The Commission relied on its powers under the *Commissions of Inquiry Act 1950* to seek information and documents from organisations and individuals with relevant knowledge.

Documents

In response to Notices to Produce Documents, the Commission received more than 120,000 documents. Documents were provided by the Queensland Cabinet Secretary, the Department of Transport and Main Roads, Queensland Treasury, the Department of the Premier and Cabinet, Queensland Rail, Aurizon, Bombardier Transport Australia, Qtectic, Ernst & Young, DLP Piper, Deloitte Touche Tohmatsu, and individuals.

There was a considerable delay from some parties in producing documents to the Commission. In some cases, the Commission agreed to a phased approach to the production of documents or to limit the production of documents. These agreements were informed by the principle of proportionality, to ensure the costs of producing documents to the Commission were not disproportionate to the likely benefits.

A significant proportion of the material provided to the Commission was done so on the basis that such documents were subject to claims of confidentiality, which may be pursued should public disclosure be considered.

The Commission thanks all public authorities, organisations and individuals for their assistance and cooperation in producing documents during the course of the inquiry.

Submissions

Submissions were invited from all interested parties via the Commission's webpage. The Commissioner also wrote to the identified stakeholders inviting submissions on the terms of reference. The list of identified stakeholders the Commission wrote to at Appendix 13.

The Commission received 19 written submissions from a range of stakeholders. The majority of submissions addressed the investigation's terms of reference or provided information regarding submitters' experiences or concerns about the NGR trains. Submissions that were not determined to be confidential have been published on the Commission's website, redacted of personal information that would breach an individual's privacy. The submitters are listed at Appendix 14.

The Commission thanks all individuals and organisations who made a submission. The submissions provided valuable information, assisting the Commission in its examination of issues.

Interviews

The Commission conducted 32 interviews over the course of its inquiry. It interviewed:

- members of the Queensland Government
- former ministers
- current and former staff from the Department of Transport and Main Roads
- current and former staff from Queensland Treasury
- current and former staff from Queensland Rail
- representatives from Bombardier Transport Australia Pty Ltd and Qtectic
- current and former staff from organisations involved in the procurement process
- representatives from the disability sector.

The persons interviewed during the course of the Commission are listed at Appendix 15.

The Commission is grateful for the cooperation and assistance provided by all parties interviewed.

Site visit

On 29 August 2018, the Commissioner and Commission staff visited Roma Street Station to view an NGR train. The Commission thanks the Department of Transport and Main Roads and Queensland Rail for arranging this site visit.

Procedural fairness

Where the Commission identified that its final report may make adverse comments in relation to an individual or organisation the Commission provided notice of potential adverse findings to those individuals or organisations. The notices set out the potential adverse findings and invited the individuals or organisations to respond by further statements or submissions as to why such findings or comments should not be made. The responses received were considered by the Commission prior to the production of the final report.

Statistics

The following statistics provide an overview of the work of the Commission:

- 19 submissions were received
- 16 requests for the production of documents were issued
- more than 120,000 documents were received
- 33 requests for attendance to be interviewed were issued
- 32 interviews were conducted.

Commission staffing

The Commission engaged eight staff (including the Commissioner) during the course of the inquiry. The staff and their positions are listed at Appendix 16.

Staff came from a variety of backgrounds, which resulted in a diverse range of skills and expertise including legal, procurement, policy, research and audit. Staff were subject to criminal history checks undertaken by the Queensland Police Service and were required to disclose any possible conflict of interest.

External engagements

The Commission engaged a number of external contractors. The entities and the purpose of their engagement are outlined below.

Entity	Purpose
Auscript	Recording and transcription services
Credence Consulting	Editorial services for the Commission's report
TIMG Australia	Printing services for the Commission's report

Records management

The Commission used Ringtail (a legal document management system) to manage the majority of evidence obtained during the inquiry. Administrative records were managed using the Department of the Premier and Cabinet's records management system (TRIM).

The Commission's records have been managed in accordance with the Commission of Inquiry Retention and Disposal Schedule (QDAN 676 v2) issued by the Queensland State Archivist under the *Public Records Act 2002*.

At completion of the Commission, hard copy records were transferred to the Queensland State Archivist, with the Department of the Premier and Cabinet nominated as the relevant and responsible public authority to manage the electronic records.

Applications to access the Commission's records should be made to the Department of the Premier and Cabinet by writing to GPO Box 15185, Brisbane Qld 4001 or by email to rti@premiers.qld.gov.au.

Appendix 3 Relevant DSAPT provisions

Source: Disability Standards for Accessible Public Transport 2002 *(Cth)*

2.6 Access paths – conveyances

(1) Subject to subsection (3) and section 2.7, an access path that allows continuous and unhindered passage must be provided with a minimum width of at least 850 mm.

(2) Subsection (1) applies to doorways and stairs, and between entrances, exits, allocated spaces and other essential facilities for passengers using wheelchairs and other mobility aids.

(3) If the conveyance exists or is ordered before the commencement of this section, the minimum width may be reduced to 800 mm at any doorway restriction.

2.8 Extent of path

(1) An access path must extend from the entrance of a conveyance to the facilities or designated spaces provided for passengers with disabilities.

(2) Up to 50 mm of an adjacent allocated space may be used as part of the access path.

(3) If an access path cannot be provided, the operator must provide equivalent access by direct assistance.

3.2 Access for passengers in wheelchairs, etc

(1) Passengers in wheelchairs or mobility aids must be able to enter and exit a conveyance and position their aids in the allocated space.

(2) If this is not practicable, operators must provide equivalent access by direct assistance.
Note See sections 33.3 to 33.6 in relation to equivalent access and direct assistance.

4.3 Passing areas – conveyances

(1) A ferry designed to carry more than 1 wheelchair must include at least 1 passing area for each accessible deck.

(2) A train designed to carry more than 1 wheelchair must include at least 1 passing area for each accessible rail car.

(3) The passing area must enable passengers travelling in mobility aids (conforming with the assumptions indicated in Part 40.1 of the Guidelines) to pass each other.

(4) The passing area may comprise part of the allocated space or circulation space or both.

6.4 Slope of external boarding ramps

The slope of an external boarding ramp must not exceed:

(a) 1 in 14 for unassisted access (AS/NZS3856.1 (1998) Clause 2.1.8 (e) (including the notes)); and

(b) 1 in 8 for unassisted access where the ramp length is less than 1520 mm (AS1428.2 (1992) Clause 8.4.2 (a) and AS1428.1 (2001) Figure 8); and

(c) 1 in 4 for assisted access (AS/NZS3856.1 (1998) Clause 2.1.8 (e)).

8.2 When boarding devices must be provided

(1) A manual or power assisted boarding device must be available at any accessible entrance to a conveyance that has:

(a) a vertical rise or gap exceeding 12 mm (AS/NZS3856.1 (1998) Clause 2.1.7 (f)); or

(b) a horizontal gap exceeding 40 mm (AS/NZS3856.1 (1998) Clause 2.1.8 (g)).

8.3 Use of boarding devices

(1) If a conveyance has a manual or automatic boarding device, it must be available for use at all designated stops.

(2) An available boarding device must be deployed if a passenger requests its use.

8.7 Signals requesting use of boarding device

(1) Any signal for requesting the deployment of a boarding device must be located in an allocated space.

(2) If possible, a signal is to be placed according to the dimensions given in AS1428.2 (1992) Clause 11.4, Call buttons.

8.8 Notification by passenger of need for boarding device

(1) It must be possible for a passenger to notify the operator of a conveyance that he or she needs a boarding device to board or alight from a conveyance.

(2) If a request signal device is used, it may be located on the conveyance or at the boarding point according to the dimensions given in AS1428.2 (1992) Clause 11.4, Call buttons.

9.1 Minimum size for allocated space

The minimum allocated space for a single wheelchair or similar mobility aid is 800 mm by 1300 mm (AS1428.2 (1992) Clause 6.1, Clear floor or ground space for a stationary wheelchair).

9.6 Number of allocated spaces to be provided – train cars, etc

(1) At least 2 allocated spaces must be provided for each rail, tram or light rail car.

(2) Up to 8 allocated spaces may be consolidated in one car of a set.

(3) If different classes of travel are offered, allocated spaces must be provided in each class.

9.7 Consolidation of allocated spaces

If possible, allocated spaces are to be consolidated to accommodate larger mobility aids.

9.9 Use of allocated space for other purposes

Allocated space may be used for other purposes if it is not required for use by a passenger in a wheelchair or similar mobility aid.

9.10 International symbol of accessibility to be displayed

(1) The floor area of an allocated space must:
   (a) display the international symbol of accessibility; and
   (b) be outlined in a flush contrasting strip 25 mm wide.

(2) The colours prescribed in AS1428.1 (2001) Clause 14.2 (c) are not mandatory.

10.1 Surfaces - compliance with Australian Standard

(1) Ground and floor surfaces must comply with AS1428.2 (1992) Clause 9, Ground and floor surfaces.

(2) AS1428.1 Supplement 1 (1993) Clause C12 provides criteria for the selection of floor surfaces.

11.4 Handrails above access paths

If installed, a handrail above an access path must comply with AS1428.1 (2001) Clause 6.1 (c), Handrails and Figure 9.

11.5 Handrails and grabrails – compliance with Australian Standard

A grabrail must comply with AS1428.2 (1992) Clause 10.2, Grabrails.

11.6 Grabrail to be provided where fares are to be paid

A grabrail or handrail must be provided at fixed locations where passengers are required to pay fares.

11.7 Grabrails to be provided in allocated spaces

Grabrails that comply with AS1428.2 (1992) Clause 10.2, Grabrails, must be provided in all allocated spaces.

12.1 Doors on access paths

(1) Any doors along an access path must not present a barrier to independent passenger travel.

(2) Direct assistance may be provided through security check points.

12.4 Clear opening of doorways

Doorways must comply with AS1428.2 (1992) Clause 11.5.1, Clear opening of doorways.

12.6 Automatic or power-assisted doors

(1) Doors may be fully automatic.

(2) Power-assisted doors must not require passengers to grip or twist controls in order to operate opening devices.

(3) Operators may provide equivalent access to conveyances by opening manual doors for people with disabilities. Note See sections 33.3 to 33.5 in relation to equivalent access.

15.3 Unisex accessible toilet – ferries and accessible rail cars

If toilets are provided, there must be at least one unisex accessible toilet without airlock available to passengers using wheelchairs or mobility aids.

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).

16.1 International symbols for accessibility and deafness

(1) The international symbols for accessibility and deafness (AS1428.1 (2001) Clause 14.2, International symbol and Clause 14.3, International symbol for deafness) must be used to identify an access path and which facilities and boarding points are accessible.

(2) The colours prescribed in AS1428.1 (2001) Clause 14.2 (c) are not mandatory.

(3) The size of accessibility symbols must comply with AS1428.2 (1992) Table 1.

16.2 Compliance with AS2899.1 (1986)

The illustrations and symbols prescribed in AS2899.1 (1986) must be used if applicable.

16.3 Accessibility symbols to incorporate directional arrows

The symbol for accessibility must incorporate directional arrows and words or, if possible, pictograms, to show passengers the way to accessible facilities such as toilets.

16.5 Accessibility symbol to be visible on accessible doors

The international symbol of accessibility must be clearly visible both inside and outside accessible doors on these conveyances.

17.1 Height and illumination

Signs must comply with AS1428.2 (1992) Clause 17.1, Signs, Clause 17.2, Height of letters in signs and Clause 17.3, Illumination of signs and Figure 30.

17.3 Location — conveyances

(1) If possible, signs are to be placed in accordance with AS1428.2 (1992) Clause 17.4, Location of signs and Figure 30.

(2) If the design of the conveyance prevents strict compliance, signs must be placed above the head height of passengers, whether they are sitting or standing.

(3) If used, destination signs must be placed above the windscreen.

17.4 Destination signs to be visible from boarding point

(1) Destination signs must be visible from, or available at, boarding points.

(2) They may be displayed on the conveyance or within the premises or infrastructure.

17.6 Raised lettering or symbols or use of Braille

(1) If a sign incorporates raised lettering or symbols, they must be at least 0.8 mm above the surface of the sign.

(2) If an operator or provider supplements a notice with Braille characters, they must be placed to the left of the raised characters.

19.1 Emergency warning systems

(1) If installed, emergency warning systems must comply with AS1428.2 (1992) Clause 18.2.1, Emergency warning systems, Clause 18.2.2, Audible alarms, and Clause 18.2.3, Visual alarms.

(2) Provision must be made for people with vision impairment to locate the exit path in the event of an emergency.

20.2 Illumination levels – conveyances

(1) Any lighting provided must comply with minimum levels of maintenance illumination for various situations shown in the notes to AS1428.2 (1992) Clause 19.1, Illumination levels.

(2) Lighting should be at least 150 lux at the entrance and at the point where a passenger pays his or her fare.

21.2 Passenger-operated devices for opening and closing doors

Passenger-operated devices for opening and closing manual and power-assisted doors on conveyances must comply with AS1428.2 (1992) Clause 23.2, Operation, and Clause 23.3, Door handles and hardware.

21.3 Location of passenger-operated controls for opening and locking doors

Passenger-operated opening and locking controls for doors on conveyances must be located according to AS1428.1 (2001) Clause 11.1.2, Location.

26.2 Public address systems – conveyances

If a public address system is installed:

(a) people who are deaf or have a hearing impairment must be able to receive a message equivalent to the message received by people without a hearing impairment; and

(b) it must comply with AS1428.2 (1992) Clause 21.1, Hearing augmentation.

27.1 Access to information about transport services

General information about transport services must be accessible to all passengers.

27.2 Direct assistance to be provided

If information cannot be supplied in a passenger's preferred format, equivalent access must be given by direct assistance.

27.3 Size and format of printing

(1) Large print format type size must be at least 18 point sans serif characters.

(2) Copy must be black on a light background.

27.4 Access to information about location

All passengers must be given the same level of access to information on their whereabouts during a public transport journey.

31.1 Priority seating

Operators must designate at least 2 of the seats provided on their unbooked conveyances as priority seating for passengers with disabilities and other groups in need of special assistance (for example, the aging).

31.2 Information to be provided about vacating priority seating

Operators must inform all relevant passengers (by signage or similar systems) that they should vacate an identified priority seat or allocated space if a passenger with a disability requires it.

33.1 Date for compliance with these Standards – new conveyances, premises and infrastructure

Operators and providers must comply with the specified sections of these Standards for all new premises, infrastructure and conveyances brought into use for public transport service on and from the date these Standards come into effect under section 31 of the Disability Discrimination Act 1992.

33.2 Date for compliance with these Standards – conveyances, premises and infrastructure in use at target dates

Operators and providers must comply with the specified sections of these Standards for premises, infrastructure and conveyances that are still in use for public transport at the target dates specified in Schedule 1.

33.3 Equivalent access

(1) Compliance with these Standards may be achieved by:
   (a) applying relevant specifications in these Standards before the target dates; or
   (b) using methods, equipment and facilities that provide alternative means of access to the public transport service concerned (but not using separate or parallel services) with equivalence of amenity, availability, comfort, convenience, dignity, price and safety.

(2) This may include direct assistance over and above that required simply to overcome discrimination.

33.4 Consultation about proposals for equivalent access

The operator or provider of a public transport service must consult with passengers with disabilities who use the service, or with organisations representing people with disabilities, about any proposal for equivalent access.

33.5 Equivalent access without discrimination

Operators and providers must be able to demonstrate that equivalent access provides public transport without discrimination 'as far as possible'.

Appendix 4 Extracts of the AHRC 2015 exemption

Source: Australian Human Rights Commission Notice of Decision 2015

Exemption from section 2.6 – Access paths

Temporary exemption: existing rail conveyances

Until 1 October 2020, for existing rail conveyance external and internal doors, the width of an access path may be reduced to a minimum of 760mm where it is not possible to provide a width of 850mm due to unavoidable design constraints or safety issues, subject to the following conditions:

- direct assistance is available
- the ARA member concerned ensures information is available to passengers in advance of travel of instances where there are restricted paths of travel on particular conveyances:
  - via the ARA member's website and downloadable fact sheets
  - in person at travel centres where they exist, and
  - via a telephone call to the customer contact centre where available.

Until 1 October 2020, an access path is only required at a single door rather than all doors of existing rail conveyances, subject to the following conditions:

- equivalent access is provided at an alternative door in the following circumstances:
  - if an allocated space is not available
  - to ensure access to unique facilities, or
  - to ensure a passenger can both board and alight the rail conveyance;
- the ARA member concerned provides a written report to the AHRC and the ARA within 12 months of this exemption on measures taken to ensure that staff and passengers are adequately informed of both the access paths available at the doors of existing rail conveyances and the equivalent access measures available; and
- the ARA makes such reports available to the public through its website.

Exemption from section 6.4 – Slope of external boarding ramps

Temporary exemption: rail conveyances

Until 1 October 2020, where the relationship between the platform and rail carriage means that an external board ramp can only be provided at a gradient greater than 1 in 8 but less than 1 in 4, ARA members are not required to provide staff assistance in ascending or descending the ramp. This exemption is granted subject to the following conditions:

- the ARA member provides a written report to the AHRC and ARA within 12 months of this decision on:
  - the number of locations where boarding ramp slopes of 1 in 8 or better cannot currently be achieved
  - measures to be taken to increase the number of locations where external boarding ramp slopes of 1 in 8 or better will be achieved, and
  - results of examination of alternative methods for achieving accessible boarding
- the ARA member provides an updated version of the report to the Commission and the ARA every 12 months

- the ARA makes the reports available on its website
- the ARA member ensures service users can obtain information about restricted access at any particular rail station or infrastructure:
  - at the location of the restriction
  - via the ARA member's websites and downloadable fact sheets
  - in person at travel centres where they exist
  - via a telephone call to the customer contact centre where available, and
- the ARA member provides free travel for any assistant accompanying a person with disability who requires assistance boarding a train as a result of the non-compliance.

Exemption from section 8.2 – When boarding devices must be provided

Temporary exemption: rail conveyances

Until 1 October 2020, a manual or power assisted boarding device is only required at a single door rather than all doors of a rail conveyance, subject to the following conditions:

- equivalent access is provided at an alternative door of the rail conveyance in the following circumstances:
  - if an allocated space is not available
  - to ensure access to unique facilities, or
  - to ensure a passenger can both board and alight the rail conveyance
- the ARA member ensures service users can obtain information about specified boarding points at any particular rail station or infrastructure:
  - at any platform at which there is a specified boarding point
  - via the ARA member's websites and downloadable fact sheets
  - in person at Travel Centres where they exist, and
  - via a telephone call to the Customer Contact Centre where available
- the ARA member provides a written report to the AHRC and the ARA within 12 months of this decision on measures taken to ensure that staff and passengers are adequately informed of both the doors of rail conveyances at which boarding devices are available and the equivalent access measures available
- the report is updated every 12 months, and the updated report is provided to the AHRC and the ARA, and
- the ARA makes these reports available on its website.

Exemption from section 8.7 – Signals requesting use of boarding device

Temporary exemption: rail conveyances

Until 1 October 2020, signals for requesting boarding devices may be located in or within reach from, rather than only in, allocated spaces on rail conveyances.

Exemption from section 12.4 – Clear opening of doorways

Temporary exemption: rail conveyances

Until 1 October 2020, where design constraints arising from narrow gauge rail tracks prevent installation of toilet doors on rail conveyances with an opening width of 850mm, a reduction in toilet door opening width from 850mm to 760mm on rail conveyances is permitted subject to the following conditions:

- the ARA member makes available an on-board narrow wheelchair that can pass through a reduced clear door opening if required, and
- the ARA member ensures service users can obtain journey-planning information about reduced door opening widths:
  - via the ARA member's website and downloadable fact sheets
  - in person at travel centres where they exist, and
  - via a telephone call to the customer contact centre where available.

Exemption from section 15.3 – Unisex accessible toilet

Temporary exemption: accessible rail cars

Until 1 October 2020, if toilets are provided, a unisex accessible toilet without airlock is not required in every accessible rail car, subject to the following conditions:

- the exemption is limited to ARA members constrained by space limitations arising from narrow gauge rail services
- one unisex accessible toilet without airlock is provided on an access path from each allocated space
- the first toilet provided on an access path from each allocated space is a unisex accessible toilet without airlock
- the ARA member provides a written report to the AHRC and ARA within 12 months of this decision on which services are affected provides an updated version of the report to the AHRC and ARA every 12 months, and
- the ARA makes these reports available on its website.

Exemption from section 15.4 – Requirements for accessible toilets

Temporary exemption: narrow gauge and standard gauge accessible rail cars

Until 1 October 2020, compliance with clause 15.4 is not required for narrow gauge and standard gauge accessible rail cars, subject to the following conditions:

- accessible toilets are configured and maintained such that passengers using mobility aids (that conform to the assumptions in Part 40 of the APT Guidelines) may enter, position their aids, use the accessible toilets and exit
- the ARA member consults with people with disability to identify dimensions that best balance the requirements for accessible paths of travel and circulation space inside accessible toilets
- the ARA member provides a written report to the AHRC and ARA within 12 months of this decision on the outcome of consultations
- the ARA makes the report available on its website

- the ARA member makes available information on its website and through travel centres and customer contact centres about any limitations and dimensions achieved in accessible toilets, and
- the ARA member concerned arranges, on request, a viewing or on-board trial to assist passengers to journey-plan before booking.

Exemptions from the DDA

The AHRC also grants to members of the ARA an exemption from sections 23 and 24 of the DDA as follows.

If a matter is regulated by a section of DSAPT, and the relevant section is subject to an exemption granted by this instrument, and

- a member of the ARA complies with the relevant section of DSAPT, as modified by the relevant exemption, and
- the member of the ARA complies with any conditions subject to which the relevant exemption is granted;

The member of the ARA is, with respect to that matter, exempt from the operation of sections 23 and 24 of the DDA.

Appendix 5 Extracts of the AHRC 2018 exemption

Source: Australian Human Rights Commission Notice of Decision 2018

Exemption from section 8.2 of the APT Standard

Temporary exemption: rail conveyances

Until 1 October 2020, a manual or power assisted boarding device is only required at a single door rather than all doors of a rail conveyance, subject to the following conditions:

- equivalent access is provided at an alternative door of the rail conveyance in the following circumstances:
  - if an allocated space is not available
  - to ensure access to unique facilities, or
  - to ensure a passenger can both board and alight the rail conveyance
- TMR (itself or through its operator) ensures that service users can obtain information about specified boarding points at any particular rail station or infrastructure:
  - at any platform at which there is a specified boarding point
  - via a website and downloadable fact sheets
  - in person at train stations, and
  - via a telephone call to the Customer Contact Centre where available
- TMR (itself or through its operator) provides a written report to the AHRC and the Australasian Railway Association within 12 months of this decision on measures taken to ensure that staff and passengers are adequately informed of both the doors of rail conveyances at which boarding devices are available and the equivalent access measures available, and
- the report is updated every 12 months, with the updated report provided to the AHRC and the Australasian Railway Association.

Exemptions from the DDA

The AHRC also grants to TMR an exemption from sections 23 and 24 of the DDA as follows.

If a matter is regulated by section 8.2 of DSAPT, and that section is subject to an exemption granted by this instrument, and

- TMR complies with section 8.2 of DSAPT, as modified by this exemption, and
- TMR complies with any conditions subject to which this exemption is granted

TMR is, with respect to that matter, exempt from the operation of sections 23 and 24 of the DDA.

Appendix 6 Procurement and project frameworks

Queensland project assessment framework

Project stages and key steps

	Project stages	Key steps
Pre-project	Strategic assessment of service requirement	▪ define the need to be addressed and outcome sought and contribution to government priorities and outcomes ▪ identify potential solutions to achieve the outcome ▪ develop a detailed plan and budget for conducting a preliminary evaluation of the potential solutions ▪ seek approval to proceed
Project	Preliminary evaluation	▪ confirm the desired outcome and options to be evaluated ▪ conduct preliminary evaluation of costs, risks and benefits of identified project options ▪ establish initial project organisation and governance arrangements ▪ develop detailed plan and budget for progressing to next stage ▪ seek approval to proceed
	Business case development	▪ confirm outcome sought and options to be evaluated ▪ determine project organisation and governance arrangements ▪ conduct detailed evaluation of costs, risks and benefits of identified project options and recommend preferred option ▪ develop project implementation plan for preferred option ▪ seek approval to proceed
	Supply strategy development	▪ establish processes to ensure probity ▪ develop procurement specifications ▪ undertake supply market analysis and market sounding ▪ develop procurement strategy, offer documents and evaluation strategy ▪ seek approval to proceed
	Source suppliers	▪ call for and evaluate offers ▪ conduct a supplier appraisal and undertake financial appraisal ▪ develop evaluation report ▪ negotiate and finalise the service contract ▪ seek approval to proceed
	Establish service capability	▪ sign (award) the contract ▪ establish contract management processes ▪ create the goods, service or output (product) required ▪ check organisational readiness ▪ seek approval to proceed
	Deliver service	▪ operationalise project products ▪ manage the contract and supplier performance ▪ conduct post-implementation review ▪ plan to close project and conduct post-project benefits review ▪ seek approval to close the project

National Public-Private Partnership framework

Project stages and key steps

	Project stages	Key steps
Project development	Strategic assessment of service requirement	
	Preliminary evaluation	▪ initial determination of priority and affordability
	PPP business case	▪ confirmation of priority and affordability ▪ approval of funding ▪ approval to proceed to EOI stage ▪ release of EOI inviting parties to register interest
Project delivery	EOI stage	▪ approval of short-listed proponents ▪ approval to proceed to binding bid/RFP stage ▪ release of RFP to shortlisted proponents
	Binding bid/RFP stage	▪ selection and approval of preferred proponent ▪ approval to finalise agreements and proceed to financial close ▪ approval for portfolio minister to execute final agreements (consultation with Premier, Treasurer and Minister for Infrastructure and Planning)u
	Project agreements management	

RFP requirements

The RFP document should include specifications regarding what constitutes a conforming or non-conforming proposal and comprehensive draft contractual documentation to ensure parties are aware of and can consider the contractual terms the government is seeking.

Bidders should be asked for evidence of committed finance and technical capabilities and to provide a fully marked-up contractual documents and departures schedule identifying instances where they have departed from the draft contractual documents.

Public interest assessment

A public interest assessment must be completed and submitted with documentation seeking project approval. The assessment considers the effectiveness of a PPP project in meeting the service requirement, the impact on stakeholders, accountability and transparency, public access and equity, consumer rights, security, and privacy.

Following approval, confirmation or updates of the assessment are required throughout the project.

[u] It is noted that following the 2012 state election there was no 'Minister for Infrastructure and Planning', but there was a 'Minister for State Development, Infrastructure and Planning'.

Appendix 7 NGR project chronology

Timeline of key decisions and events

Timing	Event description
October 2007	Rail Services Infrastructure Study identifies that additional rollingstock is required to meet forecast demand growth
June 2008	*South East Queensland Infrastructure Plan and Program 2008–2026* identifies 58 additional three-car trains are required to meet forecast demand growth
13 October 2008	QR approves funding to investigate procurement options for new rollingstock, undertake preliminary planning, and develop a business case for implementation
9 December 2008	CBRC approves commencing procurement of new rollingstock
17 December 2008	QR releases an expression of interest for the design and construction of up to 58 three-car trains to identify rollingstock supply options and develop a list of potential suppliers
30 January 2009	QR holds an industry briefing for interested parties
20 February 2009	Deloitte provides QR with the report on options for rollingstock procurement
23 February 2009	52nd Queensland Parliament is dissolved
27 February 2009	EOI period closes - QR receives five compliant EOIs
31 March 2009	State election (Australian Labor Party forms government)
April 2009	Rail Assessment of Capacity Alternatives Study finds that 73 rather than 58 three-car trains are required to meet forecast demand growth
May 2009	Evaluation panel finalises EOI assessment recommending UGL Limited, Bombardier and AdvanceRail be shortlisted to progress to the RFP phase
July 2009	QR endorses project concept stage
October 2009	QR commissions study on functional and aesthetic needs for rollingstock
14 October 2009	QR endorses project progressing from concept to prefeasibility stage
20 November 2009	QR advises Bombardier, AdvanceRail and UGL Limited they have been shortlisted to participate in the RFP phase
26 November 2009	QR endorses project progressing from prefeasibility to feasibility stage
8 December 2009	QR Board approves the release of the RFP to shortlisted proponents
10 December 2009	QR engages Ernst & Young to perform a high-level project health check
December 2009	QR develops preliminary NGR business case

Timing	Event description
5 February 2010	Ernst & Young provides *QR Passenger Rollingstock Procurement Project: Probity Health Check* report to QR
1 July 2010	QR's legal status changes and rail passenger services are separated from the intrastate rail freight business
21 October 2010	CBRC approves the release of the first RFP to the three shortlisted proponents
22 December 2010	QR issues the first RFP to the three shortlisted proponents
9 March 2011	Downer EDI Rail withdraws as a member of the Bombardier consortia
20 May 2011	QR issues a notice of change and revised performance specification including the requirement for one toilet on each three-car interurban train and two toilets on each six-car interurban train
8 July 2011	RFP period closes - QR receives proposals from the three shortlisted proponents (composition of some proponents' consortia had changed)
20 October 2011	QR issues a request for clarification requiring an intermediate guard cab on each six-car train and two toilets on interurban trains
30 November 2011	QR assesses proponents' designs for compliance with DSAPT
1 December 2011	Evaluation panel completes and endorses the preliminary evaluation report recommending that Bombardier and AdvanceRail be shortlisted to progress to the negotiation phase
17 October 2011	QR finalises a business case to establish the need, priority and affordability of procuring NGR trains
1 December 2011	CBRC notes the outcomes of the NGR Business Case including the procurement of 150 three-car trains on a 'design, construct, maintain' basis
	CBRC endorses funding for the procurement of 59 NGR trains
6 January 2012	QR advises Bombardier and Advance Rail that they have been shortlisted to progress to the negotiation phase of the RFP process
	QR advises UGL Limited that its involvement in the RFP process is suspended
19 February 2012	53rd Queensland Parliament is dissolved
24 March 2012	State election (Liberal National Party of Queensland forms government)
8 May 2012	NGR project is placed on hold pending a review by TMR and PQ
20 September 2012	CBRC approves changing the project principal from QR to TMR
	CBRC endorses approaching Bombardier and AdvanceRail regarding the feasibility of changing to an availability PPP model

Timing	Event description
24 September 2012	QR undertakes general consultation with the QR–ARG regarding designs for future trains on the Citytrain network
19 October 2012	QR advises Bombardier and AdvanceRail that the NGR project will be transferred to TMR
20 November 2012	CBRC approves changing the procurement model to an availability PPP
November 2012	NGR project formally recommences with PQ as the project lead
4 December 2012	PQ advises proponents that the pause on procurement has been lifted
21 December 2012	PQ issues two requests for clarification specifying no intermediate guard cab on the trains and one toilet on interurban trains
5 March 2013	Former Minister for Transport and Main Roads announces that the NGR project will be delivered using an availability PPP model
22 March 2013	PQ issues new RFP documents to Bombardier and AdvanceRail
11 March 2013	Downer EDI requests re-inclusion in the procurement process under the availability PPP model
22 March 2013	PQ issues revised technical specification – one toilet to be included in each NGR train
25 March 2013	TMR, as project lead, declines Downer EDI's request for re-inclusion in the procurement process
3 May 2013	QR ceases to be a government owned corporation and becomes a wholly owned subsidiary of the Queensland Rail Transit Authority
19 August 2013	Second RFP period closes – PQ receives proposals from the two shortlisted proponents
8 October 2013	Evaluation panel completes and endorses the initial evaluation report
17 October 2013	CBRC endorses the recommendation to award preferred proponent status to Bombardier and for the Minister for Transport and Main Roads (or delegate) to execute the relevant documents
15 November 2013	Evaluation panel completes and endorses the final evaluation report
18 November 2013	Former Premier, former Treasurer and Minister for Trade, and former Minister for Transport and Main Roads announce Bombardier as the preferred proponent
20 December 2013	NGR project deed is signed
16 January 2014	Financial close
29 January 2014	Former Treasurer and Minister for Trade and former Minister for Transport and Main Roads announce that Bombardier has been contracted to design, construct, finance and maintain the NGR trains
25 March 2014	Qtectic presents conceptual stage one mock-up to TMR and QR staff

Timing	Event description
5 August 2014	TMR and QR staff and QR–ARG members attend basic physical stage two mock-up inspection
November 2014	Qtectic commences construction of the NGR train fleet
6 January 2015	54th Queensland Parliament is dissolved
31 January 2015	State election (Australian Labor Party forms government)
23–24 March 2015	TMR and QR staff attend stage two mock-up inspection
31 March 2015	QR–ARG members and QR staff attend stage three mock-up inspection
26 August 2015	QR commences consultation with the QR–ARG regarding the boarding assistance model
24 May 2017	CBRC approves QR's interim assisted boarding model
27 June 2017	TMR commences consultation with the QR–ARG regarding compliance issues and options for resolution
6 July 2017	TMR provides QR–ARG with an *Accessibility Options Development and Selection – Preliminary Options Discussion Paper* for comment
18 August 2017	TMR provides the *Accessibility Options Development and Selection – Preliminary Options Report* to the QR–ARG for review and comment
September 2017	TMR develops an Accessibility Options Development and Selection – Final Options Report incorporating the QR–ARG's feedback and further investigation and assessment of the options
21 September 2017	CBRC endorses Qtectic undertaking a detailed assessment of costs and timeframes for the recommended options in the *Accessibility Options Development and Selection – Final Options Report*
27 September 2017	QR and TMR make a joint application to the AHRC for temporary exemptions from provisions of the disability legislation
29 October 2017	55th Queensland Parliament is dissolved
25 November 2017	State election (Australian Labor Party forms government)
6 December 2017	QR–ARG members attend boarding assistance model trial
11 December 2017	NGR trains enter service on the Citytrain network
29 March 2018	AHRC issues decision notice granting a temporary exemption only in relation to assisted boarding devices
23 May 2018	TMR forms a project working group with disability sector representatives to develop recommendations to rectify the trains
1 August 2018	NGR Commission of Inquiry commences
6 August 2018	Project working group finalises its recommendations report

Timing	Event description
13 September 2018	TMR holds a workshop with representatives from the disability sector to demonstrate equivalent access compliance for the recommended modified NGR train design

Appendix 8 Key entities involved in procurement

Public authorities

Entity	Role	Duration
Department of Transport and Main Roads	Project lead	January 2014 to Current
Projects Queensland (Queensland Treasury)	Project lead	November 2012 to January 2014
Queensland Rail	Project lead	May 2008 to November 2012

Private entities

Entity	Role	Duration
AON	Insurance advisor	February 2013 to September 2013
Ashurst	Legal advisor	November 2012 to January 2014
Corview	Transaction advisor	August 2010 to January 2014
Deloitte Touche Tohmatsu	Transaction advisor	November 2008 to June 2009
	Financial and commercial advisor	September 2008 to November 2010
DLA Piper	Probity auditor	March 2010 to January 2014
Ernst & Young	Probity auditor	December 2009 to September 2012
Indec Consulting	Technical advisor	May 2011 to January 2014
Interfleet Technology	Performance specification advisor	August 2009 to March 2010
KPMG	Commercial advisor	May 2011 to September 2012
Minter Ellison	Legal advisor	October 2009 to September 2012
Peter Willis	Probity advisor	September 2009 December 2009
PricewaterhouseCoopers	Commercial advisor	November 2012 to January 2014
Project Procure	Stakeholder management	July 2009 to July 2010

Appendix 9 Procurement accessibility requirements

First request for proposals

The performance specification included the following specifications relevant to the disability legislation and functional requirements:

- design of the trains must comply with DSAPT[334]
- the passenger compartment must be designed to be fully accessible to people with disabilities and comply with DSAPT[335]
- the toilet module must be designed to be suitable for both able bodied and disabled passengers in accordance with the requirements of DSAPT[336]
- PEIs must be provided, positioned and designed in accordance with DSAPT[337]
  - two PEIs must be provided in the toilet module: one at normal height and one at DSAPT height[338]
- the contractor must indicate how DSAPT boarding requirements will be complied with[339]
- the crew cab and guard cab must contain a secure locker for an access ramp[340]
- priority seats that are easily identified and accessible must be provided[341]
- the size and number of allocated spaces shall be in accordance with DSAPT[342]
- signage must comply with the requirements of DSAPT[343]
- DSAPT compliant externally visible destination indicators must be provided at each end of the train and DSAPT passenger information displays must be provided within the cars[344]
- digital voice announcement messages, synchronised with passenger information display messages, must be provided (must also be announced over hearing aid loops).[345]

The QR SEMS, referenced in the performance specification, also includes the following requirements regarding accessibility:

- doorway dimensions must comply with section 12.4 of DSAPT
- passenger-operated controls must comply with sections 12.6, 21.2 and 21.3 of DSAPT
- boarding devices must be available for exterior doorways as outlined in part 8 of DSAPT
- boarding ramps must comply with part 6 of DSAPT
- if mobility aid access is required, paths must comply with sections 3.2 and 14.1 of DSAPT
- floor surfaces must comply with part 10 of DSAPT
- handholds must comply with part 11 of DSAPT
- tactile ground surface indicators must be provided as required by part 18 of DSAPT
- allocated spaces must be provided in accordance with part 9 of DSAPT
- accessible toilets must be provided in accordance with part 15 of DSAPT
- priority seating must be provided in accordance with part 31 of DSAPT[346]
- information about transport services and location must comply with part 27 of DSAPT
- emergency warning systems must comply with part 19 of DSAPT
- signage must comply with parts 16 and 17 of DSAPT.[347]

Appendix 10 Bombardier's proposal

The proposal states the following, relevant to accessibility:

- each six-car train contains a centrally located toilet (accessible car B)[348]
  - the toilet module is fully compliant with the requirements of section 15.4 of DSAPT and space in the module has been maximised within the limitations of the narrow gauge and accessibility restrictions[349]
- the accessible cars each feature six allocated spaces[350]
  - twelve allocated spaces are in each train compliant with DSAPT[351]
  - the allocated spaces are compliant with DSAPT; each allocated space is 1,300mm x 800mm and displays the international symbol for accessibility[352]
  - two allocated spaces are consolidated within each vestibule to accommodate larger mobility aids in accordance with the preference stated in DSAPT[353]
- signage, incorporating high contrast text and symbols and braille in appropriate areas, is compliant with the performance specification, DSAPT and AS1428[354]
- door buttons meet DSAPT for height, force to operate buttons, colour contrast and visual and audible cues to passengers[355]
- grabrails and hand rails are compliant with DSAPT in terms of height, distance from adjacent surfaces, load requirements, grip diameter and colour contrast[356]
- a DSAPT compliant destination indicator is at the train front and beside each door[357]
- a hearing aid loop supports the passenger address system[358]
- information displays are situated at each end of the cars in compliance with DSAPT[359]
- two priority seats are located adjacent to the vestibule area in each car and all priority seating features take into account DSAPT[360]
- a lightweight ramp, compliant with DSAPT, is provided for assisted access[361]
  - retaining the existing assisted boarding process, was proposed, with the ramp stored in a secure cabinet adjacent to the toilet module at the leading end of accessible car B[362]
  - fitting automatic or manually deployed ramps is an option that could be explored if driver-only operation is progressed[363]
- PEIs are positioned on the door pillars, in each allocated space and in the toilet module compliant with DSAPT[364]
- anti-slip flooring covers the passenger compartment in compliance with DSAPT.[365]

Appendix 11 Planned procurement milestones – Queensland Rail project lead

The indicative procurement timetable released with the EOI is outlined below.

Activity	Date
EOI documentation released	18 December 2018
Close of EOI period	27 February 2009
EOI evaluation and identification of respondents to invite to participate in the RFP stage	February to June 2009
Issue restricted RFP	End June 2009
Close of RFP period	End September 2009
RFP evaluation period	September to December 2009
Negotiation with preferred respondent	February to April 2010
Award contract	July 2010
Commencement of delivery of 50 trains	July 2012
Complete delivery (all trains delivered and in service)	July 2013

The indicative procurement timetable released with the first RFP is outlined below.

Activity	Date
Issue revised RFP documents	22 December 2010
Close of RFP period	6 May 2011
Proponent workshops (three weeks for each proponent)	July to September 2011
Best and final offer requirements preparation	September to November 2011
Best and final offer period	November to December 2011
Best and final offer evaluation	December 2011 to April 2012
Selection of preferred proponent, negotiation and contract award	April to June 2012
Contract close	Mid 2012
Complete delivery (all trains delivered and in service)	October 2018

The indicative procurement timetable released with the second RFP is outlined below.

Activity	Date
Issue revised RFP documents	22 March 2013
Close of RFP period	15 July 2013
Proponent presentations	July 2013
Selection of preferred proponent and contract close	October 2013
Financial close and contract commencement	October 2013
Complete delivery (all trains delivered and in service)	October 2018

Appendix 12 Non-compliances and proposed changes

DSAPT requirements

The following table shows the issues of non-compliance with disability legislation identified by the Commission, and the Commissioner's view on whether the proposed rectification work in will achieve technical or equivalent access compliance.

Requirements	Outcome of proposed changes	
	Technical compliance	Equivalent access compliance
An access path, with a minimum width of at least 850mm, must permit continuous and unhindered passage through doorways, and between entrances, exits, allocated spaces and other essential facilities for passengers using mobility aids.	No, the proposed layout includes non-compliant paths.	Access paths were considered for equivalent access compliance.
An access path must extend from the entrance to facilities or designated spaces for passengers with disabilities.	No, the proposed layout includes non-compliant paths.	Access paths were considered for equivalent access compliance.
Allocated spaces must be consolidated, if possible, to accommodate larger mobility aids.	No, the proposed layout does not consolidate allocated spaces.	Allocated spaces configuration was considered for equivalent access compliance.
If toilets are provided, there must be at least one accessible toilet available to passengers using mobility aids.	No, while the proposed layout includes a second toilet in accessible car A, the layout includes non-compliant paths within each accessible car.	Access paths were considered for equivalent access compliance.
An accessible toilet must allow passengers using mobility aids to enter, position their aids and exit, and must meet the minimum dimension requirements.	No, the proposed toilet configuration does not accommodate all variations of functional requirements (eg right-hand transfer).	There is no evidence the toilet module was expressly considered for equivalent access compliance, but substantial consultation was undertaken.
If a sign is supplemented with braille characters, the braille must be positioned to the left of the raised lettering.	No, the positioning of braille is non-compliant.	There is no evidence the positioning of braille was considered for equivalent access compliance.
A boarding device must be available at any accessible entrance to a train where the vertical rise or gap exceeds the maximum distances.	Exempt – 1 October 2020.	Not applicable.

Functional requirements

The following table shows the issues of non-compliance with functional requirements identified by the Commission, and the changed proposed as part of the rectification work.

Issues	Proposed changes
Positioning of the guard and the subsequent limited capacity for guards and passengers to interact at the accessible cars and accessible boarding points.	Installing an intermediate guard cab was assessed as not feasible due to the extent of the changes required and the costs. No evidence has been identified that the boarding assistance model is not operating effectively.
Additional grabrails may improve functionality for people with disabilities.	Proposed to add grabrails outside the toilet module and at the washbasin.
Additional braille signs may improve functionality for passengers who are blind or have low vision.	Proposed to include braille in the emergency door release sign.
Height of signage for the PEI and assistance request button is too low to comfortably read braille.	There is no proposal to change the height of the signage.
Inconsistent priority seating configurations.	Proposed to convert 64 standard seats to priority seating.
Limited priority seating in close proximity to the toilet.	Proposed additional priority seating and additional toilet module will position eight priority seats near the toilets.
Fire extinguisher located beneath priority seats in accessible car A, restricting passengers with a seeing eye dog from positioning their dog under the seat.	There is no express proposal to move the fire extinguisher, but if standard seat are converted to priority seats, there is a proposal to remove fire extinguishers from beneath these seats.
Assistance request buttons do not facilitate communication between the passenger and the guard.	State variation proposes to add functionality for interaction with passengers using assistance request button. Proposed to further enhance functionality to change the button light colour to indicate acknowledgement of the request for hearing impaired passengers.
Small size and nature of the PEI may limit use by passengers who need to activate the intercom using their palm or arm.	There is no proposal to change the size or nature of the PEI, but changes to facilitate communication using the assistance request button may produce an equivalent outcome in the accessible cars.
PEIs or assistance request buttons are not accessible from the priority seats.	Adding PEIs near some or all priority seating was assessed as not feasible.
Hearing aid loops cover only two priority seats and three allocated spaces, and do not cover the accessible car areas where passengers at the accessible boarding point board.	Expanding the hearing aid loops was assessed as not feasible. However, the proposed additional priority seats will result in 12 priority seats being covered by the hearing aid loops.

Appendix 13 Stakeholders invited to make submissions

Aberdeen Infrastructure Investments Limited
Amparo Advocacy
Anti-Discrimination Commission Queensland
Arthritis Queensland
Australian Centre for Disability Law
Australasian Railway Association
Australian Federation of Disability Organisations
Autism Aspergers Advocacy Australia
Autistic Self Advocacy Network of Australia and New Zealand
Basic Rights Queensland
Blind Citizens Australia
Bombardier Transport Australia Pty Ltd
Brain Injury Australia
Children and Young People with Disability Australia
Children with Disability Australia
Choice Passion Life
Community Legal Centres Queensland
Deaf Australia
Deafness Forum Australia
Department of Communities, Disability Services and Seniors
Department of Transport and Main Roads
Deputy Premier, Treasurer and Minister for Aboriginal and Torres Strait Islander Partnerships
Disability Advocacy Network Australia
Endeavour Foundation
First Peoples Disability Network Australia
Gold Coast Disability Advocacy
Guide Dogs Queensland
Human Rights Council of Australia
Inclusion Australia
Inclusion Moves
Intellectual Disability Rights Service
ITOCHU Australia
John Laing
Leader of the Opposition (Queensland)
Mental Health Australia
Minister for Communities and Minister for Disability Services and Seniors
Minister for Transport and Main Roads

MS Queensland
National Disability Services
National Ethnic Disability Alliance
Physical Disability Australia
People with Disability Australia
Queensland Advocacy Incorporated
Queensland Aged and Disability Advocacy
Queenslanders with Disabilities Network
Queensland Rail
Queensland Rail Accessibility Reference Group
Queensland Railways Interest Group
Queensland Treasury
Rail Back on Track
Short Statured People of Australia
Speaking Up For You
Spinal Life Australia
Steven Minnikin MP, Shadow Minister for Transport and Main Roads
Sunshine Coast Citizen Advocacy Program
Tim Nicholls MP
Tracy Davis
Vision Australia
Women with Disabilities Australia

Appendix 14 List of submitters

Submission number	Submitter
1	Community Legal Centres Queensland
2	Brendon Donohue
3	Rail Back on Track
4	Blind Citizens Australia
5	Trevor Fletcher
6	Confidential
7	Vision Australia
8	Guide Dogs Queensland
9	Inclusion Moves
10	Scott Emerson
11	John McPherson
12	Wendy Lovelace
13	Anti-Discrimination Commission Queensland
14	Arthritis Queensland
15	Queenslanders with Disability Network
16	Spinal Life Australia
17	Queensland Rail (Confidential)
18	Bombardier Transport Australia (Confidential)
19	Tim Nicholls MP (Confidential)

Appendix 15 List of interviewees

The persons interviewed by the Commission and the capacity in which they were interviewed is outlined below.

Paige Armstrong, Chief Executive Officer, Queenslanders with Disability Network

James Benstead, Chief Financial Officer and Executive General Manager Commercial and Strategy, Queensland Rail

Natalie Billings, Accessibility Strategy Manager, Queensland Rail (former Disability Access Coordinator, Queensland Rail)

Michael Chadwick, Chief Executive Officer, Qtectic

Paul Coleman, former Program Director, Department of Transport and Main Roads and former Project Manager, Queensland Rail

Simon Cook, General Manager (New Generation Rollingstock), Department of Transport and Main Roads

Timothy Dangerfield, former Project Engineer NGR Project, Bombardier Transport Australia

Robert Dow, Administrator, Rail Back on Track

Nick Easy, Chief Executive Officer, Queensland Rail

Scott Emerson, former Minister for Transport and Main Roads

Helen Gluer, former Chief Executive Officer, Queensland Rail

Kellie Hairsine, former Acting Commercial Manager, Department of Transport and Main Roads

Conrad Hall, former Project Manager, Projects Queensland

Paula Herlihen, Health Educator, Arthritis Queensland

Cynthia Heydon, former Director (Rail System Management), Department of Transport and Main Roads

Nicholas Jennings, Lead Industrial Designer NGR Project, Bombardier Transport Australia

Pascal Kootstra, Human Factors Coordinator, Bombardier Transport Australia

Stuart Langan, Program Director, Department of Transport and Main Roads

Dirk Lehmann, Principal Rollingstock Engineer, Queensland Rail

Jeffrey Lingard, former Chief Engineer NGR Project, Bombardier Transport Australia

Martin McEniery, former Probity Advisor, DLA Piper

John Mayo, Chief Advisor – Government, Spinal Life Australia

John McPherson, Board Director, Queenslanders Disability Network

Tim Nicholls MP, former Treasurer and Minister for Trade

Honourable Annastacia Palaszczuk MP, Premier and Minister for Trade (former Minister for Transport and Multicultural Affairs)

Neil Scales, Director-General, Department of Transport and Main Roads

Peter Shepherd, Executive Director, Indec Consulting

Dave Stewart, former Executive Director, Projects Queensland

David Strong, Rollingstock and Simulated Program Manager, SNC-Lavalin

Chris Taylor, Rollingstock Manager NGR, Queensland Rail

William Thomas, former General Manager (Engineering Services), Queensland Rail

Emma Thompson, Chief Executive Officer, Arthritis Queensland

Honourable Jackie Trad MP, Deputy Premier, Treasurer and Minister for Aboriginal and Torres Strait Islander Partnerships (former Deputy Premier, Minister for Transport, Minister for Infrastructure, Local Government and Planning and Minister for Trade)

Nigel Webb, Chairperson, Queenslanders with Disability Network

Appendix 16 Commission staff

Commissioner

Michael Forde

Legal Advisor

Chris Maxwell

Legal Counsel

Samuel Bain

Project Director

Trudy Struber

Audit Directors

Melissa Fletcher

Rachel Vagg

Principal Procurement Advisor

Ned Mussen

Legal Officer

Leah Koger

Project Support Officer

Rachael Willis

Appendix 17 List of exhibits

Exhibits tendered at interviews

Exhibit number	Description
i	Authority for Chris Maxwell to Receive Information and Question
ii	Authority for Samuel Bain to Receive Information and Question
1	Curriculum Vitae for Bill Thomas
2	Project Deed
3	Diagram of Seating Layout Option Three Proposed by Qtectic
4	Governance Framework New Generation Rollingstock Delivery Phase
5	NGR Project Documents and Correspondence
6	Extract of Qtectic's Response to Request for Proposals – Seating and Access in Passenger Compartments
7	Curriculum Vitae for David Strong
8	Record of Disability Sector Meeting – New Generation Rollingstock Consultation through Design Process
9	Information Sheet – Australia Adopts European Standards on Accessibility Requirements for Public Procurement of ICT Products and Services
10	Queensland Government Media Release - Phillip Strachan to be New Queensland Rail Chairman
11	Information Sheet – Populations with Diminished Functionality Based on their Functionality
12	Training Materials – TransLink DSAPT Compliance Workshop
13	Curriculum Vitae for Neil Scales
14	Cabinet Budget Review Committee Submission and Supplementary Materials
15	TransLink Snapshot (3 May 2012)
16	Train Comparison – On-board Toilet
17	Extract of Queensland Parliament Record of Proceedings (8 August 2017)
18	DSAPT Validation Type Test Report
19	New Generation Rollingstock (QNGR) Human Factors Assessment of the Passenger Interior
20	Photographs of Stage Three Mock-up (31 March 2015)
21	Photographs of Stage Two Mock-up (5 August 2014)
22	Photographs of Stage Three Mock-up (31 March 2015)

Glossary and abbreviations

Glossary of key terms

access path
A walkway, corridor or aisleway.

allocated space
Space for accommodating a wheelchair or similar mobility aid.

AdvanceRail
A consortium made up of Mitsubishi Corporation and Construcciones y Auxiliar de Ferrocarriles.

availability public-private partnership
A type of public-private partnership in which the private sector is contracted to design, construct, finance and maintain public infrastructure and government makes periodic payments for the availability of the infrastructure over the term of the contract (infrastructure ownership may transfer on acceptance or at the end of the maintenance term depending on the terms of the contract).

Bombardier Transport Australia
Qtectic's principal contractor (with ITOCHU), responsible for the design, construction, delivery and maintenance of the new generation rollingstock train fleet.

braille
A system of touch reading for the blind and vision impaired that employs raised dots evenly arranged in quadrangular letter spaces or cells.

Cabinet Budget Review Committee (CBRC)
A government standing committee made up of the Premier, Treasurer and two rotational senior ministers responsible for considering financial or budgetary implications for the government.

direct assistance
Help given by an operator or provider to make public transport accessible to a person with a disability when trains do not fully comply with specifications under the *Disability Standards for Accessible Public Transport 2002* (Cth), or to provide non-discriminatory access on request.

director-general
The chief government officer within a department reporting to a minister.

disability
Any continuing physical, mental, cognitive or developmental condition that restricts a person's ability to engage in typical daily activities and interactions.

equivalent access
A process by which an operator or provider varies access to a public transport service in a manner that maintains an equivalent standard of amenity, availability, comfort, convenience, dignity, price and safety.

equivalent access compliance
Compliance with the *Disability Standards for Accessible Public Transport 2002* (Cth) through methods, equipment and facilities that provide alternative access with an equivalent standard of amenity, availability, comfort, convenience, dignity, price and safety. To achieve equivalent access compliance, the provider or operator must consult with people with disabilities who use the service or representative organisations.

evaluation report
The documentary evidence of the results of the assessment process for a stage in the procurement process.

functional requirements
Features that, while not required by the disability legislation, enhance the accessibility and usability of the new generation rollingstock trains for people with disabilities.

grabrail
A rail used to give steadying or stabilising assistance to a person engaged in an activity.

handrail
A rail used in circulation areas such as passageways to assist in continuous movement.

ITOCHU
Qtectic's principal contractor (with Bombardier Transport Australia) responsible for the design, construction, delivery and maintenance of the new generation rollingstock train fleet.

longitudinal seating
Seats facing the centre of the train car with the backs of the seats along the car sides.

performance specification
Written requirement that describes the functional performance outcomes for equipment or products.

priority seats
Seats designated for use by passengers with disabilities or who are elderly, pregnant or carrying young children.

probity
Ethical behaviour in a procurement process. Probity supports the integrity of a process by minimising conflicts, avoiding improper practices and providing confidence that ethical and transparent processes have resulted in value for money.

probity advisor
An individual or organisation engaged to observe, review and provide guidance on the probity framework and processes throughout a procurement project.

probity auditor
An individual or organisation engaged to provide independent scrutiny of the process and a probity report on the way in which the process was managed.

Projects Queensland
A former division of Queensland Treasury with responsibility, among other others, to manage tender process and contract negotiations for all public-private partnership projects.

proponent
An entity responding to a request for expressions of interest or a request for proposals.

public-private partnership
A long-term arrangement between the public and private sectors whereby government delivers infrastructure and related services through collaboration with the private sector.

Public transport infrastructure
For the purpose of this report, means infrastructure for, or associated with, the provision of public transport, including premises such as railway stations and conveyances such as trains.

Qtectic
The trading name for the NGR Project Company Pty Ltd; a company established by a consortium of Bombardier Transport Australia, John Laing, ITOCHU and Aberdeen Asset Management. Qtectic was awarded the contract to design, construct and maintain the new generation rollingstock train fleet.

Queensland Rail
Queensland Rail (QR) refers to the Queensland Government owned rail operator in its various legal statuses, including as a government owned corporation and a statutory authority.

Rail Transport Services Contract
The contract entered into on 20 July 2015 by the State (acting through the Department of Transport and Main Roads) and Queensland Rail under which the parties agreed to the terms for Queensland Rail to provide relevant rail services, infrastructure management, transport policy and planning in Queensland.

rollingstock
Wheeled vehicles that move on a railway.

shareholding ministers
The ministers who represent the government's interests in government owned corporations (GOC). GOC's have two shareholding ministers; the GOC minister (Treasurer) and the portfolio minister (eg the Minister for Transport).

technical compliance
Compliance with *Disability Standards for Accessible Public Transport 2002* (Cth) by meeting the specifications outlined.

TransLink
TransLink is a division of the Department of Transport and Main Roads that facilitates Queensland public transport services as well as the former TransLink Transit Authority. TransLink partners with Queensland Rail to deliver public transport via the Citytrain network.

transverse seating
Seats facing the ends of the train cars with an aisle between the seats or sets of seats.

Abbreviations

AHRC	Australian Human Rights Commission
APT Guidelines	*Disability Standards for Accessible Public Transport Guidelines 2004 (No. 3)*
ARA	Australasian Railway Association
Bombardier	Bombardier Transport Australia Pty Ltd
CBRC	Cabinet Budget Review Committee
CEO	Chief Executive Officer
CFO	Chief Financial Officer
Commission	New Generation Rollingstock Train Commission of Inquiry
DDA	*Disability Discrimination Act 1992* (Cth)
disability legislation	*Disability Discrimination Act 1992* (Cth) and *Disability Standards for Accessible Public Transport 2002* (Cth)
DSAPT	*Disability Standards for Accessible Public Transport 2002* (Cth)
EOI	expression of interest
IATN	Integrated Accessible Transport Network
mm	millimetres
NGR	new generation rollingstock
PAF	project assurance framework
PCG	project/program control group
PEI	passenger emergency intercom
PPP	public-private partnership
PQ	Projects Queensland
PSB	program supervisory board
PSC	program steering committee
PWG	project working group
QAI	Queensland Advocacy Incorporated
QPAC	qualified provisional acceptance certificate
QPP	Queensland Procurement Policy
QR	Queensland Rail
QR–ARG	Queensland Rail Accessibility Reference Group
QRIFM	Queensland Rail Investment Framework Manual
QROR–PCG	QR Operational Readiness Program Control Group
QTC	Queensland Treasury Corporation

RFP	request for proposal
SEMS	Safety and Environment Management System
SLA	service level agreement
TEC	Transport Executive Committee
TMR	Department of Transport and Main Roads
TMR–ARG	Transport and Main Roads Accessibility Reference Group

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