

**Vision Australia's Submission**

**Submission in Response to:**

**An Application for Temporary Exemptions under the *Disability Standards for Accessible Public Transport 2002 (Cth)* and *Disability Discrimination Act 1992 (Cth)* for the New Generation Rollingstock Project.**

**10<sup>th</sup> January 2018**

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**Submission to:**

The Australian Human Rights Commission

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## **Introduction**

Vision Australia would like to thank the Australian Human Rights Commission for the opportunity to provide a submission on the joint application by the State of Queensland (acting through the Department of Transport and Main Roads) and Queensland Rail, for temporary exemptions under the Disability Standards for Accessible Public Transport 2002 (Cth) and the Disability Discrimination Act 1992 (Cth), in relation to the New Generation Rollingstock Project.

## **About Vision Australia**

Vision Australia is the nation's largest provider of services to people who are blind or have low vision. Our vision is that people who are blind or have low vision will have the choice to participate fully in every facet of life in the community.

To help realise this goal, we are committed to providing high-quality services to the community of people who are blind or have low vision, and their families, in areas that include early childhood, orientation and mobility, education, employment, information, recreation and independent living. We also work collaboratively with Government, business and the community to eliminate the barriers people who are blind or have low vision face in accessing the community or in exercising their rights as Australian citizens.

The knowledge and experience that Vision Australia gains through its interaction with clients and their families, and also by the involvement of people who are blind or have low vision at all levels of the Organisation, means that it is well placed to provide advice to governments, business and the community on the challenges faced by people who are blind or have low vision fully participating in community life.

Vision Australia, as an organisation in the blindness sector, therefore submits this comment on the Application for Temporary Exemptions under the Disability Standards for Accessible Public Transport 2002 (DSAPT) and the Disability Discrimination Act 1992 (DDA) for the New Generation Rollingstock Project.

## **Queensland Government Accessibility Reference Groups**

Vision Australia is represented on two Queensland Government transport reference groups; the Department of Transport and Main Roads (TMR) Accessibility Reference Group, and the Queensland Rail Accessibility Reference Group, (ARG).

Information about the New Generation Rollingstock (NGR) trains has been provided through the Queensland Rail Accessibility Reference Group.

Unfortunately, a lack of full consultation at design stage of the NGR, has resulted in identification of numerous accessibility issues with the NGR trains. The detailed history of the flawed consultation process is addressed in the submission made by the ARG, of which Vision Australia is a member. Vision Australia has contributed to the identification of access barriers, in particular those affecting the interests of people who are blind or have low vision.

### **Scope of this Submission**

Vision Australia is a member of the QR Accessibility Reference Group (ARG). The ARG has commented on the application for exemptions, and made various recommendations. It has also commented on matters that have led to the application for temporary exemptions being necessary. Vision Australia fully supports and endorses the recommendations and comments in the ARG submission. In addition to the ARG submission, Vision Australia is providing this separate submission focussing on the matters most relevant to the blind and low vision community.

### **Vision Australia Recommendations**

Vision Australia endorses all seven recommendations made by the ARG, and in particular, Recommendations 1 and 2.

Recommendation 1. Refusal of application for temporary exemptions.

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

Recommendation 2. Guards to be located mid-train

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

### **Access to Transport**

At Vision Australia we promote the rights of people who are blind or have low vision to have equal access to services, including public transport services. People who are blind or have low vision are not able to drive vehicles, and are therefore more reliant on other forms of transport, including public transport.

Due to some access barriers faced by people who are blind or have low vision, many opt to travel by train rather than by bus. Queensland Rail provides platform audio announcements, on board audio announcements indicating the name of each train station, and boarding assistance from the guard located mid-train.

## **Background**

The NGR train was procured in December 2013 to the following technical specifications:

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

The non-compliances identified on the NGR train and addressed in the application for temporary exemptions are listed on pages 8 and 9 of the application. These non-compliances are commented on in detail in the submission by the ARG.

The placement of QR staff at each end of the train is not listed as non-compliance. This issue, forming part of specification (ii), is of great concern to Vision Australia, and is the major focus of this submission.

## **Matters of discrimination falling outside the DSAPT**

The issues raised in the application do not address all Vision Australia's concerns. The NGR train design has the guard located in the final carriage of the train, rather than mid-train, next to the assisted boarding point on the platform, as is the current train configuration. This requires a different boarding assistance procedure.

There are many reasons why some people who are blind or have low vision may seek boarding assistance. Some of these may include:

- a person who is new to vision loss
- a person who is new to using a long white cane for navigation
- a person who is new to using a Seeing Eye dog for navigation
- people with low vision who do not use a long white cane or a Seeing Eye dog
- people who are blind or have low vision travelling with children
- people who are blind or have low vision who have an additional physical disability
- people who are blind or have low vision who are frail aged

## **Guard Location**

The isolation of the guard, 70 metres from the mid-platform assisted boarding point, is likely to diminish service levels for people who require assistance to board or alight, especially on unstaffed platforms. On these unstaffed platforms, customers who require boarding or alighting assistance could be overlooked or forgotten, left on the train or left behind on the platform. Unfortunately, this already occurs, and the frequency of these oversights is likely to escalate to a systemic problem with the increased remoteness of the guard. This is likely to constitute discrimination attributable to the design of the NGR. Guards are separated from customers waiting at the assisted boarding point.

The mid- train guard cab is not a DSAPT issue, but Vision Australia believes that service failures are likely to occur due to the guard in car 6 being stationed 70 metres from the platform assisted boarding point , and will become a DDA issue. Currently, the guard cab is not more than 5 – 10 m from the assisted boarding point, allowing prompt and easy interaction between the guard and any customer waiting to board, including those who require assistance.

The Applicants state that adding a guard cab to the middle of NGR trains would not be appropriate. The QR business operating model is that assistance would be provided by platform staff.

### **Platform Staff**

Platform staff assistance has been offered as the solution to the dilemma of the guard's remoteness from the assisted boarding point. Currently there are many QR stations that are only staffed for a few hours a day, and only a small minority are staffed 24 hours per day. Staffing all stations throughout operational hours would be extremely expensive, and would be a target for future cost cutting. Only a design solution, namely a mid-train guard cab, would ensure that, on unstaffed platforms, boarding and alighting assistance will be available at close proximity to customers who require that assistance.

Quality and reliability of assisted boarding will be diminished on unstaffed platforms. Even with the current system where customers are only metres from the guard, guards forget to assist customers. Vision Australia believes that with the NGR configuration, failures will reach systemic levels. People with hidden disabilities will fare the worst

### **Hidden Disability**

Customers with a hidden disability, waiting at the accessible boarding point will be located 70 metres from the guard in car 6. How will the customer communicate with the guard to ask for assistance? How will guards identify a hidden disability at that distance?

Customers with a hidden disability will need to communicate with the guard to seek assistance. Guards will be challenged visually to identify a hidden disability at such a distance. Currently, customers with a hidden disability can easily converse or interact with the guard who is located mid-train. On NGR trains, guards will have to visually assess whether a customer requires assistance, rather than being able to converse. People who are blind or have low vision require verbal interaction with QR staff, as they are not able to identify non-verbal forms of communication such as waving or hand signals.

People who have low vision and do not use a cane or have an assistance animal, are people with a hidden disability.

### **The NGR boarding assistance trial**

Vision Australia participated in the NGR Boarding Assistance trial that was hosted by Queensland Rail on Wednesday 6<sup>th</sup> December 2017. During this trial, a number of access issues were identified which are likely to adversely affect people who are blind or have low vision requiring boarding assistance. These include:

#### **1. Identification of person with a disability requiring boarding assistance**

A person who is blind or has low vision does not necessarily have a visible disability. People who are blind and use a long white cane, or identification cane have a visible disability. People who are blind who use a Seeing Eye dog for navigation also have a visible disability. Similarly, people who are blind or have low vision who wear a 'Blind' or 'Vision Impaired' badge may have a visible disability, however at a distance, this badge is unlikely to be visible. People who are blind or have low vision who do not use a mobility aid or badge, have a disability that is invisible. It is unclear whether people who are blind or have low vision, who present as having a disability that is invisible, would in fact be identified by station staff, or a distant guard, as requiring boarding assistance.

#### **2. Queensland Rail staff interaction with people who are blind or have low vision**

At the boarding assistance trial, all Queensland Rail staff were courteous, respectful and did not draw unnecessary attention to the person with a disability. However, during 3 of 4 interactions (1 boarding and 2 disembarkations), staff asked a person who is blind if they needed assistance, but did not identify that they were staff, and working for Queensland Rail. People who are blind or have low vision cannot see

staff uniforms, coloured vests or badges etc. so it is unclear whether the assistance offered is from a staff member, or just a helpful member of the public. For safety reasons, people who are blind or have low vision require identification before taking a person's arm for guiding purposes. During only 1 of 4 interactions, at Beenleigh station, the person offering boarding assistance said 'I work here'.

### 3. Uncertainty around communication of destination station

The new boarding assistance procedure involves communicating to staff at the boarding station which station will be their destination station. Boarding station staff then communicate this to destination staff. However there is no way for people who are blind or have low vision to verify that the message has been passed forward or received. A person only discovers whether there is boarding assistance at the destination station at the point at which the doors open. This creates uncertainty during the journey. It also deters spontaneity, as changing the destination station involves locating the emergency button, relaying the change to the guard and asking for the change to be communicated to the new destination station staff.

#### **Further comment on the boarding assistance trial**

The boarding assistance trial, while welcome, is of somewhat limited value. The applicant proposed this trial to identify issues that they can now work to correct e.g. to provide more staff training. However, many of these issues could have been avoided if there had been full consultation at the design and procurement stage. The result of this lack of proper and adequate consultation is that there are now safety issues of concern to customers with disability attempting to use the NGR trains.

#### **Design and Access Issues**

During the Boarding Assistance trial, the Vision Australia representative noted some access issues relating to the design of the NGR train. These included:

##### 1. Inconsistency of priority seating

The NGR train has inconsistency in the configuration and placement of priority seating in different NGR carriages. This is confusing and difficult to navigate for people who are blind or have low vision. People who are blind or have low vision require consistency in design, as they cannot easily identify changes in priority seat arrangements. The Vision Australia representative observed 3 different priority seating configurations in 3 different NGR carriages. For example, the priority seating in the boarding assistance carriage is static, longitudinal seating. In the next carriage, the priority seating is longitudinal, flip down seating. The next carriage has front facing high backed seating.

##### 2. Barrier to a priority seat on boarding assistance carriage

In the NGR boarding assistance carriage, one of the 4 priority seats is blocked by a fire extinguisher located under that seat. The placement of this fire extinguisher makes it impossible for a person who is blind with a Seeing Eye dog to place the dog under that seat. In a crowded environment this could present safety issues for other passengers, and the Seeing Eye dog.

### 3. Emergency button access barriers

The emergency button, which is the sole way to communicate with the guard on NGR trains, is located at waist height between the train door and the priority seats on the boarding assistance carriage. It will require an education campaign for the blind and low vision community as to its exact location. It is also at an awkward height for braille reading while standing, and the priority seating is too far from the button to sit and read. If a person using a wheelchair or mobility scooter occupies the space in front of the emergency button, it would be difficult for a person who is blind or has low vision to locate the emergency button without touching the person in the wheelchair or inadvertently moving into their personal space.

## **The Disability Discrimination Act 1992**

Vision Australia believes that the objects of the Disability Discrimination Act 1992 (DDA) have been breached by the NGR design and procurement process.

The objects of the Act are:

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

Vision Australia asserts that the DDA was breached at the design and procurement stage. The Queensland Government failed to consult adequately with the disability sector prior to design and procurement. This has resulted in the NGR being a flawed product. For the blind and low vision community in particular, the location of the guard at the rear of the train rather than mid-train will present access barriers, with the result that people with a disability are treated less favourably than the rest of the community.

## **Comments on the application for exemptions**



Vision Australia fully supports and endorses the comments in the ARG submission. In addition, Vision Australia asserts that temporary exemptions should only be granted if the Applicant can show how it will use the relief from DDA/DSAPT compliance obtained to remediate disability discrimination. That is, the purpose for granting a temporary exemption is not primarily to immunise the Applicant from the DDA completely and forever, but to allow the Applicant time to make improvements in products and/or services to bring them into compliance with the DDA/DSAPT.

### **Temporary exemptions sought**

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

Vision Australia supports and endorses the ARG request to the AHRC to refuse all temporary exemptions sought.

### **Preliminary considerations**

The Applicants request urgent processing of the application on the grounds that the NGR fleet is required for the 2018 Gold Coast Commonwealth Games.

Vision Australia supports and endorses the ARG response in rejecting this ground. In addition, Vision Australia notes that the Applicant has known for a considerable period of time that there are accessibility issues with the trains, and they should not be granted relief from compliance during the Games. It is not the role of the AHRC to rescue the Applicant from the consequences of its failure to address the needs of people with a disability.

The Applicants request the exemptions on the ground that the NGR trains are required to replace an ageing portion of the existing QR fleet.

Vision Australia supports and endorses the ARG response in rejecting this ground.

### **Reasons for DSAPT exemptions sought**

The Applicants state that immediate compliance with the DDA/DSAPT is not possible or should not be required

Vision Australia supports and endorses the ARG response that two years of advocacy by the ARG has not caused the Applicant to alter the discriminatory design, nor rectify the need for a centrally located guard cab. All the accessibility issues with the trains were entirely foreseeable, and the current situation is entirely the result of bad planning, flawed consultation, and non-compliance with the DDA/DSAPT. In adopting this approach, the Applicant would have known, or ought reasonably to have known, that they would be leaving themselves open to the risk of

DDA complaints. People should not be denied the opportunity to enforce their rights through a complaints process, including the Federal Court.

The remediation proposal offered by the Applicant will not result in removal of discriminatory barriers, and will therefore not bring the trains into compliance with the DDA/DSAPT. This will defeat the purpose for which a temporary exemption application is granted. Some issues, such as the position of the guard cab, are not breaches of the DSAPT, but they are nevertheless not consistent with national best practice, and so people should have the opportunity to use the DDA to determine whether the Applicants refusal to insert a mid-point guard cab constitutes unlawful discrimination.

Vision Australia supports and endorses the ARG rejection of the Applicant's reasons for requiring the exemptions sought.

The Applicants argue that they intend to achieve compliance with the relevant sections of the DSAPT by carrying out a number of works including

- Reconfiguration of seating and allocated spaces in both the accessible cars to meet access path requirements between the assisted boarding door and accessible facilities, and
- Other changes which will include additional priority seating, revised train signage (wording and braille), additional grab/handrails, and additional buttons and controls where appropriate to maximise functionality

Vision Australia supports and endorses the ARG response that these measures are welcome, but they should have featured in the original design, rather than be the subject of a temporary exemption application, and asks why the Applicant did not consider the objects of the DDA/DSAPT during design and procurement.

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

As already discussed, the mid-train guard cab is not a DSAPT issue, but Vision Australia believes that service failures will occur due to the guard in car 6 being located 70 metres from the platform assisted boarding point. This will become a DDA issue. Currently, the guard cab is not more than 5-10 metres from the assisted boarding point, allowing easy interaction between the guard and any customer waiting to board, and who requires assistance.

The Applicants argue that adding a guard cab to the middle of NGR trains is not appropriate. Their argument is that a mid-guard cab with doors would impede customer access through the NGR cars, reducing the benefits of the new design. They also argue that assistance would still be provided within the QR business operating model, providing for timely and reliable assistance from platform staff.

Vision Australia supports and endorses the ARG response that timely and reliable assistance from platform staff will only be possible at stations that have platform staff in attendance. Many platforms and stations are unstaffed for much of the day. There is no guarantee of funding for the extra platform staff that would be needed during operational hours to ensure reliable boarding and alighting over the 30 year service life of the NGR.

Lack of consultation at the design and procurement stage of the NGR project has led to a situation where there are now safety concerns for people who are blind or have low vision attempting to access the NGR trains. People who are blind or have low vision often feel more vulnerable when using public transport, and the knowledge that they are not readily seen or assisted by the guard will increase these feelings of vulnerability, especially at those stations where, and at times when, platform assistance is not available.

### **Financial or other hardship which will be incurred if the exemptions are not granted**

Vision Australia supports and endorses the response of the ARG in rejecting the Applicants claim of financial hardship. If consultation with the disability sector had been undertaken at the design and procurement stage of the NGR project, the Applicant would not now face the costs associated with retro-fitting NGR trains to achieve compliance.

### **Rejection of the application**

Vision Australia fully supports and endorses the ARG submission that for many reasons, temporary exemptions from the DDA/DSAPT are not warranted, and asks that the AHRC refuse to grant the application.

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