

**Further Submission to Australian Human Rights Commission (AHRC)
New Generation Rollingstock (NGR) Project Queensland Government
Application for temporary exemptions under the Disability Standards for
Accessible Public
Transport 2002 (Cth) and Disability Discrimination Act 1992 (Cth)**

I wish to raise further significant issues in regard to this project. In summary, the project fails to meet long established principles and legislation intended to provide access for people of all ages and abilities. Therefore, exemptions should not be approved unless in strict accordance with those established principles. The proposals the subject of the exemption request by the Queensland Government do not meet the established principles.

Recent advice that the Queensland Government planned to lock all non-conforming toilets on the NGR trains raises very serious concerns in regard to the Government's intentions and commitments to address the needs of those with disabilities that impact on their ability and enjoyment of accessible public transport. This raises both the physical facilities provided and the question as to what constitutes a disability and thus an action that may be regarded as involving discrimination.

It should be noted that subsequent to public questions regarding the strategy to "lock the doors", it appears the proposal is no longer intended. However, the fact this strategy was even raised let alone considered would appear to represent an apparent total misunderstanding of the relevant legislation. The fundamental concern therefore is whether the Queensland Government may further attempt to narrow the level of service to passengers including in particular those with a disability.

Passengers with a disability impacted by the non-provision of toilets

The definition of people with a disability appears open to interpretation in relation to the relevant legislation, a point emphasised by the decision proposed by the Queensland Government to "lock the doors". In dealing with, and coming to a better understanding of, the "unmet needs" perspective through experience, the question as to who to provide for arises. Arguably the "access for all" and "barrier free" perspectives reduce the problems that potential service providers envisage because the focus is on providing rather than avoiding the provision of service.

Accordingly, rather than try to limit those for whom the service is provided, the provision of service that meets the needs of (ideally) all people becomes the intention.

Recent searches suggest that over 5 million Australians over the age of 15 are incontinent with 80% of cases being women. This suggests an approximation of 1 person in 5 over the age of 15 (Continence Foundation of Australia). To this total can be added children of an age beyond wearing any kind of protective clothing as well as those who for whatever reason "need to go".

It is not clear whether or not incontinence either temporary or otherwise, is regarded as a disability but it does appear that the Queensland Government is or perhaps was, inclined to ignore this disability by way of the proposal to "lock the doors".

As discussed in some detail in my previous submission, the inconvenience and the fear associated with incontinence cannot be under-estimated when it is so prevalent. Accordingly, the "need" to provide toilets on trains is not limited to longer distance travel for example as this is a major misunderstanding of the concern with incontinence. It may or may not be a matter for some people with another disability. Many with a recognised disability may also benefit from the provision of

toilets, in many cases despite not having the problem of incontinence eg those with a hearing disability.

Accordingly the provision of toilets, the proposal to "lock the doors" and the proposal to remove the toilets are all matters to which the relevant legislation applies and as these are matters that were and/or are part of or result directly or potentially from, the application by the Queensland Government, these matters should be resolved clearly as matters of great importance.

Passengers without a disability impacted by the non-provision of toilets

While those without a disability will be inconvenienced by the lack of provision of toilets, it appears that the numbers of passengers for whom the lack of toilets is a factor has been grossly underestimated or ignored.

For example, it is recognised that while independent mobility is a goal, in many cases, a carer is also needed or desirable. In many cases, a person with a disability is one of a party or family group that will choose not to use public transport because of the lack of provision for those with a disability.

While this may be problematic to quantify, it is clear it exceeds a 1 to 1 ratio and in many cases eg in families may exceed 1 to 5. However, because these trips do not occur, the discrimination and its effects, while invisible, are predictable outcomes of failure to provide facilities including toilets.

This again is a matter which arises from the application by the Queensland Government and as above, should be resolved in regard to that application.

The issue of carriage and train layout

Consideration of the above aspects together with the provision for many people with mobility disability must be considered as an essential aspect in regard to the layout of the entire train.

While the proposed layouts for the modification of the NGR trains remain elusive, several aspects must be considered given the intention to provide a fully accessible public transport network increases the likelihood of more people travelling in total including many more with a disability.

What happens if a large number of people using large motorised "scooters" wish to travel on the one train whether as a group or for example, individuals attending an event (eg the Commonwealth Games para-events or a relevant conference)? It appears the NGR layout severely constrains users.

It appears the NGR design provides much less flexibility to cater for such occurrences such that the design may in fact restrict or deter use. Arguably this would constitute a form of discrimination.

A similar problem is likely with entry and exit in particular if/where only one or two doors are accessible. As those in the field know as do users, it only takes one "barrier" to break the pathway but even a design that creates situations that create a feeling of being the cause of delays is enough to deter use. This too is a form of discrimination.

These issues arise in relation to the NGR design and modified earlier trains where the entry vestibule and seating layout are not designed to ensure easy entry and exit but give every appearance of maximising seating for commuters for whom access issues are not a problem or a disability. It is noted that reference is made by the Queensland Government to other constraints necessitating the proposed toilet design/s but these constraints and their effect are not specified in any detail if at all. It is not demonstrated that better alternatives cannot be provided by design changes.

The photo (at right) shows the clear passage to the toilet, the door of which is visible at the end of the carriage in an older Queensland train. Multiple locations for a variety of users can meet their needs. The photo illustrates use of flip-up seating showing how those with a disability can share the space with others whether with or without a disability.

The seating (near right in the photo) is sometimes also flip-up providing ease of access close to the entry/exit for those using a wheeled device but in other cases this seating is fixed creating a difficulty for those with a wheeled device when the lobby and corridor is blocked eg by standing passengers.

The adaptability of the layout can be achieved readily by standardised components hence meeting the users needs has been the subject of some iterations, the results of which in some cases have been useful.

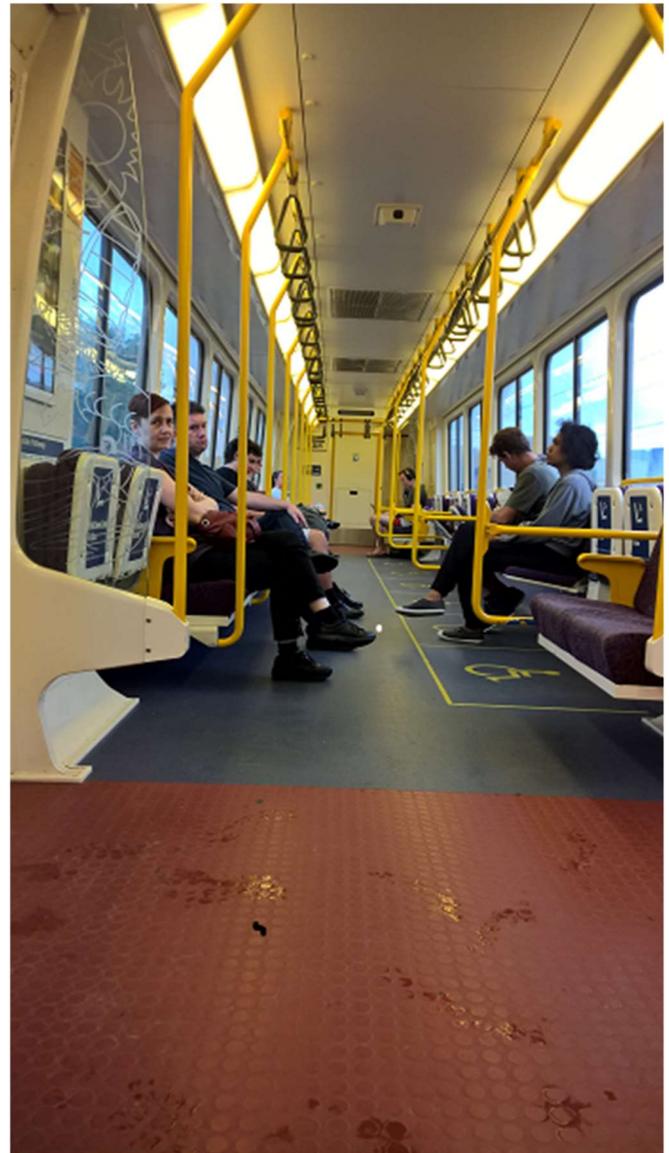
One of the main issues is use of the trains in roles that vary from inter-urban to local all-stops with suggestions that some otherwise identical NGR trains may not have toilets and will only be used for short journeys. This dramatically reduces operator flexibility, but more importantly requires external identification so users are aware if a lower level-of-service train arrives without toilets.

Summary

It is not clear whether trains with toilets removed will be re-fitted with toilets at a later date, but it is submitted that removing the toilets even for short haul trips is discriminatory to the extent it disadvantages those with a need to rely on toilets being readily available often at short notice.

It is submitted that the failure to address the needs of those with many forms of disability impact not only on them but on many others, not least those who at present appear not to be regarded as having a disability. In many cases they and friends and/or family therefore cannot enjoy access to travel on public transport. To the extent the design constraints create “barriers” to users, the actions would appear to constitute discrimination.

This submission is in addition to my initial submission and therefore the content of both should be considered to avoid unnecessary repetition. As previously, I am willing to respond to any questions.



15 March 2015