

The Australian Human Rights Commission  
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28 January 2022

Dear Commissioners

Queenslanders with Disability Network (QDN) writes to make a submission to the Australian Human Rights Commission (AHRC) on the '*Notice of Preliminary View on Application for Temporary Exemptions: Australasian Railway Association*'.

QDN is an organisation of, for, and with people with disability. As the peak body for people with disability in Queensland, QDN operates a state-wide network of more than 2,000 people with disability who provide information, feedback and views on a range of policy areas based on their lived experience to deliver better outcomes for all people with disability. This submission is informed by the views of QDN members.

### **Overarching feedback on preliminary view**

Since 2007, QDN has provided formal submissions outlining the feedback of members and raising objections with the AHRC to the multiple requests from the Australasian Railway Association (ARA) for temporary exemptions to the *Disability Discrimination Act 1992 (Cth)*.

QDN members have identified there continue to be exemption requests over the past 15 years from ARA that are described as temporary that lead to people with disability see this as ongoing decisions that don't uphold their rights under the law. Queenslanders with disability are clear that the ARA and its members have had 20 years to meet their legal requirements under the *Disability Discrimination Act 1992 (Cth)* (the Act), and question how many more years they'll be asked to accept an approach that impinges upon their rights.

The reality of policymakers not addressing issues faced by Australians with disability and instead having disability issues "filed away to be dealt with quietly at a later date" was clearly articulated by Disability Discrimination Commissioner, Dr Ben Gauntlett, in an opinion piece in *The Age Newspaper* on 2 December 2021<sup>1</sup>, written to mark International Day of People with Disability, in which the Commissioner wrote:

*"People with disability have had to fight to be heard, forced to explain their presence in employment settings and denied everyday choices that Australians without disability take for granted."*

*"To live a full life we need accessibility built into all the key elements of daily life, such as housing, employment, and transport."*

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<sup>1</sup> Gauntlett, Commissioner Ben, *The Age*, 2021, 'Being acknowledged is the first step to being included': <https://www.theage.com.au/national/being-acknowledged-is-the-first-step-to-being-included-20201201-p56jos.html>

*“Too often disability issues seem to be filed away to be dealt with quietly at a later date, rather than incorporated into policymaking at all levels. Too often, when new buildings are built or modes of public transportation created, the inaccessible legacies of the past remain.”*

QDN strongly agrees with the sentiments expressed by Commissioner Gauntlett. However, the Preliminary View taken by the AHRC is not only at odds with the Commissioner’s stated objective of achieving “true inclusion”<sup>2</sup>, but would actually further entrench the very barriers Commissioner Gauntlett highlights.

QDN members identify that in approving the ARA’s exemption once again, the AHRC will be putting people with disability in a position to “fight to be heard”<sup>3</sup> and yet again “explain their presence”<sup>4</sup> on Australia’s public transport systems. If the AHRC approves another five-year exemption for the ARA, the Commissioners will be leaving behind “inaccessible legacies of the past”<sup>5</sup> that future Commissioners will inevitably be asked to make exemptions for, until the time finally comes when the AHRC decides that protecting the human rights of people with disability is of more national interest than protecting the economic interests of ARA members.

QDN members respectfully ask the Commissioners to not file away the rights of people with disability to be dealt with at a later date. After 15 years of exemptions, the time is now for Australia to deliver on its commitment to the dignity of full human rights for all people with disability that will create a country where “true inclusion”<sup>6</sup> is a reality.

## **Feedback on specific exemptions**

### ***Level crossings***

*Section 2.1 of the Transport Standards: For a period of 5 years, flange gaps of up to 75mm are permitted where a level crossing forms part of an access path on rail premises or rail infrastructure.*

*Clause H2.2(1) of the Access Code for Buildings (‘Access Code’) in Schedule 1 of the Premises Standards: For a period of 5 years, flange gaps of up to 75mm are permitted where a level crossing forms part of an access path on rail premises or rail infrastructure.*

Level crossings are dangerous places, with the flange gaps only one hazard within this all too often fatal environment. As a matter of public safety, level crossings should be replaced by grade separated crossings wherever possible. Many jurisdictions are doing this, as the ARA states. These actions are to be commended.

QDN commends ARA member, Queensland Rail, for not being a signatory to this exemption request. QDN believes it is incumbent on the ARA to show greater transparency around this issue before being granted another five-year exemption.

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<sup>2</sup> Ibid.

<sup>3</sup> Ibid.

<sup>4</sup> Gauntlett, Commissioner Ben, The Age, 2021, ‘Being acknowledged is the first step to being included’:  
<https://www.theage.com.au/national/being-acknowledged-is-the-first-step-to-being-included-20201201-p56jos.html>

<sup>5</sup> Ibid.

<sup>6</sup> Ibid.

The ARA's application references 23,500 level crossings across Australia. However, as stated in QDN's original submission on ARA's application, to use Queensland Rail's City Network as an example, it has 152 stations. Only 19 of these stations have one or more platforms that are associated with level crossings, and few have a platform or platforms that can only be reached via level crossings. The ARA should clearly state how many level crossings will be affected by their exemption application. The number will likely reflect the Queensland situation and not be as high as their application suggests. Therefore, meeting their legal requirements under the Act is not as onerous as the ARA's application suggests.

Rather than a blanket exemption, QDN recommends that action plans on level crossing removal from the various jurisdictions, outlining plans for public consultation, costing and project timeframes, should be submitted to AHRC for approval.

Additionally, QDN believes the ARA has failed to be transparent regarding the results of 2021 trials conducted in Western Australia and Victoria into the safety and effectiveness of veloSTRAIL Flange Gap Filler, which would increase safety around level crossings, without requiring an exemption.

veloSTRAIL Flange Gap Filler, which involves rubber parts that compress under the weight of a train, but not under the weight of a pedestrian, cyclist, wheelchair or mobility device users. This means that the flange gap is not present for pedestrian, cyclist, wheelchair or mobility device users, whilst still providing the necessary functionality for a passing train. This treatment should be considered for all new or upgraded pedestrian/cycle crossings, particularly when acute crossing angles are involved.

Not only has veloSTRAIL been used safely in parts of Europe for almost 20 years, but New Zealand recommends the use of the product nationally in KiwiRail's *'Design Guidance for Pedestrian & Cycle Rail Crossings'*.<sup>7</sup>

Following trials in WA and VIC last year, The Australasian Centre for Rail Innovation's Report on the veloSTRAIL Flange Gap Filler has been finalised. Anecdotally, QDN understands that veloSTRAIL performed well in the 2021 trials, as it did in field trials conducted in 2008, which were published in the report *'The development of veloSTRAIL closed flange level crossing system'*.<sup>8</sup>

The international experience and the results of multiple trials suggest that this product is safe and fit for purpose, meaning there is a reasonable alternative to another five-year ARA exemption on this issue. However, The Australasian Centre for Rail Innovation have so far failed to make their report public.

QDN is aware that the ARA has focused on the potential for these products to cause grease from the train wheels to be spread across the path, creating a slipping hazard. QDN understands that the grease stripping issue is often the result of poor installation of the veloSTRAIL product. Anecdotally, QDN understands that in the most recent trials of veloSTRAIL, installation processes had been improved and as a result, grease stripping was

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<sup>7</sup> KiwiRail, 2017, *'Design Guidance for Pedestrian & Cycle Rail Crossings'*:

<https://www.kiwirail.co.nz/assets/Uploads/documents/4eea8a615d/RailXing-PedBikeXingDesign-RevisedGuide.pdf>

<sup>8</sup> Roseman, Andrew, 2008, *'The development of veloSTRAIL closed flange level crossing system'*:

<https://railknowledgebank.com/Presto//GetDoc.axd?ctID=MTk4MTRjNDUtNWQ0My00OTBmLTllYWUtzWFjM2U2OTE0ZDY3&riD=MzEy&pID=Nzkx&attchmnt=True&uSesDM=False&ridx=MTc1Mw==&rCFU=>

a minor issue. However, without the public release of the trial results these issues are unable to be addressed openly. For example, it is unclear why regular maintenance would not remedy this issue if installation improvements had not already rectified the problem.

Ultimately, if people with disability are being asked to have their human rights impinged on, then it is incumbent on the ARA to be transparent with all the facts about potential solutions and alternatives on the market.

### **Accessible boarding doors**

*Section 2.6 of the Transport Standards: For a period of 5 years, an access path is only required at a single door of existing rail conveyances.*

*Section 8.2 of the Transport Standards: For a period of 5 years, a manual or power assisted boarding device is only required at a single door rather than all doors of a rail conveyance.*

As stated in QDN's earlier submission on the ARA's application for exemptions, having a strategically located passenger assistance point on each platform – that serves all customers – makes good operational sense. Staff frequently misinterpret the primary nominated boarding point policy and insist that assisted boarding is via a single door only. One accessible car has its allocated spaces overloaded, while the other accessible cars have allocated spaces empty.

Passengers are entitled to board at any of the clearly identified accessible doors and should be able to nominate their preference. Equally, if stopping they are entitled to the use of signalling devices to alert staff of their location and need of a boarding device.

The ARA request for exemption is at odds with the policy and practice of many of their members. Metrotrains<sup>9</sup>, Queensland Rail<sup>10</sup>, Transperth<sup>11</sup>, Transport for NSW<sup>12</sup>, and AdelaideMetro<sup>13</sup> all appear to allow passengers to board with assistance via accessible doors, of which each train has several.

The questions of which ARA members will benefit from the exemption and how they will benefit might reasonably be asked of ARA and AHRC. The outcome of the exemption would appear to be of no advantage to most ARA members while clearly discriminating against people with disabilities. AHRC must question why they would grant such an exemption.

### **Boarding ramp gradients**

*Section 6.4 of the Transport Standards: For a period of 5 years, where the relationship between the platform and rail carriage means that an external boarding ramp can only be provided at a gradient greater than 1 in 8 and less than 1 in 4, ARA*

<sup>9</sup> Metrotrains, 2021, 'Accessibility: boarding': <https://www.metrotrains.com.au/station-accessibility-features/boarding/>

<sup>10</sup> Queensland Rail, 2021, 'Accessibility': <https://www.queenslandrail.com.au/forcustomers/access>

<sup>11</sup> Transperth, 2021, 'Train Accessibility': <https://www.transperth.wa.gov.au/using-transperth/disability-assistance/train-accessibility>

<sup>12</sup> Transport for NSW, 2021, "Access to Trains": <https://transportnsw.info/travel-info/using-public-transport/accessible-travel/access-to-trains>

<sup>13</sup> AdelaideMetro, 2021, 'Priority seating and allocated spaces':

[https://www.adelaidemetro.com.au/\\_data/assets/pdf\\_file/0011/824366/Priority-seating-and-allocated-spaces.pdf](https://www.adelaidemetro.com.au/_data/assets/pdf_file/0011/824366/Priority-seating-and-allocated-spaces.pdf)

*members are not required to provide staff assistance to customers to ascend or descend the ramp.*

Boarding ramp gradients are entirely dependent on platform height relative to carriage floor height. Without a capital works program and a commitment to significant investments in infrastructure upgrades, an exemption for five years will move people with disability no closer towards upholding their full human rights. At the current rate of upgrade (lawfully due to be finished in 2022) and under the best circumstances, ARA members are on track to complete the work by 2032.

QDN members are looking to the AHRC for a decision that ensures people with disability won't be expected to accept ongoing approval of temporary exemptions until 2032 (or later). Again, QDN members argue that ARA members have had 15 years of exemptions to address these issues and still have a multitude of low platforms that make boarding ramps too steep for independent access. Their failure has major implications for passengers who need to rely on boarding assistance and results in people with disability continuing to experience discrimination over a simple failure to provide accessible boarding points.

By denying a further exemption, the AHRC would send a clear message that the ARA and its members have been given more than enough time to meet their obligations under the Act and any failure to invest in basic infrastructure to meet the rights of people with disability will no longer be excused. The time for action is now.

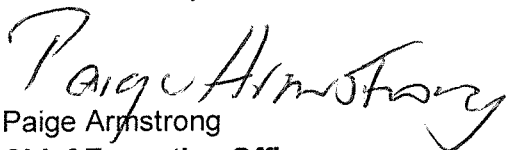
## **Conclusion**

QDN recognises that legacy infrastructure does in some instances present legitimate compliance challenges. However, most of these challenges are not insurmountable, and with the assistance of people with disability and the disability sector, the majority can be overcome.

People with disability have the capacity, skills and lived experience to work from the beginning of any co-design process that delivers Equivalent Access solutions. If full compliance cannot be reached, people with disability have shown great willingness and patience to achieve the best outcome that circumstances and constraints permit. Working in respectful partnership creates trust and goodwill.

The decision before the AHRC represents an important juncture point – the AHRC can continue down the same path that Australians with disability have been forced to endure for 15 years, with continuous temporary exemptions and no end on the horizon, or the AHRC can decide to cease the never-ending temporary exemptions, so that Australia can finally uphold the rights of people with disability and deliver on its promise of equal access to public transport and full inclusion in our communities.

Yours sincerely



Paige Armstrong

**Chief Executive Officer**

**Queenslanders with Disability Network**