Inquiry into the delivery of outcomes under the National Disability Strategy 2010-2020 to build inclusive and accessible communities

Submission by Queensland Advocacy Incorporated

Community Affairs References Committee

April 2017

About Queensland Advocacy Incorporated

Queensland Advocacy Incorporated (QAI) is an independent, community-based systems and individual advocacy organisation and a community legal service for people with disability. Our mission is to promote, protect and defend, through systems and individual advocacy, the fundamental needs and rights and lives of the most vulnerable people with disability in Queensland.

QAI has an exemplary track record of effective systems advocacy, with thirty years' experience advocating for systems change, through campaigns directed to attitudinal, law and policy reform and by supporting the development of a range of advocacy initiatives in this state. We have provided, for almost a decade, highly in-demand individual advocacy through our three individual advocacy services – the Human Rights Legal Service, the Mental Health Legal Service and the Justice Support Program. Our expertise in providing legal and advocacy services and support for individuals within these programs has provided us with a wealth of knowledge and understanding about the challenges, issues, needs and concerns of individuals who are the focus of this inquiry.

QAI deems that all humans are equally important, unique and of intrinsic value and that all people should be seen and valued, first and foremost, as a whole person. Further, QAI believes that all communities should embrace difference and diversity, rather than aspiring to an ideal of uniformity of appearance and behaviour. Central to this, and consistent with our core values and beliefs, QAI will not perpetuate use of language that stereotypes or makes projections based on a particular feature or attribute of a person or detracts from the worth and status of a person with disability. We consider that the use of appropriate language and discourse is fundamental to protecting the rights and dignity, and elevating the status, of people with disability.

Background and summary of recommendations

The development of the National Disability Strategy (NDS) represented an exciting opportunity for Australia to foster a fresh national response to people with disability that is consistent with the human rights obligations Australia assumed by signing and ratifying a suite of international treaties and conventions. The NDS sets out a 10 year national policy framework plan aimed at improving life for all people with disability and their families.

The NDS is the culmination of commitment by all levels of government, industry and the community to a unified national approach to policy and program development. It was developed following consultation in 2008-9 by the National People with Disabilities and Carer Council. Marketed as a means by which Australia would become an inclusive, enabling and equal environment for those with and without disabilities, the NDS is underpinned by and was designed to complement the commitments Australia made by signing and ratifying the Convention on the Rights of Persons with Disabilities (CRPD).

Yet we are now past the half-way point in the life of the NDS. The preliminary indicators of progress are not encouraging and suggest there has not been a consistent commitment to faithful implementation of the intent of the NDS. We must therefore consider how our commitments under, and progress against, the NDS measure up to our human rights obligations at an international level.

The first priority area under the NDS, which this inquiry focusses on, is concerned with the physical environment including public transport; parks, buildings and housing; digital information and communications technologies; and civic life including social, sporting, recreational and cultural life.

This inquiry is concerned with:

(a)   the planning, design, management, and regulation of:

   (i)   the built and natural environment, including commercial premises, housing, public spaces and amenities,

   (ii)   transport services and infrastructure, and

   (iii)   communication and information systems, including Australian electronic media and the emerging Internet of things;

(b)   potential barriers to progress or innovation and how these might be addressed;

(c)   the impact of restricted access for people with disability on inclusion and participation in economic, cultural, social, civil and political life; and

(d)   any other related matters.

QAI will address each of these terms of reference in turn, drawing upon knowledge and experience gained through both systems and individual advocacy for the most vulnerable people with disability in Queensland.

At the outset, QAI wishes to express our concern that the initiatives proposed predominantly focus on physical accessibility. In our submission, the requirements that must be met to be a truly inclusive and accessible community extend far beyond physical access. Issues of choice with respect to where and with whom a person lives, inclusion in the fabric of cultural and community life and in the workforce, and civil and political participation are all fundamental. Further, to be an inclusive and accessible community, a welcome must be extended to people entering or returning to those communities. This means that people who

are either new arrivals (immigrants and refugees) or people re-entering community from places of detention, from hospitals and from mental health facilities must not only be welcomed by must also be given the supports they need to access their community. In this regard, the degree of inclusion and access offered by any community is inextricably linked to another theme (Theme four) of the NDS – personalised community supports. Without this link people will be marginalised and denied access to the communities and people who are experiencing re-entry or are new arrivals to communities will be the most vulnerable and stand to lose the most. Further, QAI submits that the reason why so many people with disability are indefinitely detained outside of their community is due to the lack of supports they have. As discussed in our submission, this is an issue that must be addressed as a priority.

QAI's recommendations:

➢ QAI supports the importance of community integration and access for people with disability and mental health conditions.

➢ Accessibility requires far more than physical access and includes ensuring people have the support they need to live in, and participate in, their community.

➢ While there have been many housing reforms over the past decades that have positively impacted upon the lives of people with disability,[1] many people are still afforded scant choice with respect to their accommodation arrangements.

➢ QAI considers that it is fundamentally important to support people with disability to live autonomously, where desired and possible.

➢ The provision of adequate financial support, in the form of rental assistance that is sufficient having regard to any additional requirements resulting from the disability, is an integral part of the support structures required. QAI concurs with the proposal by the Harmer Report (2009) for a separate index for rental subsidies for persons with disabilities.

➢ QAI emphasises the importance of ensuring the availability of accessible, affordable public transport options for people with disability.

➢ The Government must address the growing 'digital divide', which is becoming increasingly disabling where the internet or appropriate technology is unavailable or inaccessible.

➢ QAI calls for the need for real, sustainable initiatives directed towards increasing the rates of involvement of people with disability in meaningful open employment.

➢ Given the false yet widespread presumption that many disability allowances and supports will become subsumed within the NDIS, safeguards must be introduced to address gaps in services and supports.

➢ QAI considers that giving all people a valued social role within the community can help to diversify and strengthen communities and to build resilience and supportive relationships within the community.

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[1] The strong emphasis on deinstitutionalisation and reformation of the social and housing policy framework in Australia over the past few decades has resulted in the movement of people with disability from large state institutions into smaller, community-based group homes (Lisa Bostock, Brendan Gleeson, Ailsa McPherson and Lillian Pang, deinstitutionalisation and housing futures: Final report (Australian Housing and Urban Research Institute UNSW-UWS Research Centre, 2001)). This has had generally positive outcomes: See, for example, Janet Louise Young, *Deinstitutionalisation and Changes in Life Circumstances of Adults with Intellectual Disability in Queensland,* unpublished doctoral thesis, University of Queensland, 2001.

Introduction

Under the NDS, this target area aims towards the goal of having people with disability live in accessible and well-designed communities with opportunity for full inclusion in social, economic, sporting and cultural life. This is separated into the following policy directions:

- Increased participation of people with disability, their families and carers in the social, cultural, recreational and sporting life of the community.

- Improved accessibility of the built and natural environment through planning and regulatory systems, maximising the participation and inclusion of every member of the community.

- Improved provision of accessible and well designed housing with choice for people with disability about where they live.

- A public, private and community transport system that is accessible for the whole community.

- Communication and information systems to be accessible, reliable and responsive to the needs of people with disability, their families and carers.

The areas for future action are identified as:

1.1 Improve access and increase participation of people with disability in sporting, recreational, social, religious and cultural activities whether as participants, spectators, organisers, staff or volunteers.

1.2 Support the development of strong social networks for people with disability.

1.3 Monitor adherence to and evaluate the effectiveness of the Disability (Access to Premises – Buildings) Standards 2010 and Disability Standards for Accessible Public Transport 2002 and improve the accessibility of reports.

1.4 Promote the development of Disability Access Facilitation Plans by airlines and airport operators to improve communication between operators and passengers with disability.

1.5 All levels of government develop approaches to increase the provision of universal design in public and private housing in both new builds and modification of existing stock.

1.6 Improve community awareness of the benefits of universal design.

1.7 Promote universal design principles in procurement.

1.8 All governments adopt the mandated conformance levels for web accessibility as a baseline requirement to ensure more people with disability have access to online information and services.

1.9 Use the National Broadband Network as an enabling technology platform to deliver innovative services, communication and support for people with disability, their families and carers.

We will now consider the way in which these priorities are addressed by considering the terms of reference for this inquiry.

Planning, design, management and regulation

The natural and built environment

The 2014 progress report to the Council of Australian Governments proclaims that the *Disability (Access to Premises – Buildings) Standards 2010* has, along with related measures, resulted in improved accessibility of the built environment.[2] The Progress report notes:

> *Accessibility is starting to become a routine consideration for planners, designers and policy makers, following the widespread promotion of the principles of universal design in private and public housing design, transport services and other fields.*

Yet the focus in this regard has been predominantly on physical access. This strong focus, while important, can undermine consideration being given to other key issues that impact upon accessibility, including for example the barriers to accessibility that may be faced by people with an intellectual or cognitive, rather than a physical, disability. Access is not only physical. For many people with social, cognitive and intellectual impairments, accessible housing requires other attributes for the person to sustain safe and appropriate living arrangements. Some people will want to be living in a quiet street away from busy roads, or will need or wish to be in a street where neighbouring houses are at a distance, or close by, or of a special construction type. Some people will need to have a sizeable back yard and gardens or be near to open parklands with room to run.

While there has been some progress made in offering affordable rental housing which complies with universal design principles and is accessible for those with a physical disability, insufficient attention has been directed towards provision of affordable housing, or rental assistance, to support people with an intellectual or cognitive disability to live in a place of their choice in the community. There is an inadequate supply of social housing, which affects people with specific needs most keenly.

The Henry Review observed the growing gap between the cost of renting and household income.

> *In 2009, the ratio of rents to average weekly earnings had risen to its highest level since the late 1980s. The review explained: As at 5 June 2009 there were 418,000 individuals and families paying more than 30 per cent of their income in rent even after receiving Rent Assistance; 129,000 of these were paying more than 50 per cent of their income. Many of these people, especially age pensioners and disability support pensioners (who make up around one-quarter of Rent Assistance recipients) are likely to have limited capacity to increase their incomes. The number of Rent Assistance households paying more than 30 per cent of their income in rent is at its highest level since 2000.*

Aged care and pension systems in Australia are designed for home owners rather than people with disability on low incomes. After-housing poverty rates are higher for non-home owning older households. Those people have less capacity to modify their homes as they get older and, in most cases, are unable to find more suitable housing in the private market. One of the consequences is the increasing isolation and disability that older people in unsuitable or inaccessible housing face. People in those circumstances move into residential aged care at an earlier age as there are no other options available to them, which can also be as costly, if not more so than private rental.

The focus of social housing in Australia has been to provide affordable housing to low-income families, but attention has increasingly shifted toward catering for the housing needs of the most disadvantaged in the community.

According to AIHW figures, in 2012–13, 77 per cent of allocations to public rental housing

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[2] *Progress Report to the Council of Australian Governments*. 2014, 28.

went to people in greatest need—particularly those who were homeless or at risk of homelessness. The AIHW also recorded that those households where at least one member had a disability made up more than 133,000 households in public rental housing or 41 per cent of total stock.

Community housing providers seek to encourage local communities to be more active in managing and providing affordable housing, providing affordable and appropriate housing for low- and moderate income people and for those people whose housing needs are not adequately met in other forms of housing, particularly, for example, people with disability. For example, Common Equity in Melbourne has a mix of both private and social housing, including some housing for people with a disability. It was built on an old boot factory.

Queenslanders with disability are currently experiencing an affordable housing crisis as well as facing extra barriers in securing a home. People with disability have lower incomes than the general population, and more housing stress. The building industry has not taken up universal housing design. People cannot afford modified housing, and when they can they find that landlords will not allow them to do so. People with disability face assumptions about the need for institutional and congregate care and can have difficulty negotiating and advocating within the housing system, particularly people with complex needs, including people with intellectual and cognitive disabilities. QAI acknowledges the important work Queenslanders with Disability Network (QDN) has engaged in in the area of housing for people with disability, and endorse the recommendations made in their recent paper *Going for Gold: Accessible, Affordable Housing Now.*[3]

QAI submits that government should continue to fund public housing and commit to achieving a higher proportion of overall social housing as a percentage of Australia's housing stock. This additional investment in social housing should go some way to ensuring that people with specific needs are housed in affordable and appropriate houses.

Over the past few decades there has been a strong emphasis on deinstitutionalisation and reformation of the social and housing policy framework in Australia and this has resulted in people with disability being moved from institutions into smaller, community-based group homes.[4] While the outcomes of this movement have been generally reported to be favourable,[5] this type of living can also constitute a new form of institutionalisation that carries over many of the same adverse conditions and experiences for those subjected to it. QAI does not support any projects that congregate people with disability or requires them to share their supports and or services. QAI notes the particular vulnerability of people with disability who do not have the opportunity or voice to express their own wants and wishes directly, and who are often forgotten in places like boarding houses, hostels, nursing homes, group homes, the streets, the family home where they feel they may never leave, and in unsuitable unaffordable private rentals, or those at risk of falling into any of the above.

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[3] QDN. *Going for Gold: Accessible, Affordable Housing Now.* QDN Position Paper on housing for people with disability. March 2017.

[4] Lisa Bostock, Brendan Gleeson, Ailsa McPherson and Lillian Pang, deinstitutionalisation and housing futures: Final report (Australian Housing and Urban Research Institute UNSW-UWS Research Centre, 2001).

[5] See, for example, doctoral research by Young, which reports on Australia's largest deinstitutionalisation research project, whereby residents from Challinor, a government-run institution located in Ipswich, Queensland, were relocated after the centre was closed. The residents of Challinor was predominantly classified as a most problematic group to deinstitutionalise, as the demographics of this group were mostly older (aged over 40 years), had been institutionalised for an extremely lengthy period (over 20 years), many had severe and profound levels of intellectual disability and many had behaviour problems. However, the deinstitutionalisation of this group resulted in favourable outcomes: Janet Louise Young, Deinstitutionalisation and Changes in Life Circumstances of Adults with Intellectual Disability in Queensland, unpublished doctoral thesis, University of Queensland, 2001.

Recent Australian research has recognised the desirability of taking an individualistic approach to housing for people with disability, which acknowledges the importance of providing appropriate fiscal and non-fiscal supports to enable people to live independently in the community.[6] In 2010, an external evaluation of the delivery and outcomes of the Queensland Government's Housing and Support Program found that people with intellectual and cognitive disability or mental illness can successfully reside and participate in their community of choice, with adequate community support, stable housing and appropriate clinical case management.[7]

A key reason for this problem has been the lack of individualised portable funding. A significant number of people with disability remain living with their aging parents. Programs such as the Elderly Parent Carer Initiative have exacerbated the lack of autonomy and authority that a person with disability has over their own life. This type of approach has failed people with disability when inadequate or lack of funded supports prolongs dependency on parents who are aging and resigned to providing care until they die or are no longer able. While the NDIS is promising changes for many people with disability, unless there is a specific targeted approach from the Department, a significant number of eligible NDIS potential participants residing in the congregate shared setting of boarding houses and hostels will be overlooked.

People forced to share care in group living arrangements have little choice about the location, or co-tenants or design of their house. The residents of boarding houses and hostels have been neglected, forgotten and ignored. This is exacerbated by the problems associated with congregating people with high and complex support needs, and the diverse needs of people with mental illness, intellectual impairment, and other social issues.

One of the issues associated with the promulgation and continuation of forced co-tenancy is that this conveys what is understood and has resulted in a belief by community that this is the only way people with disability can be supported to live. As the footnoted story indicates, the family mistakenly believe that security cameras are the solution. Cameras can malfunction, be turned away and are a breach of human rights and privacy. The issue is congregate and shared care. Each person should have their own individual staff and enough individualised funding to live where, how and with whom they want – not an exercise in cost savings because as ever, it will be the damage to or loss of vulnerable lives that always suffer in the name of economics.[8]

Following a roundtable collaboration between The Office of the Public Advocate, Queensland, Micah Projects Inc and participating agencies Queensland Public Interest Law Clearing House Incorporated; Queensland Health, Mental Health Outreach Team; Pindari Supported Accommodation and Assistance Program Service, Salvation Army; HART 4000; Kyabra Support Service; and the School of Human Services and Social Work, Griffith University in 2007 and a forum in 2008, the pilot research project found that boarding houses and hostels and rooming houses as a form of accommodation, for vulnerable people with disability and complex support needs was highly unsuitable. The researchers did not ask about this form of

[6] Lesley Chenoweth, Natalie Clements and School of Human Services and Social Work, Funding and service options for people with disabilities: Final Report, Griffith University, June 2009, reporting on the 2008 meta-analysis by Parmenter and Arnold for the Victorian Department of Human Services.
[7] The evaluation was conducted by the Department of Psychiatry, University of Queensland, in conjunction with the Queensland Centre for Mental Health Research (known as 'The Park').
[8] See: http://mobile.abc.net.au/news/2017-04-06/familys-battle-for-justice-for-daughter-assaulted-in-care/8402140?pfmredir=sm

accommodation, respondents raised issues and concerns unprompted.[9]

The recent Senate Inquiry into violence, abuse and neglect of people with disability in institutional and residential settings found that the levels of violence, abuse and neglect of people with disability in Australia is such that a Royal Commission is warranted, with the Committee noting:[10]

> *It is well-known that 'where people with disabilities live and the cultures of the organisations that provide services, in particular residential services, are significant factors that impact on risk of violence, abuse and neglect'. Deakin University noted that it is the 'isolation from broader society and the "closed" nature of disability services' that can lead to a 'corruption of care'.*

QAI notes that the choices available to people with disability living under Restrictive Practices are even more limited than for other people with disability who do not. People living under Restrictive Practices are currently confined to the few choices of Service Providers available that are perceived by the Department to have expertise and knowledge of Positive Behaviour Support Plans and how to use Restrictive Practices. This is certainly exacerbated in rural and remote areas of Queensland with few if any choices of services. We point to the model of Kalpana – a small person-centred service geographically located and specifically designed to support 10 individuals deemed 'too difficult' for all other Service Providers. Those people no longer live under Restrictive Practices and self-direct their own supports. The service operates with a coordinator and a governance model.

Transport services and infrastructure

In the Second Implementation Plan (2014 – 2018), the relevant Commonwealth priority identified is that the Australian Government is committed to improving public transport accessibility for people with disability. The Disability Standards for Accessible Public Transport 2002 must be reviewed every five years. The final report on the second review and the Australian Government's response was released on 10 July 2015. The Australian Government is continuing to progress the recommendations arising from the second Transport Standards review.

In Queensland, it is proposed that the *Disability Action Plan—Improving Access to 2017* will assist people with disability to participate in community life by improving the accessibility of the passenger transport network in Queensland. This responds, in part to the recognition in the Progress Report that people with disabilities continue to report difficulty using public transport, with difficulty proportionate to degree of disability.[11]

Yet paradoxically, QAI's systems advocacy team is presently working to challenge a public transport development that is directly counter to this commitment.

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[9] "Complex options or complex needs? Addressing the housing and support needs of people with impaired decision-making capacity who experience chronic homelessness" 2010 Funded by a Griffith University Industry Collaborative Scheme grant, with funding contributed by Micah Projects Inc., Office of the Public Advocate Queensland, HART 4000, and Mission Australia.

[10] Community Affairs References Committee. *Violence, abuse and neglect against people with disability in institutional and residential settings, including the gender and age related dimensions, and the particular situation of Aboriginal and Torres Strait Islander people with disability, and culturally and linguistically diverse people with disability,* November 2015, 48.

[11] *Progress Report to the Council of Australian Governments.* 2014, 34.

Queensland Train Access: the New Generation Rollingstock (NGR)

Queensland is currently building $4.3 billion worth of suburban trains: the 'New Generation Rollingstock' project. The trains will not be fully accessible, despite the legislative and policy safeguards of the *Disability Discrimination Act 1992* (Cth), the Disability Standards for Accessible Public Transport, the *Anti-discrimination Act 1991* (Qld), the *Disability Services Act 2006* and various federal and Queensland disability plans including the National Disability Strategy, the *Queensland Disability Plan 2014–19*, and the Queensland Department of Transport and Main Roads' *Disability Action Plan – Improving Access to 2017*.

The NGR is being delivered under an Availability Public Private Partnership (PPP), awarded to the Bombardier-led consortium Qtectic in 2013. Qtectic is made up of Bombardier Transportation, John Laing, Itochu and Aberdeen Infrastructure Investments Limited.   Qtectic has a contract with Queensland to design and construct 75 six-car trains that will serve the south-east suburban rail lines for the next three decades.

Queensland Rail has a Disability Reference Group.   A coalition of rail users from that group and QAI are trying to do something about the accessibility challenges of the trains, which are under construction, but are <u>not yet on the tracks</u> and in service. There are three (3) access issues that presumptively could give rise to discrimination actions:

- The corridor between two of the carriages that provides access to the toilet is too narrow for most manual and motorized wheelchairs.[1] A passenger in a wheelchair can reach the toilet from the carriages that do not have a toilet only by calling the guard, getting off at the next stop and re-boarding. This procedure would obviously delay the service for all. If it is raining the passenger would likely get wet.

- The toilet space is not accessible. Best and safest practice is for the wheelchair to fit parallel to the pedestal.   The allotted space is too small for a parallel transfer, and too small for safe maneuvering.

- The guard will be stationed at the rear instead of in the middle of the train where they will be needed to assist with boarding and alighting.   Despite plans for CC-TV surveillance and to allow call-aheads for boarding assistance, people with mobility impairments will be missed when a platform is crowded or unstaffed.

We go into more detail below, but there are two crux issues:

1. No Obligation for Consultation

There is no legislative mechanism to ensure that the Queensland state government consults with people with disabilities **before** commissioning railway infrastructure.   In 2013, the Queensland Department of Transport commissioned the $3.4 billion worth of new trains without first talking to people with disabilities about access, the consequence of which is that 75 New Generation Rollingstock 6-car trains designed for Brisbane's suburban lines will not be fully accessible to people who use prams or wheelchairs or who have other mobility impairments.

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[1] Only one carriage has a bathroom. There is insufficient accessible path of travel from carriage to carriage. The corridor connecting car 3 to car 4 (the toilet car) is approximately 600 mm wide. The average width of manual wheel chairs is 600 mm ~ 750 mm.

If there is a cardinal rule of Universal Design, it is that retro-design and retro-fit are infinitely more time-consuming and costly than getting it right in the first place. Unless they are redesigned and rebuilt, these inaccessible trains will provide decades of service for able-bodied people, but be unusable by people who use wheelchairs and many others with impaired mobility for the duration of the trains' service, until at least 2050. Had people with disabilities been consulted from the outset about the $4.3 billion project, the access challenges that are now so clear may have been dealt with at significantly less expense at inception.

There are a number of relevant action plans that contain undertakings to consult and co-design infrastructure with people with disabilities, including:

- Queensland Disability Plan 2014–19 Enabling choices and opportunities

- The Queensland Plan: a 30-year vision for Queensland

- Transport and Main Roads Disability Service Plan 2014–2016

- Disability Action Plan – Improving Access to 2017 (Disability Action Plan)

None of these plans expressly compels consultation with people with disabilities, and nor do the *Disability Discrimination Act 1992* (Cth) or the Disability Standards for Accessible Public Transport.

2. Disability Discrimination Act 1992 (Cth) Exemptions

The second 'crux' issue is that section 55 of the *Disability Discrimination Act 1992* (Cth) ('the Act') empowers the Human Rights Commission (HRC) to grant, on application, exemptions from parts of the Act. In practice, the HRC has granted key exemptions to the representative body for Australian railway providers, the Australian Railways Association: exemptions that have, in part, given Queensland Rail permission to proceed with inaccessible design.

Through their work with the Queensland Rail Access Reference Group, people with disabilities have identified a number of NGR access jams, including an inaccessible corridor (it is too narrow), an inaccessible bathroom (too small) and inefficient and unworkable boarding arrangements for people with mobility impairments. If given the opportunity to do so, people with disabilities could have identified these problems much earlier in the design process. This would have made the trains fully accessible and would have saved taxpayers a lot of money that must now be spent on the redesign and rebuilding of the trains.

These access challenges have not yet been subject to discrimination complaints, let alone determination by any administrative tribunal or court, so we cannot say with absolute certainty that the designs violate the *Disability Discrimination Act 1992* (Cth) or the Disability Standards for Accessible Public Transport, or that they amount to unlawful discrimination. We can state, however, that some Queensland trains now in service do not share these access faults: a fact which, incidentally, undermines the narrow-gauge necessity argument used by the Australasian Railways Association in its successful applications for section 55 exemptions.

The gist of their argument is that narrow-gauge lines impose design constraints such that safety must be compromised if accessibility is not. For example, the ARA states:

> *[S]ome ARA members are unable to comply [with the DSAPT] due to narrow gauge railway tracks and narrow carriage width. This means that the carriages are necessarily very narrow in width in order to fit on the infrastructure and also travel through some tunnels. [..]For example if the clear opening door width for the unisex accessible toilet is 780mm on a train, to widen this doorway would necessitate a*

reduction in the aisle way width adjacent to the toilet or compromise internal circulation room inside the toilet. To change the layout of the toilet and other key internal fixtures would not be feasible due to the need to maintain structural integrity and impact on crash worthiness.[12]

The following explanatory statement from Queensland Rail's *Accessibility Action Plan 2014* leaves little doubt about who might stand to benefit from the ARA's advocacy:[13]

Queensland railways have been constructed using narrow gauge (1067mm) track built in the early part of last century. Narrow gauge track imposes limitations to train carriage width and presents design and engineering constraints limiting the ability to design a carriage that meets the needs of all users, including customers with disabilities. For example, if a toilet facility and an access aisle are required to be adjacent to each other, construction to the dimensions specified in the Transport Standards is physically impossible. Challenges presented by Queensland Rail's narrow track gauge will continue to impact accessibility on trains.

Fully accessible trains have for some time already been in service on Queensland's narrow-gauge lines, yet the Human Rights Commission has made a decision to accept the narrow-gauge rationale as a legitimate basis on which to sanction section 55 exemptions. The Queensland 'Tilt-train' for example, has accessible bathrooms and corridors, and the central boarding system currently used on in-service Brisbane suburban trains shares none of the access problems identified on the NGR trains. The Queensland government can build accessible trains, and they should.

Section 55 of the *Disability Discrimination Act 1992 (Cth)* empowers the Human Rights Commission to order exemptions so that transport providers do not have to immediately comply with every aspect of the *DDA* and the Disability Standards for Accessible Public Transport, with a view to eventual compliance without short-term catastrophic financial consequences. In practice, Australian rail providers have sought and have largely been granted a range of exemptions, even where rail operators have similar above and below rail infrastructure that complies with both the *DDA* and the DSAPT.

Trains Conclusion

Fixing the trains will be costly, whether they are redesigned, or whether Queensland Rail devises a 'direct assistance' staffing solution for the 30+ year duration of their service.

It will be a regrettable policy decision to continue the roll-out without considering the long term risks and costs associated with this discrimination. There is a greater chance that passengers will be injured, and an associated risk of litigation. Public transport is a vital need and accessible transport is essential if people with disabilities are to participate on an equal basis. These trains will be in service for decades, and the inconvenience and likely injury to people with disabilities will exceed the cost of making the trains accessible.

Communication and information systems

The Federal Government acknowledges that people with disability have told governments that one of the key shortcomings in implementing the NDS is lack of awareness of the intent

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[12] Australasian Railway Association. Submission to the Australian Human Rights Commission – Temporary Exemption Applications. 15 April 2015.

[13] Queensland Rail 'Accessibility Action Plan 2014'.

of the strategy amongst the broader community. The Government's response has been to develop a communications strategy, to be implemented through a range of activities.

Additionally, a further key issue that has been recognised has been the 'digital divide' between Australians with and without disability in terms of their access to the burgeoning world of rapidly developing internet technologies.[14]

QAI endorses the adoption by all levels of government of the *Web Accessibility National Transition Strategy*, which mandates compliance with internationally-accepted standards for web accessibilities in a move towards a more socially inclusive internet environment. We also support the introduction of new TV captioning standards

However, our concern is that, firstly, in an increasingly digital age, the 'digital divide' is becoming increasingly disabling for those without access to the internet. This is particularly so in the context of an overriding assumption of access. Second, the speed of development is such that some technological advancement can be out of reach to some people with disabilities.   Finally, many resources remain inaccessible to many people with disabilities, as they are not written in Easy English or not otherwise compliant with access requirements in their complexity of text or images or availability to those with sight or hearing impairments or from CALD backgrounds.

Further to this, plan language or 'easy English' does not provide accessible information to the high proportion of people who are illiterate and require information that is explained to them in the way that they may understand. This is often left to family members, advocates and or appointed guardians. For many people with disability this is impractical or unlikely to happen and it is possible that substitute or best interest decisions will be made instead of supporting people to make their own decisions by providing them with the information they need in the way they understand and with the time required to make the decision.

We are not alone in noting that the approach to increasing the availability and inclusiveness of electronic media has been inconsistent and incomplete.[15] Our work advocating for people with disabilities affirms reports from people with disability that 'fully accessible information and communication material is still largely the exception rather than the rule' and that 'more needs to be done to ensure compliance with existing accessibility guidelines and in educating other sectors, private business, industry and the wider community about their obligations and responsibilities.'[16] However, we dispute the conclusion drawn in the Progress Report that, were this done, this would help ensure that 'information and communication material was accessible to everyone'.[17] In our submission, there is significant work to be done, including a substantial injection of funding, to move towards closing the digital divide.

Potential barriers to progress or innovation and how these might be addressed

As noted at the outset, access is about more than physical access. For many people with disability, particularly those with an intellectual or cognitive disability or mental illness, access is about having the supports they need to live within and engage with their community. For people from ATSI or CALD backgrounds, it is imperative that cultural issues be properly considered and addressed. We note that under the second implementation plan proposes, in Queensland, The Respectfully Journey Together – Aboriginal and Torres Strait Islander

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[14] Cth of Australia. *National Disability Strategy 2010-2020: Evidence Base*. November 2011.
[15] *Progress Report to the Council of Australian Governments*. 2014, 35.
[16] *Progress Report to the Council of Australian Governments*. 2014, 35.
[17] *Progress Report to the Council of Australian Governments*. 2014, 35.

Cultural Capability Action Plan sets out the Department of Communities, Child Safety and Disability Services approach and commitment to growing cultural capability; building capacity to better support vulnerable Aboriginal and Torres Strait Islander people; partnering more inclusively with key organisations; and engaging genuinely with communities. We are encouraged that the development of this plan was led by the voices of Aboriginal and Torres Strait Islander people and are hopeful that this will translate into real measures that authentically address the significant needs in this area.

The antithesis of inclusivity is forced co-tenancy. As discussed in detail above, despite the de-institutionalisation movement in Queensland, many people with disability still live in forced co-tenancy arrangements, where they are required to live with non-family members not of their choosing in order to share care and services. QAI considers that it is fundamentally important to support people with disability to live autonomously, where desired and possible.

As also noted above, there remains a significant disparity between the preferences and reality of accommodation for many people with disability in Australia. Recent Australian research has recognised the desirability of taking an individualistic approach to housing for people with disability, which acknowledges the importance of providing appropriate fiscal and non-fiscal supports to enable people to live independently in the community. In 2010, an external evaluation of the delivery and outcomes of the Queensland Government's Housing and Support Program found that people with intellectual and cognitive disability or mental illness can successfully reside and participate in their community of choice, with adequate community support, stable housing and appropriate clinical case management.

For many adults with disability, adequate financial support in the form of rental assistance is but one part, albeit an integral part, of the support structures required. It is noted that the type of financial assistance required to support appropriate accommodation arrangements for people with disability, whether it be a physical impairment or a mental health, intellectual or cognitive impairment, is higher (and often significantly so) than that required by a person without the disability. However, it is appropriate and necessary that this additional assistance be provided to ensure persons with disability are able to enjoy living conditions on par with persons without disability.

Given that there is a societal and familial belief that prevails that people with disabilities require congregate housing arrangements to ensure adequate support and housing arrangements, it is important that there is an intentional and robust promotion of opportunities for people with disabilities to live with support in a home of their choosing. This can be achieved through a national campaign using the information resources available through Centrelink, the NDIS website, and media. Further to this, state departments of housing can promote other ways for people with disabilities to share housing if people desire using the databases of eligible tenants and prospective tenants to match people who wish to share. Rental subsidies for people to live in the private rental market is another option.

QAI concurs with the perspective expressed by the 2009 Harmer Report that: "[A] separate index that more appropriately reflects changes in the cost of private rent would have merit [and could] be based on the actual rents paid by income support recipients to obtain a good measure of the actual changes experienced in the particular segment of the market in which this group operates" as a means of ensuring rental subsidies meet the needs of people with disability. Additionally, QAI considers that a further index that takes account of the actual cost of modifications and supports to accommodation that are required by people with disability, which will necessarily differ according to the type of disability and individual need, is appropriate.

A barrier to progress is the unwillingness, even by the Australian Human Rights Commission, to enforce appropriate minimum standards to ensure the seamless inclusion of people with disability in society. In this regard, we note the recent granting by the AHRC of an exemption, discussed above, to the operation of the Disability Standards for Accessible Public Transport to Queensland Rail, with the result that the Queensland Government commissioned $4.3 billion worth of inaccessible trains. While we do not dispute the need for transitional provisions and periods when introducing change, the focus must be firmly on the needs of vulnerable people, rather than the profit margins of Government.

The impact of restricted access for people with disability on inclusion and participation in economic, cultural, social, civil and political life

Economic life

Restricted access from the community has a significant impact on the ability for people with disability to become involved in any real way in economic, cultural, social, civil and political life.

We note that one of the limbs of this term of reference – the impact of restricted access for people with disability on inclusion and participation in economic life – also overlaps with the third theme of the NDS (economic security). We will focus here on the access issues relevant to employment for people with disabilities.

People with disabilities can face significant difficulties gaining meaningful employment. There can be differing reasons for this, but significant access issues include the inaccessibility of the built environment, lack of accessibility of public transport, lack of access to appropriate education and training in their earlier years, and negative stereotypes about the capabilities of people with disability.

The right to participate in the workforce is a fundamental human right that is the foundation of many other rights and liberties. It is protected in many of the key international human rights treaties, including the CPRD. Most people want and need to work, to earn their living and have economic security and also for the sense of meaning, purpose, self-definition and status that work offers. To be a worker is to be included within a specific community and has many social benefits. Most PWD and people without disability can and want to work and to have a career trajectory and financial independence and security.

Yet we know that PWD are disadvantaged when it comes to work. The Federal Government acknowledges that the workforce participation rates of PWD are too low, whether compared against the relative rates of employment of people without disability or against international benchmarks. And the already dismal statistics on the employment participation rates of PWD are positively skewed when we consider the many PWD working in sheltered workshops, or Australian Disability Enterprises (ADEs) – these forms of substandard employment mask the significantly lower rates of real – that is, appropriate and meaningful – employment for PWD. PWD also have much higher employment insecurity, and their average weekly income is approximately half that of people without disability.

What explains their lower rates of participation in the workforce is not a reduced desire to work but the increased difficulties they can face in obtaining employment as a direct result of their disability. The work they may be offered is often not commensurate with their level of skills, ability and potential and PWD are significantly more likely to be on a lower income and to experience long-term unemployment and poverty, as well as isolation from society and the community.

Despite recognition by the Federal Government of the importance of supporting increased workforce participation by people with disabilities, workforce participation rates of people with disabilities decreased, rather than increased, between 2009 and 2012, notwithstanding the commencement of the NDS in 2010.[18] Of those people with disability who are employed, their median gross weekly income is approximately half of that of people without disability.[19]

Social, community and educational inclusivity are direct drivers of later workforce participation by people with disability. Many people with disability are not prepared in their early years for later engagement in the workforce in the same way as people without disability. There are currently 20,000 workers with moderate to severe disability in the around 190 ADEs across Australia. ADEs are the antithesis of inclusivity.

The Evidence Base report noted that volunteering is a form of community involvement that consistently correlates with higher levels of social support and with the development of new skills and connections. Importantly, there was no negative correlation found between increased severity of disability and rates of volunteering.[20] QAI maintains that, where people with disabilities volunteer in government or private business workplaces for more than two years there should be an established trajectory to a paid position.

Social and cultural life

As noted in the Evidence Base report, the connection between disability and social isolation is well recognised, with increased severity of disability associated with lower levels of participation in activities offering the potential for community interaction. QAI considers that giving all people a valued social role within the community can help to diversify and strengthen communities and to build resilience and supportive relationships within the community.

While the progress report notes that the 'vast majority of people with disability participated in social or community activities on a regular basis',[21] QAI is concerned that this does not necessarily reflect participation in a meaningful way in activities chosen by the person.

QAI congratulates the state and federal government on initiatives undertaken in the areas of arts and sport. These initiatives are an important and symbolic step towards the increased inclusion of people with disability in the community. However, they are not enough.

Political life

People with disability are already largely excluded from political life, to the extent that they are denied the opportunity to be part of a jury. QAI takes the position that, given the overrepresentation in the criminal justice system of people with disability as defendants and offenders, it is ironic that people with disability may be denied a place in the jury room, which is both symbolically and substantively the key public contribution to the determination of criminal responsibility and the administration of criminal justice. Filters that currently operate to exclude people with disabilities include that only persons enrolled as electors are eligible for jury service (people deemed to be of 'unsound mind' may be excluded from the electoral roll); a person who has a 'physical or mental disability' that makes them incapable of effectively performing the functions of a juror is not eligible for jury service in Queensland; and that there is no allowance for modifications or support required by persons with disability,

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[18] *2010–2020 National Disability Strategy Second Implementation Plan Driving Action 2015–2018,* 24.
[19] *2010–2020 National Disability Strategy Second Implementation Plan Driving Action 2015–2018,* 24.
[20] Cth of Australia. *National Disability Strategy 2010-2020: Evidence Base.* November 2011, 18.
[21] *Progress Report to the Council of Australian Governments.* 2014, 34.

such as the presence of an Auslan interpreter. The High Court has recently affirmed this position.[22]

Other related matters

With the rollout of the NDIS, it is vitally important that safeguards are put in place to ensure a strong network of social and community support for all people with disability. With the presumption that many disability allowances and supports will become subsumed within the NDIS, notwithstanding that many people with disability will not receive an individual NDIS package, there is, if anything, a greater probability for people with disability to be excluded than ever before.

Conclusion

QAI wishes to congratulate the Federal Government for considering appropriate law reform in this area. We note that the initiatives proposed predominantly focus on physical accessibility and that a truly inclusive and accessible community goes far beyond physical access. It includes considering where and with whom people live, the supports they need to actively participate in their community, and the welcome that is extended to people entering or returning to a community.

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[22] *Lyons v State of Queensland* [2016] HCA 38.