



Cairns Community Legal Centre Inc

27 June 2008

Department of Infrastructure, Transport, Regional Development and Local Government
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SUBMISSION TO NATIONAL AVIATION POLICY STATEMENT

Background to the Disability Discrimination Legal Service ('DDLS')

The DDLS is a legal service operated by the Cairns Community Legal Centre Inc ('CCLC'). The CCLC is a non-profit, community based organisation run by volunteers and paid workers with Commonwealth and State Government funding.

The DDLS provides legal advice and case work which relates to disability discrimination complaints under the *Disability Discrimination Act 1992* ('DDA') and the *Anti-Discrimination Act 1991* ('ADA').

Community education and awareness-raising activities as well as law reform work are also an important aspect of the DDLS.

Our interest in the review

In recent times we have received a number of enquiries and requests for assistance in matters relating to public transport, air travel in particular.

The DDLS solicitor was also a member of the national steering committee for Accessible Airlines, a project organised by the NSW Disability Discrimination Legal Centre ('NSW DDLC') and the Public Interest Advocacy Centre ('PIAC'). That project culminated in the publication of 'Flight Closed', a Report on the experiences of People with Disabilities in Domestic Airline Travel in Australia (available at www.piac.asn.au/publications/pubs/rep2007123_20071201.html).

The CCLC was one of many to provide a submission into the five-year review of Disability Standards for Accessible Public Transport ('Transport Standards'). We consider that the draft review report prepared by The Allen Consulting Group failed to adequately address issues raised in the Flight Closed report. We fully support PIAC's response to the draft report, 'Flight still closed?' (available at www.piac.asn.au/publications/pubs/sub2008042_20080411.html).

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Our submission

Our submission focuses on consideration of **item 4.4 in the Issues Paper: Disability standards**.

We invite the Minister initially to review the many submissions to the review of the Transport Standards, to the extent that each relates to air travel by people with disabilities. The submissions contain much valuable information.

Are the current Transport Standards adequate to ensure the removal of discrimination from air travel?

The evidence through case studies noted in the Flight Closed report supports the contention that air travel has actually been made more difficult for passengers with disabilities.

- Passengers who were used to living and travelling independently are now required to travel with a carer.
- Mobility aids which had been carried regularly previously are now being refused on the same type of aircraft.
- Passengers are being denied return flights even though outbound flights were completed uneventfully.
- Conditions imposed, such as the Independent Travel Criteria, have become more restrictive and have less connection with real conditions experienced by passengers.
- While the number of flights between destinations offered by the various carriers has grown significantly, the number of flights available to carry wheelchairs to 'secondary destinations' has diminished.
- New entrant to air travel in Australia, Tiger Airways, imposes conditions such as: vision impaired passengers must travel with a personal assistant; limit of two passengers per flight who have reduced mobility and require special assistance, and each of such passengers are required to be accompanied by another fare paying passenger.

In its draft report to the Minister, The Allen Consulting Group reported that a common view at public hearings and in submissions from individuals and organisations representing people with disabilities was that air travel accessibility for people with disability has gone backwards over the last five years.

We must conclude therefore that the Transport Standards are **not** adequate to ensure the removal of discrimination from air travel.

In addressing the adequacy of the Transport Standards generally, we also reviewed international standards and legislation, in particular the United States of America ('US') Department of Transportation 14 CFR Part 382 Nondiscrimination on the Basis of Disability in Air Travel ('14 CFR Part 382'). A copy of this legislation is available at <http://airconsumer.ost.dot.gov/rules/382short.doc> .

Since air travel is such a global industry, we considered it appropriate to incorporate world best practice in our legislation. We are of the opinion that air travellers with disabilities would be better served and their rights better safeguarded by separate legislation modelled on the US legislation detailed above.

CCLC Recommendation 1: that separate legislation which safeguards the rights of airline passengers with disabilities is enacted.

Are there recommendations arising from the recent Transport Standards Review that might be implemented to improve services for people with a disability?

Draft Recommendation 4 regarding appointment of modal sub-committees should be expanded to not only develop Guidelines under the Transport Standards, but to redraft the Transport Standards itself into a modality based document.

We are of the opinion that the structure of the current Transport Standards makes it difficult for users as well as operators and providers to easily identify specifics relating to any particular mode of transport. There are 120 subparts in the Transport Standards, each with references to conveyances and/or premises and/or infrastructure.

Draft Recommendation 5 regarding a national labelling scheme for mobility aids will have no practical effect as the current Transport Standards contain no limits on the type, size or weight of mobility aids that are required to be transported.

Draft Recommendation 6 regarding power of the Human Rights and Equal Opportunity Commission (HREOC) to refer cases of breaches of the Transport Standards directly to the Federal Court should be clarified to include power to initiate investigations into suspected breaches. See our further views on this recommendation below.

Draft Recommendation 7 regarding mandatory reporting framework for Commonwealth, State and Territory governments should be expanded to also require air operators and providers to report to the Minister on their compliance with the Transport Standards.

Draft Recommendation 8 regarding Australian Bureau of Statistics collection of data relating to public patronage of public transport by people with disabilities may assist with quantitative data to reflect recommended mandatory reporting. However, it would prove more useful if the questions also canvassed particular barriers to use of public transport.

Draft Recommendation 9 regarding the implementation of a new consultative framework involving two existing committees needs clarification and refining.

Requiring the Accessible Public Transport Jurisdictional Committee ('APTJC') to advise HREOC on standards for assistance animals will be ineffective because HREOC has no power to change the DDA or to influence the Courts regarding the application of section 9(1)(f) DDA. Steps need to be taken to amend the DDA itself in this regard.

Considering the amount of public consultation already undertaken and the information collected in all previous reviews, it is to be hoped that the new consultative framework will be able to attend to recommended changes promptly without the need for repetitive public input. Needless delay should be avoided.

Are the current complaint and compliance mechanisms effective?

There is no requirement in current legislation to report to any Government department or statutory authority on compliance with the Transport Standards (not even regarding meeting the target dates) let alone on the frequency and volume of complaints to the carrier with respect to service. We are therefore forced to rely on anecdotal evidence through case studies undertaken by concerned private bodies, and other submissions to the review of Transport Standards.

Reliance on figures of complaints to HREOC is not advised since only a small percentage of people experiencing difficulties (regardless of the link to a disability) will put themselves through the formal complaint process. Of those that are lodged, conciliated complaints might achieve an acceptable outcome for the individual concerned but cannot work to address a systemic issue.

Though the DDA makes it unlawful to contravene a disability standard, neither the DDA nor the Transport Standards impose a penalty for doing so.

Pursuant to Part 35.1 of the Guidelines, the 'primary' means of 'ensuring' compliance with the Transport Standards is through a complaint to HREOC. Part 33.2 (4) of the Guidelines states that enforcement is by complaint to HREOC, or if terminated, an application to the Federal Court or Federal Magistrates Service.

It is our strong opinion that an individual aggrieved by systemic contravention of the Transport Standards should not bear the risk, cost and responsibility of pursuing large corporations to enforce statutory obligations.

The enforcement process is manifestly unfair and needs to be overhauled. The Government should be responsible for enforcing compliance, not aggrieved persons. We are not aware of any other Government regulation where the disadvantaged person entitled to the protection of the legislation has the core responsibility of enforcing it.

CCLC Recommendation 2: that HREOC be given to power to investigate incidents of contravention of the Transport Standards and to pursue the operators responsible in the Federal Court of Australia. Appropriate levels of funding must be provided to undertake the new function.

We approve of the requirement in US legislation 14 CFR Part 382 that requires carriers to categorise and record all disability-related complaints and to submit an annual report summarising those complaints to the Department of Transportation. We consider that a similar legislative requirement here in Australia would enhance and progress the objects of the DDA for all people with disabilities.

CCLC Recommendation 3: that steps be taken to amend the DDA to include a requirement for operators and providers to implement a process to collect, categorise and record all disability-related complaints, and to report annually to the Minister for Infrastructure, Transport, Regional Development and Local Government.

One area where we strongly support a cross-requirement of compliance with the Transport Standards is in the issuing of Air Operators' Certificates. We reviewed information available on the CASA website and appreciate that certificates address the operators' and aircrafts' operations, maintenance and airworthiness. Due to the lack of regulatory oversight of compliance with the Transport Standards, the process of enforcing compliance with the Transport Standards is lengthy, costly, risky and falls on the shoulders of people with disabilities. It is simpler and fairer to require compliance as a condition of the certificate.

CCLC Recommendation 4: that the Air Operators' Certificates include a condition that the operators will comply with all relevant Australian legislation, including the Transport Standards.

Should the panel require any clarification or further information regarding this particular submission made by the Centre please do not hesitate to contact Sue Tomasich of our office.

Regards

CAIRNS COMMUNITY LEGAL CENTRE INC

Per: