



27 June 2008

Department of Infrastructure, Transport, Regional  
Development and Local Government  
GPO Box 594  
Canberra ACT 2601

Dear Sir/Madam

**Submission on the Development of a National Aviation Policy  
Statement Issues Paper – Disability Standards.**

The Disability Discrimination Legal Service Incorporated is an independent, community organisation that specialises in disability discrimination matters. It is a not for profit incorporated association that provides free legal service to people with disabilities. It also provides community legal education and undertakes law and policy reform projects in the areas of disability and discrimination.

A committee of volunteers manages the service. The DDLS Management Committee includes people with disabilities. Many people with disabilities, volunteers and students contribute their efforts to the work of the DDLS.

The DDLS works as an active member of the community legal sector and the disability advocacy sector.

**Our experience**

The DDLS regularly receives complaints from people with disabilities in relation to barriers they face in accessing domestic or international air travel. The complaints include general poor service issues, but mostly relate to discriminatory policy and

systemic problems in service delivery. Within the last 12 months alone, we assisted clients with the following types of complaints:

1. Refusal to allow passengers to travel independently
2. Refusal to carry mobility equipment
3. Limitation on flight availability
4. Requirement of separate fare for carers or support persons
5. Lack of captions on audio/visual in flight presentations
6. Lack of or poor pre-boarding assistance

The steady and growing number of the complaints and expressions of dissatisfaction from people with disabilities, their families, associates and carers confirm the sector's view that the current Transport Standards are not adequate in reducing or eliminating discrimination. It also reflects that Australia is lagging behind other developed countries in ensuring access to autonomous and dignified travel opportunities and facilities for many persons with various types of disabilities. For instance, on 10 January 2008, the Canadian Transportation Agency (CTA) released a landmark decision concerning the right of individuals with disabilities to travel by air without having to pay for a second seat, or an attendant carer to accommodate their disability. In the United States, the Department of Transportation requires carriers and airport operators to sign an agreement (to provide all actions necessary to ensure accessible boarding for passengers with disabilities) no later than 2 December 1998.

We address these salient issues and provide recommendation as follows.

1. Independent travel

Most airlines servicing Australia (Qantas, Virgin, Singapore, etc) require passengers to perform the following tasks unassisted as a condition of independent travel:

- To be able to reach down and pull for overhead oxygen masks;
- All aspects of putting on a life jacket;
- Fasten/Unfasten own seatbelts; and
- Ability to understand cabin crew instructions including safety procedures

The said independent travel criteria specifically targets the ability of passengers with disabilities who may or may not be able to perform the above tasks when travelling and cause discrimination in three ways:

- a) The criteria confirms a policy that flight crew may refuse to assist passengers notwithstanding that one of the duties of a Flight Attendant is to *“anticipate and provide for the comfort of passengers needing special attention, including unaccompanied children, parents with infants, and persons with disabilities, the elderly and non English speaking passengers.”* There are no historical accounts or actual records of any incident where the safety of any person had been endangered because the flight attendant assisted a passenger with a disability. In

those unfortunate cases, where disaster has struck, it did not discriminate between passengers with and without disabilities.

It is common practise for children to board aircraft with parents entrusting flight attendants with their care. The Independent Travel criteria outlined by Virgin Blue Airlines cannot be expected to be complied with at all times by children; however they are permitted on board in the care of the flight attendant. Thus, it seems that there may be discriminatory attitudes towards passengers with a disability in regard to the stated aim of eliminating an extra burden or task put upon flight staff. Many individuals with disabilities are able to perform daily tasks and in fact travel on a frequent basis without the need of a carer but perhaps require some assistance from flight attendants throughout the duration of the flight.

People with disabilities put a high value on their autonomy such that independent travel for them carries a reasonable assumption of risk which under the circumstances ought to be respected. The common dignity and respect that should be inferred upon all peoples and especially those with a disability tends to be clouded by a clear case of misjudgement of airline staff (supported by formal policy) as to the skills possessed by the passengers in question.

In addition, Qantas require anyone who may need assistance administering medication “including Epi Pens” to travel with a carer. This covers many people with allergies who currently travel independently. While there could be a requirement for people holding Epi Pens to alert aircraft staff, it is not unreasonable that Level 3 or higher First Aid training be provided to all flight attendants to enable them to assist with Ventolin, Epi Pens and other non-invasive emergency response measures. The level of complexity of these types of assistance are similar to the administration of Cardio-Pulmonary Resuscitation in cases of heart attack, Heimlich manoeuvre for choking and other basic tasks which a basic first aid qualified crew member may perform

- b) Ground crew or administrative personnel misunderstands the nature of that passenger’s disability. Many discrimination complaints arise from the failure of some airlines to recognise the great variability in the abilities of people with disabilities. The specific abilities of a person with a disability are often ignored and airlines deny independent travel solely on the basis that the person has a disability. In justifying these decisions, Tiger Airlines have recently relied on the case of *McLean v Airlines of Tasmania Pty Ltd*<sup>1</sup> in which a passenger was denied independent travel on an airline because his presence on board would endanger the lives of himself, other passengers and the crew unless he was accompanied by a carer. The passenger had cerebral palsy, which meant that he had difficulty communicating, used a wheelchair, was incapable of getting himself into or out of his wheelchair, had uncontrollable shaking of the head and hands and had difficulty gripping anything.<sup>2</sup>

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<sup>1</sup> [1996] HREOCA 37.

<sup>2</sup> *McLean v Airlines of Tasmania Pty Ltd* [1996] HREOCA 37.

It is vital that airlines are required to look to the abilities of the passenger, including the history of their independent travel or lifestyle, and not just the fact that they have a disability when assessing whether a person is capable of independent travel. Tiger's position also ignores the fact that a carer or support person is also a passenger. The attitude and conduct of transport service providers must be scrutinised to avoid or minimise travel industry bias.

The aforementioned issue was exemplified recently with the policy of refusal to allow deaf passengers to travel aboard Tiger Airways due to the absence of a carer<sup>3</sup>, despite regular air travel without the use of a carer and no physical impairment or intellectual impairment. This is an example of what appears to be a revenue motivated requirement because there is no causal relationship between the passenger's disability and the requirement.

- c) The airlines refuse to accept the passenger's assessment of their independent travel ability and require that the passenger travel with a carer to a support person for whom separate fare is charged and collected from the passenger who in most cases does not have the financial resources to pay for the costs of the extra fare. Whilst many businesses have participated in the Companion Card Scheme, airlines have distanced themselves from such travel incentives. The requirement clearly puts a person with a disability at a serious financial disadvantage, particularly considering that most people with a disability are reliant on their meagre Disability Support Pension. The Disability Standards for Accessible Public Transport which came into force on 23 October 2002 do not provide a clear avenue of redress because they state that "all passengers must be prepared to pay fares".<sup>4</sup>

Qantas also requires, that if you weigh more than 130kgs and require assistance with transfer between an aircraft seat and wheelchair, you will need to arrange an 'Assistance Person' for travel on domestic flights and a 'Carer' for travel on International flights. This clearly will preclude heavier people with disabilities from flying independently, even if they can perform other tasks independently.

The independent travel criteria jacks up the costs of travel for a passenger with a disability because the passenger may be liable not only for the costs of their trip but for that of a carer. For instance, our client Mr P has a physical disability and intellectual disability. He relies on his disability support pension of about \$380.00 a fortnight. He has over the years travelled on his own on a one hour flight to Sydney to visit his mother once every 6 months. He usually stays with his mother for two weeks, after which she takes him back to the airport for his return flight to Melbourne. The airline ignored his travel history and recently decided to impose the independent travel criteria. With the required support person for his flights to and from Sydney, he would have to pay for:

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<sup>3</sup> *Herald Sun 'Tiger Airways deaf to discrimination claims?' 11/04/08*

<sup>4</sup> Disability Standards for Accessible Public Transport 2002 (Cth), pt 25.1.

- i) One return ticket for him, another return ticket for the support person, wages and accommodation of the support person for the two weeks that he is in Sydney, OR
- ii) One return ticket for him, one return ticket for the support person to accompany him on his flight to Sydney and for the support person to return to Melbourne (to avoid extending the work hours to a further 14 day period), and another a return flight for the support person to travel to Sydney and accompany him back to Melbourne. In the latter case, if a return fare costs \$300.00, Mr P's total plane fare alone is actually \$1800.00 each visit or \$3600.00 a year.

*Recommendation: That carers or support persons for passengers with disabilities travel free of charge. This may lead to airlines considering the reasonableness of their independent travel criteria.*

*Recommendation: That the eligibility criteria for Independent Travel be standardised across all airlines and created with input from representatives from the disability community who may be best placed to advise airlines on the practicalities of their requirements.*

*Recommendation: First Aid training to staff is expanded to cover administration of Epi Pens and other common 'medications' that currently prevent people with illness/disability travelling independently.*

## 2. Group Travel

Some airlines specify that no more than two persons with a support person or carer or service animal may travel on the same flight. This is clearly discriminatory and indicative of the industry's myopic view of people with disabilities and facts of travel and life. There are many married couples or people with disabilities who are in an intimate relationship and engage in social activities together, such as travelling. The notion that this is not a reasonable requirement sets Australia back as a progressive and inclusive society.

*Recommendation: This policy and practise should not be allowed.*

## 3. Booking requirements and pre-boarding arrangements

### a. Notice of Disability

This submission recognises that where the passenger is requesting assistance or if the disability has a significant impact on their travelling needs, that there is an obligation to disclose their disability or medical condition or that a requirement of disclosure is reasonable. What we oppose is the excessive amount of time (3 days, 7 days, etc) within which notice of disability

needed to be provided. Considering the varieties of disabilities, passenger needs and corollary airline response, it is incorrect to frustrate passengers whose disability or needs do not require advance notice prior to the intended flight.

- b. Clients have also complained that whilst they have provided adequate notice via the booking procedure, they find that ground crew members often appear not to have been advised, or are unable to locate such information or confirm that the requested adjustments have been attended to as a result of an earlier notification. One DDLS client with a vision impairment reported that taxi drivers refused to escort them to the check in counter due to fear of a traffic infringement for the few seconds that the vehicle would be left unattended. For those assisted to get past the entrance doors, they have no means of finding their way through an unfamiliar environment, unless perhaps a kind stranger offers a lending hand. This is not appropriate.

- c. Occupational Health & Safety

People using wheelchairs with certain dimensions have been refused carriage on aircraft due to the requirement of ground staff to store their chair in the aircraft hold. Occupational Health & Safety concerns have been quoted in relation to moving the chair through the hold door on certain size aircraft. It does not seem to relate to the chair not fitting through the door, but rather the procedure to move it through the door. This refusal does not seem to be consistent across all airlines, despite them using the same model aircraft.

Clearly in this case, one airline may simply have a different policy than the other, but no more or less difficulty with the task. In one case, Qantas claimed that luggage loading personnel refuse to do any further manual handling, such as tilting, due to its workplace lifting policy. This view disregards the potential solution provided by simple or inexpensive loading or lifting machines. We have been advised that there were none available; however it is difficult to accept this position given current advances in equipment design and technology.

- d. Wheelchair Brought on Board

Currently, people who use wheelchairs are required to abandon their wheelchair for storage prior to embarkation, and are assisted to an aircraft seat for the duration of the flight.

For some people with disabilities this is acceptable, however others use wheelchairs that have been customised to support them physically in certain ways. For example, a person who may not be able to sit upright independently, and/or need their head supported a particular way, may be

unable to sit for any length of time without this support without risk of injury or to health.

This can either preclude those people from flying, or from flying for any length of time.

*Recommendation: That on all aircraft there is a space set aside where a person can sit in their own wheelchair, with appropriate safety straps to hold the wheelchair in case of emergency. Similar safety precautions are used on Wheelchair Accessible Taxis.*

*Recommendation: That the role of Travel Agents and the system of internet bookings be standardised in order to prevent failure of notification to the airlines of a person's requirements, and to create a mechanism where passengers receive timely confirmation of the arrangements made for them.*

*Recommendation: That passengers needing minor assistance in slicing flight issued food items or moving from their seats to the toilet are specifically advised that flight personnel are available to provide such assistance.*

*Recommendation: That one member of cabin crew is designated to be a disability liaison officer for the duration of the flight.*

*Recommendation: That Staff training is expanded to include providing minor mobility assistance to passengers to and from the toilet door.*

*Recommendation: That airlines and airport facilities be required to comply with requirements similar to the U.S. Department of Transportation requirement described above.*

*Recommendation: That airports have facilities to assist a person with a sensory or physical disability to reach an airline check-in counter safely.*

*Recommendation: Airport authorities provide a drop off area to enable drivers sufficient time to escort a passenger to a check-in counter or inside the airport.*

*Recommendation: Airport authorities provide a system to alert the check-in counter that a person with vision impairment is inside the airport and needs an escort to the counter.*

*Recommendation: Standard policies and procedures in relation to storage of wheelchairs in aircraft throughout the industry. It may be that equipment or knowledge may have to be shared in order that proper*

*handling procedures, which reflect an effort to ensure OH&S is balanced against the rights of persons with disabilities, are implemented.*

4. Passengers with Specific Communication Needs

Technology for in flight entertainment has long been available to provide subtitles to foreign language films, or English films have been shown to a predominantly non English speaking batch of passengers, as well as closed captions for the hearing impaired. Our deaf clients have complained that the national carrier (Qantas) and Cathay Pacific do not provide captions for its standard video safety presentation and in flight entertainment.

There is no excuse, financial or whatsoever for this service to be substandard.

*Recommendation: That close captions be provided for all in flight entertainment and an overhead monitor displays equivalent visual presentation of common audio announcements that cabin crew or the pilot may make during the trip.*

5. Hierarchy of emergency egress from an aircraft.

The DDLS has been advised by a person with a disabilities that he has been told by aircraft personnel that in the event of an emergency, he will be left until last.

This is clearly discriminatory, and leads one to infer that people with disabilities' lives are worth less than those without disabilities.

The DDLS believe that airlines have a long way to go in relation their treatment of people with disabilities, and hope that our submission to this Issues Paper highlights some issues.

Yours sincerely

Placido Belardo

Julie Phillips

Principal Solicitor

Manager