



**Disability Discrimination Legal Centre (NSW)**

**Submission:**

**Toward A National Aviation Policy Statement**

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NSW Disability Discrimination Legal Centre Inc.

PO Box 989

Strawberry Hills NSW 2012

Voice: (02) 9310 7722

Toll Free: 1800 800 708

TTY: (02) 9310 4320

TTY Toll Free: 1800 644 419

Fax: (02) 9310 7788

Email: [info@ddlcnsw.org.au](mailto:info@ddlcnsw.org.au)

Contact for these submissions:

Jo Shulman

Principal Solicitor

[Jshulman@ddlcnsw.org.au](mailto:Jshulman@ddlcnsw.org.au)

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## **1. INTRODUCTION**

### *1.1 The New South Wales Disability Discrimination Legal Centre (NSWDDLC)*

The NSW DDLC was set up in 1994 to help people with disability to use disability discrimination laws. Our role is to provide accurate and easy to comprehend advice to people with disability in NSW who want to make a complaint of disability discrimination. Friends, family members or advocates who want to stop disability discrimination can also use the centre.

The centre's objectives are briefly summarised below:

- To promote community awareness of the potential to use discrimination laws to advance the rights of people with disabilities;
- To provide legal services for people with disabilities, their associates and representative organisations, who have been discriminated against;
- To ensure the effective participation of people with disabilities in the management and operation of the Centre;
- To reform laws and change policies, practices and community attitudes that discriminate against people with disabilities;
- To develop and be involved in appropriate networks;
- To maintain the necessary infrastructures and administration systems in order to further the Centre's aims and objectives.

### *1.2 DDLC's Airline Access Expertise*

Airline Access has been an issue that NSW DDLC has worked on for many years.

In 2006, NSW DDLC and the Public Interest Advocacy Centre (PIAC) partnered to work on the National Accessible Airlines Project (the project). The Project researched multiple case

studies of peoples with disabilities and their experiences of airline travel. The Project analysed these case studies and developed the report *Flight Closed*.<sup>1</sup>

*Flight Closed* was submitted to the Review of the Disability Standards for Accessible Public Transport conducted by the Allens Consulting Group (ACG) in 2007-2008. NSW DDLC provided a further detailed submission to the Allen Consulting Group on 28 August 2007. NSW DDLC also provided comments in relation to the Draft Report of the Allens Consulting Group.

NSW DDLC also has made submissions to the Human Rights and Equal Opportunity Commission opposing an exemption application made by Regional Express Airways.

Copies of all of these submissions are attached.

NSW DDLC has also represented and advises numerous clients in relation to disability discrimination complaints against airlines:

- NSW DDLC acted for Mr Rick Howard in a disability discrimination case lodged in the Federal Magistrates Court in 2006 against Jetstar and the Civil Aviation Authority concerning the respondents' refusal to carry Mr Howard's assistance animal on board. The case has now settled.
- NSW DDLC acted for three clients in complaints to the Human Rights and Equal Opportunity Commission regarding Virgin Blue's Independent Travel Criteria policy. One of the clients Tom Ferguson, is currently litigating his case in the Federal Court.
- NSW DDLC assisted two clients commence proceedings against international airlines. Both these cases involved access to bathroom facilities on aircraft.

NSW DDLC welcomes the opportunity to make submissions to the Department of Infrastructure, Transport, Regional Development and Local Government (the Department) on its issues paper: *Towards a National Aviation Policy Statement: (the Issues Paper)*.

The Department's Issues Paper is wide ranging and deals comprehensively with a range of issues relevant to the aviation industry not all of which are within our area of expertise.

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<sup>1</sup> Brenda Bailey, *Flight Closed: Report on the Experiences of People with Disabilities in Domestic Airline Travel in Australia*, Public Interest Advocacy Centre and NSW DDLC, 2007

Accordingly, we have restricted our submissions and recommendations to the following areas:

- Consumer Protection ( part 4.3)
- Disability Standards (part 4.4)

## **2. CONSUMER PROTECTION AND DISABILITY STANDARDS**

### *2.1 The impact of the low cost airline model on people with disability*

The ‘low-cost airline model’ has opened up airline travel for many – there has been a 40% increase in the number of Australians flying domestically as compared to before the collapse of Ansett in 2001.

The greater access to airline travel enjoyed by a larger number of people is facilitated by the more basic standard of service provision that the operators offer. However, this model of service provision has been to the detriment of people with disabilities.

The increasingly competitive nature of the market place has resulted in some inconsistent and restrictive airline policies that have made air travel more difficult for people with disability in recent years. These difficulties are detailed in the enclosed Flight Closed Report. Some of the areas in which restrictive and inconsistent practices deny air travel for people with disability include:

- The transport of wheelchairs
- Travel with assistance animals
- The application of ‘independent travel criteria’, which either denies access to travel or imposes a condition that the passenger travel with a carer at their own cost

In our experience, one of the greatest issues that arise in these cases is the uncertainty around the interaction of the transport standards and the *Civil Aviation Regulations 1988* (Cth)

### *2.2 Are the needs of people with disability incompatible with a low cost service model?*

NSW DDLC refers the Department to the recommendations of the “Flight Closed” report and urges the Department to act on those recommendations.

Most of the recommendations of the Flights Closed Report could be implemented at a nominal or low cost to the airline industry, thereby ensuring that no increased costs are passed on to the consumer.

Indeed, implementation of these recommendations could be of financial advantage to the airline industry because they would ensure that the industry does not have to waste time and money on defending legal proceedings against them for discriminatory practice. Given Australia's ageing population and increasing rate of disability, these changes would in fact make airline travel more attractive for more of the community, thereby increasing the profits of the airline. Thus, the needs of people with disabilities and the economic objectives of the airline industry need not to be viewed as irreconcilable.

### *2.3 Current complaint and compliance mechanisms- Transport Standards*

The existing process for monitoring compliance with the Transport Standards is inadequate. The individual who feels that they have been discriminated against or unfairly treated bears the burden of seeking a remedy. Relying on individuals with disabilities to enforce the standards by reporting breaches is not only unfair to them, but also means that reforms in the system are only ever reactive.

The inadequacy of the complaints mechanism system points to the underlying structural problems of the system. HREOC currently posts action plans voluntarily submitted by service providers on its website. The voluntary nature of this framework results in insufficient information being available to people with disability. For example, to date, airlines have not cooperated with the voluntary arrangement to publish actions on the HREOC website. For this option to be effective, reporting should be mandatory.

### *2.4 A solution*

Regulation similar to that introduced in the European Union should be developed and implemented in Australia. The relevant European Regulation, CF1107-2006, provides that:

- The management of assistance for people with disabilities is placed under the auspices of the airport authority and taken out of the hands of individual airlines.
- The responsibility for ensuring that all airport management adheres to the relevant regulation has been given over to the Civil Aviation Authority in each European country.

The first provision of the relevant European regulation ensures uniformity amongst airline services and the latter removes the burden from the aggrieved individual as well as ensuring that there is a regulatory body, which overviews industry practice, thus ensuring proactive rather than reactive reforms.

Regulations such as these would simplify the monitoring and complaint process for people with disability and avert the ‘blame shifting’ which often occurs in the air transport industry.

## **CONCLUSION**

As the Department develops a National Aviation Policy Statement, NSW DDLC is concerned that the protection of the rights of people with disability as reflected in the *Disability Discrimination Act 1992* (Cth) and the UN Convention on the Rights of Persons with Disabilities is ensured.

As discussed above this requires recognition that the Transport Standards as they currently exist are not adequate to ensure the removal of discrimination from air travel. Specific Transport Standards which address the needs of people with disability in accessing air travel should be implemented in consultation with people with disability.

Regulation similar to that introduced in the European Union should be developed in Australia. Reporting of action plans needs to be mandatory in order for them to be effective. Compliance against those plans and the Transport Standards should be monitored and enforced by an independent body in order to improve the lives of people with disability.