



Australian Federation of
Disability Organisations

Aviation Green Paper: Towards 2050

Submission by AFDO and NITAN

November 2023

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About AFDO

Since 2003, the Australian Federation of Disability Organisations (AFDO), a Disabled Peoples Organisation (DPO), a funded Disability Representative Organisation (DRO), has been the recognised national peak organisation in the disability sector, along with its disability specific members, representing people with disability. AFDO's mission is to champion the rights of people with disability in Australia and support them to participate fully in Australian life.

Our thirty five (35) member organisations represent disability specific communities and cross-disability communities with a total reach of over 4 million Australians.

AFDO continues to provide a strong, trusted, independent voice for the disability sector on national policy, inquiries, submissions, systemic advocacy and advisory on government initiatives with the Federal and State/Territory governments.

We work to develop a community where people with disability can participate in all aspects of social, economic, political and cultural life. This includes genuine participation in mainstream community life, the development of respectful and valued relationships, social and economic participation, and the opportunity to contribute as valued citizens.

Our vision

That all people with disabilities must be involved equally in all aspects of social, economic, political and cultural life.

Our mission

Using the strength of our membership-based organisations to harness the collective power of uniting people with disability to change society into a community where everyone is equal.

Our strategic objectives

To represent the interests and united voice of our members and people with disability at a national and international level in all relevant forums.

To build the capacity, profile, reputation and sustainability of AFDO through the strength of our member organisations.

To enhance the connection and influence in international disability initiatives by policy, advocacy and engagement, focused on the Asia Pacific region.

Our members

Full members:

- Advocacy for Inclusion Incorporated
- Arts Access Australia
- Autism Aspergers Advocacy Australia
- Blind Citizens Australia
- Brain Injury Australia
- Deaf Australia
- Deafblind Australia
- Deafness Forum Australia
- Disability Advocacy Network Australia
- Disability Justice Australia
- Disability Resources Centre
- Down Syndrome Australia
- Enhanced Lifestyles
- National Mental Health Consumer & Carer Forum
- People With Disabilities WA
- Polio Australia
- Physical Disability Australia
- South West Autism Network - WA
- Women With Disabilities ACT - ACT
- Women with Disabilities Victoria - Vic

Associate members:

- Advocacy WA
- All Means All
- AED Legal Centre
- Amaze - Vic
- Aspergers Victoria
- Disability Voices Tasmania
- Disability Advocacy and Complaints Service of South Australia
- Explorability Inc
- Leadership Plus
- Multiple Sclerosis Australia
- National Organisation for Fetal Alcohol Spectrum Disorder
- National Union of Students - Disabilities Department
- Star Victoria Inc
- TASC National Limited
- Tourette's Syndrome Association of Australia
- Youth Disability Advocacy Service



About NITAN

The National Inclusive Transport Advocacy Network (NITAN) represents a national voice of people with disability advocating for accessible and inclusive public transport systems across Australia.

<http://www.nitan.org.au/>

Background

NITAN was established and is under the auspice of the Australian Federation of Disability Organisations (AFDO). However, NITAN operates independently; it is an unfunded group of people who share a specific interest in public transport matters.

Members

NITAN was established with a core working group of members from the following organisations:

- All Aboard Network
- Australian Federation of Disability Organisations
- Council for Intellectual Disability
- Disability Justice Australia
- Disability Resources Centre
- First Peoples Disability Network
- Inclusion Moves
- National Ethnic Disability Alliance
- People with Disability Australia
- Physical Disability Council of NSW
- Victorian Legal Aid

NITAN has since grown to also be supported by other state-based advocacy organisations and individuals with expertise in legal, transport, and disability rights. Our focus is unashamedly on disabled people having access to the same transport options as the wider community, spanning the full spectrum from active transport to public transport and the ability to self-drive.

Purpose

We aim to be a voice of people with disability on transport matters; however, we recognise the disability community is made up of a diverse range of people with differing needs and priorities. We understand that to be effective, we need to engage with experts in their field. We are open to ideas on how this can occur and look forward to shaping our voice with the disabled communities' assistance.

Our Objectives:

- **Community Inclusion:** Promote the ethos that full, equal community integration of people with disability is not possible without a completely accessible ‘whole of journey’ public transport system Australia-wide, and advocate this position to all governments, industry, and community stakeholders.
- **Influence:** Ensure that the voices of people with disability are heard in the design and shaping of public transport systems across Australia and in their day-to-day operations. Support others with requisite experience and qualifications as they advocate on public transport issues encompassing a “nothing about us without us” approach.
- **Alliances:** Build a strong network of allies and rally the many voices of people with disability to speak as one national voice.

What does NITAN do?

NITAN aligns itself fully with the goals of Australia’s Disability Strategy.

We provide a national voice and connection for people with disability and associated organisations that advocate for accessible and inclusive transport.

We work to educate people with disability on their transport rights. We also raise awareness of public transport issues facing people with disability.

We make sure that state and territory-based transport advocacy groups can feed into a national advocacy network that is independent and non-partisan.

Acknowledgements

AFDO and NITAN acknowledge Aboriginal and Torres Strait Islander people as the traditional custodians of the land on which we stand, recognising their continuing connection to land, waters, and community. From our offices in Melbourne, Canberra, Sydney and Brisbane, we pay our respects to the peoples of the lands on which these operate and to their respective Elders past and present. We also pay our respects to the traditional owners of all lands on which we operate or meet around the country.

AFDO and NITAN acknowledge people with disability, particularly those individuals that have experienced or are continuing to experience violence, abuse, neglect, and exploitation. We also acknowledge their families, supporters, and representative organisations and express our thanks for the continuing work we all do in their support.

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Summary of recommendations

1. Funding be provided for an external party to provide independent oversight of reported compliance and action plans of transport providers. This funding should allow for targeted and systematic reviews or audits of compliance and should also be directed to ensure oversight of engagement mechanisms set up by aviation transport providers in relation to any co-design work completed.
2. A set of Aviation Standards be co-designed with people with disability and their representative organisations. These new Standards can form part of the existing Transport Standards and be reviewed in line with them. The Aviation Standards must be specific, enforceable, and measurable, and should comply with the Guiding Principles of Australia's Disability Strategy 2021-2031.
3. An independent body be established and funded to maintain oversight of the Aviation Standards. This body must have sufficient powers and resourcing to include investigation, data collection, and enforcement, including the issuing of compliance infringement notices.
4. The Aviation Standards should include provisions for transparent and publicly available reporting and data collection to enable evaluation and monitoring of service providers' compliance with the Standards.
5. The Aviation Access Forum must be provided with the appropriate resources, powers, and funding to be an effective body and perform its role as intended. Its composition must include a variety of people with disability who have knowledge of the aviation industry and lived experience expertise. The forum should be equipped with appropriate roles and responsibilities, with the Minister for Infrastructure being ultimately responsible for its functioning.
6. The two wheelchair restriction utilised by airlines be immediately abolished, in line with the US model that does not allow restrictions on the number of people with disability on a given flight.
7. In line with the recommendations from the Disability Royal Commission, a framework must be established that imposes a positive obligation on transport providers to demonstrate they have satisfied air travel standards. This should include requirements around consumer protections, such as compensation for damage to mobility devices, not merely repair or replacement at cost.
8. Disability Access Action Plans be co-designed with people with disability. They must include targets and key performance indicators for airlines and airports, with clear roles and responsibilities outlined for all stakeholders.

Introductory comments

AFDO and NITAN welcome the opportunity to provide feedback on the Aviation Green Paper, and thank the Department of Infrastructure, Transport, Regional Development, Communications and the Arts (the Department) for their consideration of this submission.

In this submission, we will endeavour to provide an overview of the countless and complex issues faced by people with disability when attempting to travel by air. Air travel has and continues to be a difficult and burdensome process for people with disability. In particular, we note that issues around security screening, access to boarding, disembarking, and loss of or damage to mobility equipment are significant problems of which the airline industry has long been made aware. As time continues to pass with minimal improvement to the status quo, it is clear that something needs to change.

While this discussion will primarily focus on aviation-specific concerns, it is important to note that a 'whole-of-journey' philosophy underlies our approach to inclusive transport. By whole-of-journey, we refer to the entire duration of an individual's journey, from before they even leave their house until they have arrived at their final destination. In regard to aviation, this means that a provider's responsibility does not begin and end with the flight or airport but includes all elements, such as access to taxis and rideshares, the ability to book a ticket online, and competent customer service where assistance is required.

In addition, we would remind the Department that the concerns raised in this submission are not merely matters of inconvenience, but serious contraventions of international human rights law. Per Australia's international commitments under the *Convention on the Rights of Persons with Disabilities* and the *International Covenant on Economic, Social and Cultural Rights*, the Government is obliged to ensure that all people with disability are able to live without discrimination and can enjoy full economic, social, and cultural rights on an equal basis with others. These human rights instruments explicitly include equitable access to transport, including air travel.

In place of our current inaccessible and inequitable system, AFDO and NITAN advocate for the exploration of alternative jurisdictional models that would both hold service providers accountable and operate transparently. Such a model would incorporate a clear complaints mechanism and be equipped with enforceable measures to deliver satisfactory outcomes for people with disability, providing clarity and consistency for all parties. Within this envisioned model, we additionally call for robust consumer protections and a positive obligation on service providers to ensure the implementation and maintenance of minimum standards. Most critically, co-design with people with disability must be built into every stage of the design process. Through this proposed model and our recommendations, AFDO and NITAN assert a vision of future aviation policy that seamlessly integrates standards, elevates customer service, and fortifies consumer protections, while enabling people with disability to travel by air just like everyone else

Transport as a human right

Australia is a signatory to both *the International Covenant on Economic, Social and Cultural Rights (ICESCR)* and the *Convention on the Rights of Persons with Disabilities (CRPD)*. Per these instruments, the Commonwealth Government is obliged to ensure that all people with disability are able to live without discrimination and to enjoy full economic, social, and cultural rights on an equal basis with others.

More specifically, under Article 9 of the *CRPD*, States Parties are required to:

*“... take appropriate measures to ensure to persons with disabilities access, on an equal basis with others, to the physical environment, to **transportation**, to information and communications... and to other facilities and services open or provided to the public, both in urban and in rural areas.”ⁱ*

Critically, Article 9 further states:

*“These measures, which **shall include the identification and elimination of obstacles and barriers to accessibility**, shall apply to, inter alia:*

*a) Buildings, roads, **transportation** and other indoor and outdoor facilities, including schools, housing, medical facilities and workplaces;”ⁱⁱ*

Australia is also a founding member of the International Civil Aviation Organisation (ICAO) and was one of the first States to ratify the Convention on Civil Aviation (Chicago Convention), which is implemented in Australia through the *Air Navigation Act 1920 (Cth)*.ⁱⁱⁱ The ICAO publishes Standards and Recommended Practices (SARPS), and as a Contracting State to the Chicago Convention, Australia is obliged to notify ICAO of any discrepancies between their national legislation and the SARPS.^{iv} While, as of November 2022, Australia has notified the ICAO of a number of inconsistencies, it remains unclear as to why these divergences in legislation and procedure are necessary.^v

Current situation and major areas of concern

Flying for people with disability is difficult, if not traumatic and degrading – not because it needs to be, but as the inevitable result of an inferior and separate system that does not consider our rights or needs. Lacking any true or consistent process, it relies entirely on individual staff being trained to provide accurate information – information that is not based on any written policy, and with no failsafes or redundancies in place. This leaves people with disability at the mercy of given staff members they encounter on the day, who exercise total and entirely arbitrary power over their ability to travel by air. A functioning system should not be contingent on individual actors, rather, it should be founded on a carefully considered systemised process.

This current situation is untenable and must change. It is disjointed, dysfunctional, barrier-laden, and lacks any real consistency. It is a cost to everyone and has untold economic impacts, particularly for the tourism industry, as it deters many people with disability from travelling.

It is the position of AFDO and NITAN that an effective system begins with inclusive design, catering to all people – including people with disability. Ultimately, we would like to see an inclusive system that enables people with disability to navigate travel seamlessly, from the process of booking a flight, to checking in, boarding, and disembarking, just like everybody else.

Ticketing

Under our current system (or lack thereof), people with disability encounter multiple challenges related to ticketing, including limited choice when booking flights, inconsistent customer service, and frequently inaccurate or conflicting advice.

There is a distinct lack of choice in how airlines provide ticketing services, and many people with disability are forced to book their ticket by phone, rather than the much more convenient online booking process accessible to the general population. No other segment of society is forced to do this – they are given choices that are simply unavailable to many people with disability.

Another issue concerns people with disability being repeatedly made to repeat their access needs during every call. This quickly proves tiresome, and demonstrates the inadequacies of the current system, which clearly has no capacity to store and recall this information. In addition, information provided by customer service officers often varies, and is inconsistent from flight to flight. This is not only inconvenient, but further highlights the lack of any comprehensive system for data capture, as well as a lack of training for staff regarding people with disability.

Thus, in order for a person with a disability to book a flight, they must remain on the phone for considerable lengths of time, navigate inconsistent information, and repeatedly speak with people who do not understand their needs and requirements – and who often do not care to understand. It has become particularly evident post-COVID that airlines have not undertaken disability

awareness training, which not only perpetuates these inconveniences, but leaves people with disability feeling disrespected, undervalued, and, ultimately, less willing to fly.

Checking in

Checking in is another area that remains problematic for people with disability, and further underscores the lack of any systemic approach. AFDO and NITAN are of the view that there is no valid reason why people with disability cannot check in like anyone else at an airport. There is no valid reason why people with a disability should be made to go to different areas or engage in separate procedures to simply check in to a flight.

We do not seek to be special, however, the system ensures that we are treated differently. As an example of this, wheelchair and mobility device users are not provided with a choice of seating and may only sit in an aisle seat. We question whether this is truly necessary and assert that wheelchair and mobility device users should have the option to choose their seat when making a reservation, just like anyone else.

Issues with checking in are often compounded by a lack of communication between airlines and ground staff. For instance, what a customer service person advises on the phone will more often than not be contradicted by airport staff. This further indicates the lack of any underlying process, and results in an inferior experience for people with disability.

Many people with disability who use mobility devices are made to carry a dangerous goods certificate – which must be procured annually through a complicated process at their own expense – leaving them unable to check in through the usual process, and often precluding them from flying entirely, despite having followed airline policy (where it exists) to the letter. While airlines will be aware that a passenger is registered as carrying a dangerous good, due to a lack of written process and general inconsistency, this information is rarely communicated to airport ground staff, who have the power to arbitrarily deny boarding and confiscate items. Many people with disability have described their experiences at airports as ‘Russian roulette’ or ‘potluck’. This problem is aptly demonstrated in the following case study of a person traveling with a mobility device that uses lithium batteries.

Case Study: Trevor

Qantas, Jetstar, Virgin, none of them have a written procedure on how to deal with this, so it's potluck what happens to you when you arrive at the terminal even though you have a valid ticket, you've paid for it, and you have the dangerous goods letter. I even have a little thing I wear around my neck with the details, the size, weight, capacity. But at the airport, they just ignore it, because they don't have a procedure for dealing with your scooter - that's a problem. There have been many times where it's been broken... some of them, they just put it on the conveyer and it ends up dropping down a metre and a half on the thing and it breaks. There is no consistency, we never have the same process twice.

Boarding and disembarking

Wheelchair users, both manual and powerchair, are required to check in their wheelchairs and transfer to an airline-provided chair. This diminishes their independence and forces them to rely on others. It also demonstrates a fundamental lack of respect for people with disability, many of whom would consider their mobility device to essentially be a part of their body. The provided wheelchairs are often old, damaged or otherwise unsuitable, leading to discomfort and potential injury. They must then rely on being pushed to the gate, where they are left to wait, unable to wander through the airport and peruse the shops like the rest of the population.

On disembarking, there have been many instances where people with disability have been left on the plane. This is unacceptable. There is no valid reason why a person's wheelchair cannot be brought to them, enabling freedom and a more dignified experience. This would alleviate the risk of injury and ensure people with disability do not have to go to a separate area to pick up their chair, which is both inconvenient and unnecessary.

As noted above, wheelchair and other mobility device users are often not provided with a choice of seating and are forced into an aisle seat. While this may suit some, the needs of people with disability are individual and diverse, so for many others, an aisle seat may not be appropriate. Again, we note the lack of choice and denial of independence inherent in these experiences.

The following case study is just one of many instances where a person with disability is left feeling embarrassed and disrespected due to providers' systemic failure to account for their needs.

Case Study: Brian

Brian finds it uncomfortable when he is first on the plane – as most wheelchair passengers are – and then seated in the aisle, which forces other passengers to climb over him to get to their seat. Other passengers are often not informed that he is in a wheelchair, and so they will ask him to stand up or move so that they can sit down, resulting in uncomfortable and at times hostile interactions. Occasionally, an elderly person with difficulty moving will have to somehow clamber over him to get to their assigned window seat, which is difficult and embarrassing for both parties.

Security

Inconsistencies in regard to security can also be observed from airport to airport. This is despite the fact that the Department of Home Affairs is responsible for setting consistent security standards in airports across the country.

Security screening is particularly fraught with inconsistencies. At one airport, a person with disability may encounter rude staff and be subject to invasive and unnecessary pat-downs, while at

another, their experience may be entirely different. This highlights both the lack of training of security staff and improper implementation of standards from airport to airport.

Very often, being held up due to security questioning and screening methods has caused people with disability to miss their flights or connections, with no guarantee of recompense. Airport security procedures and rules do not always complement airline rules, causing frequent arguments and delays.

AFDO and NITAN are of the view that the Department of Home Affairs should co-design a security system with people with disability that ensures a consistent and equitable approach. For example, individuals with assistance animals should be given the choice to undergo security screening methods available to everyone else, rather than being subject to secondary screening methods.

Equivalent access

One deeply problematic issue affecting people with disability – and the cause of many complaints in relation to air travel – is the concept of ‘equivalent access’, which is included within the Disability Standards for Accessible Public Transport 2002 (Cth).^{vi} Equivalent access has been defined as:

“... alternative methods of assisting passengers with disabilities to use public transport where there are unavoidable constraints on unassisted access.”^{vii}

In practice, the implementation of equivalent access often leaves people with disability feeling degraded and discriminated against. It enables providers to avoid investing in the appropriate equipment and facilities or developing systemic approaches to dealing with inclusivity and accessibility. Instead, they rely entirely on individual staff members being appropriately trained – though this training is ad hoc at best, if not inadequate or entirely non-existent.

If the standard of equivalent access is to be maintained, noting that a decision regarding the modernisation process is imminent, then the onus must be on the transport provider to present valid reasons as to why appropriate equipment or facilities are unable to be provided for people with disability.

Alternatively, this standard should be modified through a genuine and meaningful process of co-design with people with disability and their representative organisations to ensure appropriate service. A set of criteria must be established and independently reviewed for equivalent access to be implemented, and it should be seen as a last resort. Such a process must be transparent, with any decisions made publicly available.

Two wheelchair restriction

The ‘two wheelchair’ restriction refers to the airline-imposed limit of no more than two wheelchairs – that is to say, wheelchair users – per flight. This not only presents yet another barrier but also undeniably sends a strong message that ***we are not welcome***. People with disability want to be a part of society, just like everyone else, and part of that is being able to travel – as has been duly recognised in the aforementioned human rights instruments. This policy sends a clear signal that airlines view us as a burden and are unwilling to accommodate our needs. In addition to being a deterrent to flying, the two wheelchair policy limits choice and can force families and friends to be separated when traveling. It is a fundamental example of the lack of regard for people with disability within aviation as a whole.

Consumer protections

Another frequent issue encountered by people with disability is damage to mobility devices during the process of flying. This often occurs when baggage handlers fail to handle the device appropriately, the device is stored on the plane inappropriately, or is allowed to drop the several metres onto the baggage conveyer belt. This leaves many devices completely unusable, or in other cases, lost entirely.

Compensation for damages is rarely granted, which can have serious repercussions for an individual’s employment, ability to attend medical appointments, or their ability to complete the most simple tasks of daily living – even leaving the airport may become impossible. Damage to or loss of a mobility device cannot be compared to lost luggage. The consequences are far more serious than not having fresh clothes for a few days. In addition, the onus for pursuing compensation is placed on the customer, who must bring forth a complaint against the provider.

This state of affairs is unacceptable, and there is no valid reason or justification as to why this should occur. Once again, we can only note the complete lack of regard, respect, or understanding for people with disability that this demonstrates.

The need for separate Aviation Travel Standards

Given the multitude of issues outlined above, AFDO and NITAN are of the view that there is a need to create new standards specific to aviation, going beyond the existing Disability Standards for Accessible Public Transport (DSAPT; the Transport Standards). While the current DSAPT applies to all forms of transport, they do not address many of the concerns raised in this submission. We make this observation within the context of the current DSAPT modernisation process and its associated consultations, noting that this will hopefully provide the minimum basis for an improved experience for all.

A set of aviation-specific transport standards would provide certainty and consistency for all parties. As has been established, the status quo is simply not working, and must be reviewed as a matter of urgency. A regulatory model that provides a minimum standard for service providers would be one step towards providing consistency and a better travel experience for all parties. The aviation standards must be measurable and enforceable. Data collection and compliance of service providers to the standards should be transparent and available to the public. The aviation standards can form part of the existing Transport Standards and be reviewed as part of the existing review process.

The current lack of aviation-specific standards causes discrimination, lack of access, and lack of choice. People with disability who travel by air frequently have their independence compromised and, in some cases, taken away entirely. It is for these reasons that we need aviation specific standards that are fit for purpose.

The Australian aviation sector is underregulated when it comes to service and standards for people with disability. Currently, we have a 'system' where people face poor customer service, are inconvenienced, treated differently to others, and encounter inconsistencies from airport to airport. It is an inferior and second-class system that has been imposed upon people with disability.

The aviation standards must include the areas specified earlier in this submission, most critically, ticketing, check-ins, and security. It is imperative that these standards be co-designed with people with disability to ensure systems efficacy. The co-design process must be meaningful and transparent. Consultation must be integrated from the very start of the process, and not be conducted as an afterthought when decisions have already been made by others. It is critical that people with disability are enabled to participate in decision-making processes relating to design, delivery, evaluation through the provision of accessible and inclusive mechanisms. As we would remind the Department, there must be "nothing about us without us."

In short, the aviation travel standards must be co-designed with people with disability and our representative organisations, incorporate a whole of journey approach, and institute a systemised

process that eliminates inconsistencies and enables seamless air travel for people with disability.

Compliance

The aviation travel standards must also be enforceable. One of our primary concerns is that compliance with the existing Transport Standards is not effectively enforceable. Currently, the only mechanism for ensuring compliance with the Transport Standards is through a complaints process which can only be instigated individually by individuals with disability, mirroring the complaints process under the *Disability Discrimination Act 1995 (Cth) (DDA)*. This is a significant weakness of the current DSAPT model and is illustrated by the fact there is currently no overall compliance with all of the DSAPT standards.

The inability for the Transport Standards, and the anti-discrimination legislation in which they are embedded, to enforce any compliance in the operation of public transport services also means they are equally powerless at the design, tender and quotation, or development and building stages, resulting in accessibility oversights that require costly rectification works or are simply ignored.

The Disability Royal Commission noted that there is a “lack of a specific government entity to monitor compliance”.^{viii} There is a need for an independent body that oversees, monitors, and reports to the Minister regarding compliance to the standards. This independent body must be sufficiently resourced and granted the appropriate powers to investigate, gather and analyse data from service providers. The onus must be on the service provider, via a positive obligation, to adhere to any aviation standards and publicly report why they failed to satisfy them. The aviation standards must also include transparent reporting and data collection in order to enable effective monitoring of compliance to the standards.

Inequitable complaints process

Relying solely on individual complaints for enforcement impedes the capacity of the Transport Standards to act as a driver for any significant change to accessibility of public transport. Furthermore, the complaints process itself is inherently unfair, and places an unnecessary administrative burden on people with disability while exposing them to significant financial and emotional risk.

The complaints process is mediated by the Australian Human Rights Commission (AHRC) and functions by bringing the complainant, usually a person with disability, and the respondent, normally a public transport operator or provider, together to negotiate a settlement. The person with disability is normally only able to represent themselves, while the respondent will often have team of lawyers at their disposal. Due to this unequal power dynamic, the resulting negotiated settlement, if one is reached, may still not result in compliance with the Transport Standards.

While it is true that complainants may seek to have unresolved discrimination complaints adjudicated by the Federal Courts, this is often not a viable course of action for many people with disability, as it exposes them to further financial risk. In addition, the legal process and judicial system are both onerous and time-consuming, and the associated emotional trauma often means people with disability will withdraw from the process prior to its conclusion.

As noted above, the complaints system may only be used to seek compensation for discriminatory conduct and does not include the financial cost of litigation. Given the fact that litigations costs are an inherent part of the process of bringing a complaint forward and can easily run into the tens of thousands of dollars, AFDO and NITAN are of the position that these costs should not be excluded from compensation.

In sum, we believe that the complaints system as it currently exists is significantly flawed, being fundamentally a *reactive* system. It is our belief that the Transport Standards and the legislation around them should instead be *proactive*, with the onus being on the service provider to demonstrate and justify why they cannot provide a service that is available to other sectors of the community. This would also align with the concept of 'positive obligation' as seen in the Disability Royal Commission's final recommendations, outlined further below.

Implications of the Disability Royal Commission's final recommendations

The implications of the recently released final recommendations from the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (Disability Royal Commission, DRC) are far-reaching, extending even to the field of aviation.

As discussed, the prevailing trend in discrimination complaints processes has been to place the onus on individuals with disability to advocate on their own behalf and ensure their own needs are met. However, the DRC's recommendations introduce a significant shift to this dynamic by proposing the establishment of a new Disability Rights Act. This prospective legislation would impose a positive obligation on all "public authorities" to actively promote inclusion, marking a departure from the current individual-centric approach.^{ix}

The proposed Act not only outlines mechanisms for lodging complaints, but also introduces the potential for further legal action, with the burden of proof placed on defendants to demonstrate adherence to their responsibilities. Notably, the Act would also empower Disability Representative Organisations (DROs) and others to initiate complaints and legal proceedings on behalf of individuals. It also includes compliance mechanisms, such as sanctions and compensation.

If enacted, the Disability Rights Act could emerge as a promising avenue for advocacy and action, offering a transformative framework for advancing the rights and inclusivity of individuals with disability.

The US jurisdictional model as an alternative approach

It is the position of AFDO and NITAN that a new jurisdictional model is required – one in which service providers are held accountable by enforceable measures and have a positive obligation to provide accessible and equitable services. In contrast to our current system – or rather, our lack thereof – this would provide clarity and consistency for all parties.

In both Canada and the United States, jurisdictional models exist that enable people with disability to claim compensation. They also include strong reporting requirements for data collection. The US model in particular is very comprehensive and provides safeguards for disability rights regarding air travel, including a Bill of Rights for airline passengers with disability.

Its minimum standards include the following:

- Accessibility of airport facilities.
- Accessibility of aircraft.
- Seating provisions on aircraft.
- Storage of mobility devices, including wheelchairs.

In addition, the US model prohibits limiting the number of people with a disability on a flight (as occurs in Australia under the two wheelchair policy discussed previously) and does not require advance notice that a person with a disability will be travelling.

Considering the numerous advantages associated with the US model, we believe it merits serious consideration for potential implementation in Australia. In particular, the high level of detail and high degree of prescription and specificity regarding the necessary actions at each stage of an air travel journey would be greatly beneficial. While the US framework has its own issues, and we would certainly not advise its wholesale adoption without reform via co-design, the model offers an appropriate degree of specificity for a comprehensive framework.

Aviation Access Forum

The Aviation Access Forum (AAF) is symbolic of how people with disability are viewed and treated within the aviation sector. It is essentially a toothless tiger and is yet to meet even once in 2023. The forum and its purpose desperately require review. AFDO and NITAN contend that if the forum is to be effective, the following conditions must be met:

- If the AAF is to provide advice regarding policy and/or operational issues, it must have clear roles and responsibilities. The reporting structure needs to be defined. With the forum ideally reporting to the Minister for Infrastructure and given secretariat support from the Federal Department of Infrastructure. This includes following up on issues and providing status reports.
- The forum must include people with disability that have knowledge of the aviation industry and with lived experience of disability. This would ensure that co-design is embedded in the forum.
- Members who represent airlines must have the powers and delegated responsibility to make decisions. They must also have knowledge of the issues people with disability face when flying.
- The forum must have the appropriate powers and resources to take actions.

Regional services

AFDO and NITAN are of the view that there is scope to improve the travel experience in regional areas. Suggested improvements include:

- Upgrading facilities that enable people with disability to have greater access to existing airports. This could range from better design of waiting areas at departure gates to having areas for assistance animals to enable toileting.
- Fostering increased competition, potentially enabling larger airplanes to travel into regional areas and create a point of difference with their competitor.
- Improved customer service for people with disability. Even the simple act of asking whether staff may assist and then knowing how or what to do would go a long way to ensuring people with disability feel welcome and enhancing their experience. Training of staff is a critical element in this.

Disability Access Action Plans

At present, Disability Access Action Plans are largely ineffective. They have no targets or performance measures, are reviewed on an ad hoc basis, and are generally produced without any real co-design with people with disability.

A common theme across these plans from various organisations is a focus on the responsibilities of the person with a disability, while limiting those of the aviation transport provider. They do not address how systems will be improved, modified, or implemented. On the occasion that they do, there is no mention of co-design with people with disability.

If these plans truly to be effective, AFDO and NITAN are of the opinion that these documents must be produced in conjunction with people with disability, through a rigorous and meaningful process of co-design. These documents must also include

Disability Access Action Plans should be viewed as strategic documents containing targets and key performance indicators that can be measured and reported to the CEO of the transport provider. They should enable innovation and aim to provide policies and actions that enhance the travelling experience of people with disability. Roles and responsibilities must be clearly defined, allowing actions to be undertaken by the appropriate party.

These documents must be made available to all staff of the transport provider with appropriate training and systems to ensure that any targets specified within the documents can be implemented. This would also aid in ensuring a more inclusive environment.

In the event that aviation transport standards are implemented, then these documents can form part of the co-design process to ensure they are implemented and monitored effectively.

Concluding remarks

The aviation sector desperately requires change if it is to enable people with disability greater access and inclusion to travel. The current piecemeal system simply does not work, leaving people with disability denied their both their dignity and their human rights.

AFDO and NITAN contend that there is a need for new aviation-specific standards, which themselves would form the basis of a coherent and consistent system able to address the issues raised in this submission. This system would eliminate inconsistencies, designate clear roles and responsibilities, and contain provisions for consumer protections including compensation.

As always, we would reiterate that co-design with people with disability is an integral component in developing air travel standards and innovative solutions to said issues.

ⁱ United Nations (2006) *Convention on the Rights of Persons with Disabilities*, Treaty Series, vol. 2515, Dec. 2006; emphasis added.

ⁱⁱ *ibid.*; emphasis added.

ⁱⁱⁱ International Civil Aviation Organization (ICAO) (1947) *Convention on International Civil Aviation*, opened for signature on 7 December 1944, 15 UNTS 295 (entered into force 4 April 1947) ('Chicago Convention').

^{iv} *ibid.* (n 6, art 38).

^v Public Interest Advocacy Centre (PIAC) (2022) *Experiences of people with disability accessing air travel and pursuing complaints against airlines and airports*, Submission to the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, December 2022, accessed 20 November 2023. <<https://piac.asn.au/wp-content/uploads/2023/01/PIAC-Submission-to-DRC-Experiences-of-people-with-disability-accessing-air-travel-and-pursuing-complaints-against-airlines-and-airports.pdf>>

^{vi} Department of the Attorney General (2005) *Disability Standards for Accessible Public Transport 2002*, Office of Legislative Drafting and Publishing, Department of the Attorney General: Canberra.

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^{viii} Royal Commission into Violence, Abuse, Neglect & Exploitation of People with Disability (2023) *Final Report*, Royal Commission into Violence, Abuse, Neglect & Exploitation of People with Disability: Sydney.

^{ix} *ibid.*