



**Response to the Application for an Exemption under  
the *Disability Discrimination Act 1992* by Regional  
Express Holdings Limited (REX Airlines)**

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# Introduction

## The Public Interest Advocacy Centre

The Public Interest Advocacy Centre (PIAC) seeks to promote a just and democratic society by making strategic interventions on public interest issues.

PIAC is an independent, non-profit law and policy organisation that identifies public interest issues and works co-operatively with other organisations to advocate for individuals and groups affected.

In making strategic interventions on public interest issues PIAC seeks to:

- expose unjust or unsafe practices, deficient laws or policies;
- promote accountable, transparent and responsive government;
- encourage, influence and inform public debate;
- promote the development of law—both statutory and common—that reflects the public interest; and
- develop community organisations to pursue the interests of the communities they represent.

Established in July 1982 as an initiative of the Law Foundation of New South Wales, with support from the NSW Legal Aid Commission, PIAC was the first, and remains the only, broadly based public interest legal centre in Australia. Financial support for PIAC comes primarily from the NSW Public Purpose Fund and the Commonwealth and State Community Legal Centre Funding Program. PIAC also receives funding from the NSW Government Department of Energy and Water for its work on utilities, and from Allens Arthur Robinson for its Indigenous Justice Program. PIAC also generates approximately income from project and case grants, seminars, consultancy fees, donations and recovery of costs in legal actions.

## PIAC's work on airlines access

Over the last few years PIAC has represented a number of people with disability discrimination complaints against airlines. As a consequence of that work and PIAC's growing awareness of increasing barriers being placed in the way of people with disabilities enjoying equitable access to airline travel in Australia, in 2006 PIAC began work with the NSW Disability Discrimination Legal Centre on the National Accessible Airlines Project.

The work of the Project included collecting case studies from people with disabilities around Australia, outlining their experiences of airline travel (both positive and negative). The Project analysed those case studies and developed a report on airline travel, *Flight Closed*, that was submitted to the Review of the *Disability Standards for Accessible Public Transport*, and is to be launched on 13 December to highlight the worsening experience of people with disabilities in airline travel.

## The exemption application by Rex Airlines and the current inquiry

The Human Rights and Equal Opportunity Commission (HREOC) has received an application from Regional Express Airlines (Rex) for an exemption from the *Disability Discrimination Act 1992* (Cth) (DDA) so as to permit Rex to place certain restrictions on travel for passengers with disabilities in its SAAB aircraft. HREOC has called for submissions by 5 December 2007.

The scope of the restrictions that Rex seeks to be permitted to apply are:

1. If a passenger using a wheelchair cannot assist him/herself to move between their own wheelchair and the Rex aisle chair and between the aisle wheel chair and the aircraft seat, a Passenger Facilitator (provided by the passenger) is required to attend both the departure and destination airport to assist with moving the wheelchair passenger between their wheelchair and the aisle chair and between aisle wheelchair and the aircraft seat. This facilitator is not required to travel with the passenger and there is no additional financial burden on the passenger.
2. If the passenger is unable to understand and follow safety directions (written or verbal), is unable to don a life vest, requires the application of medication in flight, or requires assistance to the toilet or to eat, a companion is required to travel with the passenger. If the passenger's only restriction is the inability to eat or drink unaided, a companion is not required if the passenger elects to forgo catering during booking.
3. To help with the cost of this requirement Rex will provide the lowest fare applicable to the flight, regardless of availability of that fare, for the companion.
4. Passengers using wheelchairs must check-in no later than 45 minutes prior to the scheduled departure time at regional airports and 60 minutes prior to the scheduled departure time at capital city airports to allow sufficient time to prepare the wheel chair for carriage and to board the passenger without unduly delaying the flight.
5. Passengers with electric wheelchairs must either disable their own electric chair or supervise Rex staff in disabling and re-activating the electric wheelchair after transfer to the aisle chair.
6. All flight bookings must be made with the Rex Customer Contact Centre to ensure that all special requirements are notified to the airline. The weight of the chair will have to be notified to Rex during booking. No extra charge is applicable to this service. Bookings for disabled persons cannot be made on the Rex website.
7. Wheelchairs must not weigh more than 64Kg, except that with prior approval, wheelchairs in excess of 64 kg but not exceeding 140 kg may be carried at ports where specialist lifting equipment is provided.
8. Passengers using wheelchairs will be required to book at least two days in advance of the flight to enable Rex to make all the necessary preparations.
9. Rex will limit the number of wheelchair bound passengers to 2 per flight and will carry only one chair weighing in excess of 64 Kg per flight.
10. If approval is obtained to carry chairs in excess of 64 Kg an excess baggage fee will apply.
11. A limit of one chair per disabled passenger will be carried free of charge. Additional chairs will be charged at the normal excess baggage rates with the normal excess baggage restrictions.
12. Passengers who are unable to understand instructions from the Flight Crew or Flight Attendant in an emergency due to intellectual disability are required to travel with a companion
13. Rex will not carry a passenger with a prescribed contagious disease unless a notification is provided from a doctor stating that the person is fit to fly and poses no danger of infecting the crew or other passengers in the aircraft.

## Scope of Response

The major focus of this response is items 1 and 2 of the matters listed in the exemption application. However, in respect of the other exemptions sought PIAC provides more limited comments.

# Response to specific elements

## Principle underlying the provision of exemptions power

The HREOC guidelines for those seeking exemptions state that the application should specify the period of the exemption and describe the terms and conditions that will apply while the applicant improves access. The conditions may include the measures taken during the exemption period to improve access and consult with people with disabilities and their representatives.

There is very little in the Rex application to indicate what steps Rex is intending to implement to achieve compliance and its timetable for doing so. Without more specific commitments from Rex in this regard it would be inappropriate to grant an exemption simply to enable Rex to avoid a possible risk of a complaint at any time into the future. Rex should be required to provide an action plan as referred to in the guidelines for improving access.

## Requiring an attendant to assist with transfers

Rex Airlines should be required to submit a plan for investigating and acquiring appropriate equipment for the lifting and transfer of passengers. Airline staff should be trained in the use of this equipment.

Attendants are not necessarily trained in boarding arrangements and could cause more delays and confusion as the airline staff provide assistance to the attendant.

Regulations in the United States allow for an attendant to be required but if this is determined by the airline it is at the cost to the airline. Full refunds are made available if an attendant is not found. This is the approach that should be adopted in Australia and any exemption allowing an airline to impose the cost of an attendant, who is required by the airline, would be a failure to properly understand the nature and extent of the service provided by the airlines.

Rex Airlines should not be permitted to require a passenger to provide an attendant to push the airline manual wheelchair to the boarding area and aircraft.

Passengers should be permitted to stay in their own manual chair up to the point of boarding.

The airline should accept the determination made by a person that they do not require any extraordinary service.

Moveable armrests should be fitted on aisle seats to enable self-transfer.

## Refusal to carry a passenger without an attendant

If refused access on safety grounds the basis of the refusal should be put in writing to the passenger within 10 days.

## **Understanding safety information and emergency directions from people with an intellectual disability**

This exemption is the most alarming on a number of grounds. It requires the crew to determine the intellectual capacity of an individual and will probably mean that passengers who have an obvious intellectual disability will be discriminated against regardless of whether they can follow instructions. It would also include passengers (such as tourists) who do not speak the same language as the flight crew and unaccompanied children.

Organisations supporting and representing people with intellectual disabilities currently provide training for people to use public transport; the airline could take a positive approach to this issue by assisting with training needed for airline safety.

The airline should set out clearly in a public document how it will determine capacity and train staff to apply this policy.

The airline should accept the determination made by a person that they do not require any extraordinary service.

The United States regulation requires airlines to provide safety briefings as discreetly as possible and does not allow any special requirement to be imposed on the passenger such as a comprehension test.

## **Medication, toilets and meals**

North American regulations provide a sensible alternative to this exemption, it includes the requirement to assist a passenger move to and from the toilet. This service does not include carrying someone or assisting with personal care in the toilet.

In-service meal assistance should be provided to open packages, identify items and cut large portions (also international practice). This does not require assisting someone to eat a meal or provide medical services. Airline staff assist passengers with these services without any problems for the airline at the moment.

## **Fares for carers**

The lowest 'fare applicable to the flight' requires more clarity; it assumes that on some flights there are no low fares and therefore no discount available. Carers Australia has a 'Companion Card'; acceptance of this card for a guaranteed discount on the normal fare would be more transparent and assist carers.

## **Prior notice and internet bookings**

The refusal to offer web-based services for people with disabilities reduces the capacity of some people to be independent. Use of internet services for frequent flyers should make airline processing more efficient as information about an individual's needs would be easily accessible.

If prior notice is required, then airlines should also abide by the clause currently in the Standard that people with disabilities should be provided with priority seating and ensure that all staff involved in the journey are informed of the passengers needs.

In the case studies provided to PIAC about poor airline service, the practice of priority seating is rarely if ever applied. Passengers also describe how, regardless of the amount of notice provided 'the necessary preparations' are rarely made ahead of time. A common account is for passengers to explain their needs many times over to every airline personnel they meet during a journey.

## **Wheelchairs weighing 64 kilos**

There is no limitation in the current standard, or in any international standard limiting the weight of wheelchairs. It is difficult to understand why Rex Airlines is making this request when it does not seem a significant issue for other airlines. There must also be flights that are not full and can manage the extra weight. A blanket ban on limiting the weight and number of chairs would restrict access even in circumstances where weight is not an issue.

## **Limiting wheelchair passengers to two per flight**

This applied regardless of the ability of the person, age, type of chair and weight does not appear to have any logic to the stated aims of the exemption. This exemption would make it impossible for friends, couples and groups (such as sporting teams) to travel together.

## **Excess baggage**

The Standard clearly states that aids will be carried and additional charges will not apply. This condition is standard for all international flights and in North American and European Standards or regulations.

It also appears to be an exemption that does not take into account the weight of other luggage that may or may not be carried by the passenger. For example, someone travelling on business with no other item but a wheelchair could be charged more than someone travelling with the equivalent in stored luggage.

## **Additional Chairs**

This will disadvantage people travelling on teams that carry specialised sports chairs or bath chairs due to the lack of such facilities at the travel destination. Again, this seems to apply indiscriminately of any other luggage that may or may not be carried. It also seems to be in contrast to other sporting equipment that is carried such as golf equipment that may be carried free if within the normal baggage weight. It appears that passengers travelling with some sports equipment are favoured over others that have a disability. For example, if the chair was in a case and not classified as a chair, would it attract the same charge (if within the total weight allowed on a flight)?

## **Contagious diseases**

It is not clear why Rex requires an exemption for contagious diseases when other airlines have provisions for all passengers that have a contagious disease to seek clearance before travelling. There does not seem to be a need to grant an exemption from HREOC.

It is of concern that this exemption will be used to target people with disabilities to provide more information about their health status rather than directed at the general population of passengers.

It raises questions such as how the airline will determine a contagious disease? Will they be targeting individuals from countries with high rates of tuberculosis or cholera? Will it include people that have head colds?