



**Flying in the face of adversity: Comments on  
Department of Infrastructure, Transport, Regional  
Development and Local Government Issues Paper:  
Towards a National Aviation Policy Statement**

**27 June 2008**

**Anne Mainsbridge, Project Officer and  
Jessica Cruise, Acting Senior Solicitor**



# Contents

<b>Introduction .....</b>	<b>1</b>
The Public Interest Advocacy Centre .....	1
PIAC’s Work on airline access .....	1
Towards a National Aviation Policy Statement Issues Paper .....	2
<b>Consumer protection: Issues Paper, Part 4.3 .....</b>	<b>2</b>
Are existing consumer protections and airline procedures adequate in dealing with these challenges (of low cost airlines)? .....	2
Is it possible to improve passengers’ travel experiences without adding unnecessary costs to airlines that would inevitably need to be passed on to passengers? .....	3
How can airlines ensure passengers are adequately informed about restrictions? .....	3
Are existing airline terms and conditions reasonable? .....	4
Transport of Wheelchairs .....	4
Independent Travel Criteria .....	5
<b>Disability Standards: Issues Paper, Part 4.4 .....</b>	<b>6</b>
Are the current Transport Standards adequate to ensure the removal of discrimination from air travel? .....	6
Are there recommendations arising from the recent Transport Standards Review that might be implemented to improve services for people with a disability? .....	8
Are current complaint and compliance mechanisms effective? .....	9
<b>Security: Issues Paper, Part 5 .....</b>	<b>10</b>
Do we adequately address the requirements of people with special needs? .....	10
<b>Conclusion .....</b>	<b>11</b>



# Introduction

## The Public Interest Advocacy Centre

The Public Interest Advocacy Centre (PIAC) is an independent, non-profit law and policy organisation that seeks to promote a just and democratic society by making strategic interventions on public interest issues.

PIAC identifies public interest issues and, where possible and appropriate, 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 income from project and case grants, seminars, consultancy fees, donations and recovery of costs in legal actions.

## PIAC's Work on airline access

Over the last few years, PIAC has increasingly focussed attention on barriers to airline travel for people with disabilities.

In 2006, PIAC began work with the NSW Disability Discrimination Legal Centre (NSW DDLC) on the National Accessible Airlines Project (the Project). The work of the Project included collecting case studies from people with disabilities around Australia, and their families, outlining their experiences of airline travel (both positive and negative). The Project analysed these case studies and developed a report, *Flight Closed*<sup>1</sup>, that identified the key barriers to air travel for people with disabilities, and proposed solutions. *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, and PIAC has subsequently provided comments on the Draft Report released by ACG.<sup>2</sup>

---

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

<[http://www.piac.asn.au/publications/pubs/rep2007123\\_20071201.html](http://www.piac.asn.au/publications/pubs/rep2007123_20071201.html)> at 25 June 2008.

<sup>2</sup> Brenda Bailey, *Flight still closed? Response to the Review of the Disability Standards for Accessible Public Transport: Draft Report* (2008) Public Interest Advocacy Centre

<[http://www.piac.asn.au/publications/pubs/sub2008042\\_20080411.html](http://www.piac.asn.au/publications/pubs/sub2008042_20080411.html)> at 26 June 2008.

PIAC is currently representing two clients in the Federal Court of Australia who have brought complaints of unlawful disability discrimination against Virgin Blue Airlines Pty Limited (Virgin Blue). PIAC has also assisted a number of other clients in conciliation proceedings in the Human Rights and Equal Opportunity Commission (HREOC) in relation to complaints of disability discrimination by various airlines. Recently, PIAC made a submission to HREOC opposing an application by Regional Express Airlines (REX) for an exemption from the *Disability Discrimination Act 1992* (Cth) (DDA) so as to place certain restrictions on passengers with disabilities in its SAAB aircraft.<sup>3</sup>

## **Towards a National Aviation Policy Statement Issues Paper**

PIAC is pleased to have the opportunity to make this submission 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). PIAC welcomes the release of the Issues Paper as the first step in the development of a National Aviation Policy Statement for Australia.

The Issues Paper traverses a wide range of matters relevant to aviation activity in Australia. This submission addresses the following areas: Consumer protection (Part 4.3), Disability Standards (Part 4.4) and Security (Part 5). Within each of these areas, PIAC focuses on issues of relevance to people with disability. PIAC has framed its response to address specific questions that have been raised by the Department within each area.

## **Consumer protection: Issues Paper, Part 4.3**

### **Are existing consumer protections and airline procedures adequate in dealing with these challenges (of low cost airlines)?**

The Issues Paper poses this question with reference to the 'low-cost airline model' and the challenges that this model has created for airlines in terms of 'managing customer expectations and delivering the travel experience passengers expect'.<sup>4</sup>

There is no doubt that deregulation of the domestic air travel industry has resulted in a greater number of low-cost carriers offering lower fares and more basic levels of service. This has resulted in a 40% increase in the number of Australians flying domestically than before the collapse of Ansett in 2001.<sup>5</sup> According to the Issues Paper, 'air travel is accessible to more people than ever before'.<sup>6</sup>

However, people with disability do not appear to have benefited from these changes in the same way or to anything like the same extent as the rest of the community. The experiences of passengers and their families outlined in *Flight Closed* suggest that it may now, in fact, be more difficult for them to travel by air than it was previously.<sup>7</sup>

---

<sup>3</sup> *Response to the Application for an Exemption under the Disability Discrimination Act 1992 by Regional Express Holdings Limited (REX Airlines)* (2007) Public Interest Advocacy Centre <[http://www.piac.asn.au/publications/pubs/sub2007121\\_20071210.html](http://www.piac.asn.au/publications/pubs/sub2007121_20071210.html)> at 26 June 2008.

<sup>4</sup> Department of Infrastructure, Transport, Regional Development and Local Government, *Towards a National Aviation Policy: Issues Paper* (2008) 22.

<sup>5</sup> *Ibid.*

<sup>6</sup> *Ibid.*, iv.

<sup>7</sup> Bailey, above n1, 1.

It is reasonable for consumers to have to accept a more basic standard of service in return for low-cost flights. However, the reality for many people with disability is that service does not meet even basic standards.<sup>8</sup> In some cases, service may even be denied completely.<sup>9</sup> A minimalist approach to service standards can, and often does, in effect mean that a person with a disability is completely prevented from choosing airline travel as an option.

Accepting a more basic standard of service should not mean having to compromise fundamental human rights and freedoms.

## **Is it possible to improve passengers' travel experiences without adding unnecessary costs to airlines that would inevitably need to be passed on to passengers?**

*Flight Closed* made 57 recommendations for improving the travel experiences of passengers with disabilities.<sup>10</sup> It is PIAC's submission that many of these improvements could be implemented at nominal or low cost to airlines. These recommendations have the potential to improve the travel experience of all passengers generally, hopefully resulting in Australia's domestic carriers being lifted from the bottom of consumer surveys.<sup>11</sup> They also have the potential to make Australia's airlines more accessible to an ageing population. Thus, over time, the benefits of implementing the recommendations are likely to far outweigh any costs.

In any event, airlines should be mindful of the 'unnecessary costs' they are likely to continue to incur if they do not implement the recommendations. These include the costs of having to defend protracted legal proceedings brought against them under the DDA and other anti-discrimination laws by passengers with disability who have been denied equitable treatment.

## **How can airlines ensure passengers are adequately informed about restrictions?**

Budget airfares often have restrictions, such as being unable to change flights without penalty, or having particular check-in requirements. As the Issues Paper acknowledges, awareness of such terms and conditions is becoming increasingly important for consumers.<sup>12</sup>

*Flight Closed* provides evidence that passengers with disabilities are sometimes not adequately informed about restrictions that may impact on their ability to travel.<sup>13</sup> These impacts are often, because of disability, much more significant than would be the impact of the same failure on a traveller without a disability. The effect, in fact, may be to completely ruin the person's travel plans, as typically, a person with a disability has little or no choice of carrier. Thus, a failure to provide adequate information about restrictions may result in a missed flight,

---

<sup>8</sup> See, for example, Case Summary 51 in Bailey, above n1, 81, in which a passenger's request to be seated closer to the toilet was refused, with the result that the passenger was unable to access the toilet for 4.5 hours.

<sup>9</sup> See, for example, Case Summaries 1, 17, 26, 27, 29, 33, 34, 42, 43, 45, and 50 in Bailey, above n1, Appendix A. Bailey, above n1, Part 4.

<sup>11</sup> See 'Consumers give Qantas the thumbs down' (2007) CHOICE <<http://www.choice.com.au/viewArticle.aspx?id=105764&catId=100576&tid=100010>> at 26 June 2008 and full report: Choice, *Airline Satisfaction* (2007) CHOICE <http://www.choice.com.au/viewArticle.aspx?id=105749&catId=100281&tid=1000008&p=1&title=Airline+satisf+action> at 26 June 2008.

<sup>12</sup> Department of Infrastructure, Transport, Regional Development and Local Government, above n4, 22.

<sup>13</sup> See, for example, Case Summaries 30, 46 and 101 in Bailey, above n1, Appendix A.

sometimes with no refund. In one case study, a week before a booked flight an airline advised a customer that her booking was cancelled because 'two wheelchairs were already booked on the flight'.<sup>14</sup>

It is essential that passengers with disability be given accurate and specific information about airline policies and conditions of travel. This information should include restrictions of aircraft, relevant policies about carriage of wheelchairs, security clearance arrangements, availability of seats with armrests that can be raised, what assistance can be provided and how that assistance can be accessed. This information should be made available at the time of booking, for each type of aircraft and airport. It should also be available in accessible formats.

The *Flight Closed* report makes a number of recommendations aimed at ensuring that passengers with disability are provided with adequate information about restrictions. These include the following:

- Information about all airline policies and services should be identified on the airline's website and other promotional material, and in alternative formats on request. Airline staff and agents should be made aware of these services and restrictions and make this information available to customers on request: Proposal 18.
- Booking staff should be able to locate information that is necessary to finalise the booking process, including any restrictions on the number of wheelchairs and equipment the airline will carry on the flight and the number already booked on the specific flight, at the time of booking: Proposal 19.
- The airline should provide refunds or rebook flights on all categories of tickets when cancellations are due to a passenger being unable to undertake their flight because the airline has failed to provide relevant information or assistance: Proposal 25.
- Passengers should be able to readily locate information about available assistance and support services on the airline's website when booking tickets: Proposal 29.
- Information should be available at the time of booking tickets, about the airline's policy and procedures for the transport of disability aids and equipment: Proposal 33.

PIAC urges the Department to adopt these recommendations as part of the proposed National Aviation Policy Statement, as a means of ensuring that people with disability are not prevented from accessing airline travel due to inadequate information about conditions and restrictions on travel.

## **Are existing airline terms and conditions reasonable?**

The increasingly competitive nature of the air industry market place has resulted in some inconsistent and restrictive airline policies and terms and conditions in recent years. These include restrictive conditions placed on air travel in relation to transport of wheelchairs and application of independent travel criteria.

### **Transport of Wheelchairs**

It has become increasingly common for airlines to introduce policies refusing to carry certain sizes of wheelchairs on particular flights or aircraft. It appears that airlines have developed baggage-handling arrangements without taking into account the transport needs of people with disabilities. *Flight Closed* includes a number of examples of passengers with motorised wheelchairs being refused service or incurring additional expense and inconvenience because of these requirements, such as having to make connecting flights between what for most of us would be single leg journeys.<sup>15</sup>

---

<sup>14</sup> Ibid, 16: Case Study 1.3.

<sup>15</sup> See, for example, Case Summaries 1, 27, 37, 38, 42, 46, 50, 73, 93 and 107, in Bailey above n1, Appendix A.

In PIAC's view, these restrictions are not reasonable. They are often applied in an inflexible way, indicating an over-reaction or a lack of common sense approach to disability. Airlines often refuse to discuss whether batteries could be removed from chairs or whether chairs could be folded or dismantled. For example, one passenger who uses a wheelchair that he is able to fold and stow on its side on the top of his car for transport had an airline refuse to carry the wheelchair unless it was in an upright position. In an upright position, the chair was too tall for the hold, and the customer was therefore refused travel.<sup>16</sup>

In *Flight Closed*, PIAC made a number of recommendations regarding transport of mobility aids (including wheelchairs).<sup>17</sup> In particular, PIAC recommended that the airlines be responsible for reassembling wheelchairs and that no additional charge should be permitted for this service.<sup>18</sup> PIAC also recommended that for all aircraft of more than 60 seats there should be cabin space to stow at least one folding wheelchair and that use of this space for a passenger's wheelchair should be a priority.<sup>19</sup>

### Independent Travel Criteria

Many airlines impose criteria that either denies access to travel, or imposes a condition on travellers with disabilities that limit the passengers options or add to their costs. For example, Virgin Blue's Independent Travel Criteria (ITC) require a person to travel with a carer at their own cost unless they can reach for, pull down and secure an overhead oxygen mask, put on a lifejacket, fasten and unfasten their seatbelt and be able to respond to cabin crew directions, including directions about emergency procedures.<sup>20</sup> More recently, Rex Airlines has sought to apply ITC that include requirements that passengers who are 'unable to understand and follow safety directions (written or verbal)' and 'certain intellectually disabled passengers' be required to travel with a 'companion'.<sup>21</sup>

The impact of ITC on passengers with disability has been to deny them access to travel, or to require them to incur additional costs, even in circumstances where they have travelled independently for many years. For example, in one of the Federal Court matters referred to above, PIAC acts for Tom Ferguson who has Cerebral Palsy, has little or no ability to move his upper or lower body independently, and is reliant on a wheelchair for mobility. Tom flew with Virgin Blue from Sydney to visit his family in Brisbane for Christmas. However, when he arrived at Brisbane Airport for the return flight to Sydney in January, he alleges that he was advised by a Virgin Blue employee that he would be unable to travel by himself and that he would need to be accompanied by a carer for the return flight. The reason allegedly given for this decision by Virgin Blue was that he was not able to access the toilet independently and could not use an oxygen mask in the event of an emergency. Consequently, Tom's mother had to fly with him to Sydney and then return to Brisbane. Tom had previously travelled independently with various airlines, including Virgin Blue.

---

<sup>16</sup> Bailey, above n1, 18: Case Study 1.5.

<sup>17</sup> Ibid, 60-61: Proposals 33-40.

<sup>18</sup> Ibid, 61: Proposal 36.

<sup>19</sup> Ibid, 61: Proposal 40.

<sup>20</sup> Virgin Blue, Flight Information, Special Needs and Assistance, Independent Travel Criteria, available at <http://www.virginblue.com.au/Personal/Flightinfo/SpecialNeedsandAssistance/IndependentTravelCriteria/index.htm>, at 25 June 2008.

<sup>21</sup> *Application for Exemption under Section 55 of the Disability Discrimination Act from the provisions of section 23 and 24 of the Act by Regional Express Holdings Limited* (ABN 18 099 547 270), available at <[http://www.hreoc.gov.au/disability\\_rights/exemptions/rex/application.doc](http://www.hreoc.gov.au/disability_rights/exemptions/rex/application.doc)>

The requirement to be accompanied by a 'carer' imposes not only the additional cost of a return airfare, but will also involve the cost of accommodation for the 'carer' if the person is returning to their home port other than on the day of the original flight. It will often also involve the cost of the wages for the carer as many people who are otherwise independent do not have a family member or friend who can make themselves available for the period of the trip.

The *Flight Closed* report provides a number of other examples of ITC impacting adversely on passengers with disability.<sup>22</sup>

In PIAC's view, ITC are not reasonable. In particular, it is not clear to PIAC:

- Why ITC are not applied to minors who could experience difficulties following directions?
- Why ITC are applied to passengers with disabilities who live independently in every other aspect of their lives?
- Why ITC (sought to be applied by Rex Airlines) apply to people who have an obvious intellectual disability and not to other passengers who may have difficulty understanding instructions in English?
- What skills airline staff have in assessing a passenger's understanding, and whether or not their disability would prevent them from putting on a mask or safety vest?
- How such vague criteria are applied to everyone with a disability, and how front-line staff are expected to interact with and assess every type of disability?
- How people can be deemed to be able to travel safely and independently with one airline but not with another.

PIAC refer the Department to the recommendations made in the *Flight Closed* report concerning Independent Travel Criteria<sup>23</sup>, in particular Proposal 24, which advocates that Australia adopt a system similar to that which applies in the USA, which places an obligation on the airline to bear the additional cost in circumstances where it considers that an attendant is necessary to assist a passenger in a possible emergency.<sup>24</sup>

## Disability Standards: Issues Paper, Part 4.4

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

The *Disability Standards for Accessible Public Transport 2002* (Cth) (the Transport Standards) specify levels of service, measures and actions that public transport operators must undertake to meet their obligations under the *Disability Discrimination Act 1992* (Cth).

In PIAC's view, the Transport Standards are not adequate to ensure the elimination of discrimination against people with disabilities in relation to air travel. This is evidenced by the majority of the 110 case studies in *Flight Closed*, which show that people with disabilities experience significant problems in accessing information, airport facilities, boarding aircraft and navigating complaint processes. These problems include:

---

<sup>22</sup> See, for example, Case Summaries 18, 33, 34, 39, 43, 45, 47, 48, 49, 54, 55, 67, 89, and 98, in Bailey, above n1, Appendix A.

<sup>23</sup> Bailey, above n1, 54 and 57: Proposals 11, 24 and 26.

<sup>24</sup> Ibid, 57: Proposal 24.

- passengers who provided advance notice of their disability and needs not always receiving assistance as they expected, and finding it necessary to request assistance at each point in their journey, even when it would appear obvious that assistance was required.<sup>25</sup>
- airlines insisting that passenger be able to access a toilet regardless of whether it was necessary;<sup>26</sup>
- staff asking personal and inappropriately phrased or timed questions;<sup>27</sup>
- damaged and lost wheelchairs;<sup>28</sup>
- communication breakdowns between different sections of airport staff; for example, messages about passengers needing assistance were not passed on to staff with the result that flights were missed despite the passenger being ready at the airport in sufficient time.<sup>29</sup>

The case studies demonstrate that poor-quality air transport can be stressful, expensive, physically painful and detrimental to employment and family relationships. Barriers are described that prevent people from participating in various aspects of public and private life, such as undertaking business trips, attending sport camps, accessing respite care, visiting parents and joining family on holiday.

A major problem with the Transport Standards is that they are generic to all modes of transport, and fail to take account of issues that are specific to air travel. They don't deal adequately with complex features of the airport terminal, such as security access points, nor do they take into account the level of complexity a passenger with disability encounters when travelling by air. In *Flight Closed*, PIAC recommends the development of airline access regulations separate to other modes of transport, as is the case in Canada, the United States of America and the European Union.<sup>30</sup> This allows for regulatory agencies with responsibility for airlines to administer the regulation and for the specific needs of airline travel to be redressed and monitored.

A further problem is that the Transport Standards focus on improved infrastructure and capital equipment rather than on service provision. Information on service provision is minimal—a mere two pages—and inadequate guidance is provided about staff training. This is in stark contrast to the highly prescriptive sections of regulations that apply in Canada and the USA about service provision and staff training.

Many of the Transport Standards are difficult to understand and apply. They provide little or no guidance about the ways the airline industry could make air travel more equitable for people with disability. PIAC refers the Department to Appendix B of the *Flight Closed* report, which lists compliance issues and aspects of the Transport Standards that are inadequate to fully address the transport needs of people with disabilities in relation to airline travel.

---

<sup>25</sup> See, for example, Case Summaries 6, 28 and 32 in Bailey, above n1, Appendix A.

<sup>26</sup> See, for example, Bailey, above n1, 33.

<sup>27</sup> See, for example, Case Study 1.2 in Bailey, above n1, 15.

<sup>28</sup> See, for example, Case Study 1.14 in Bailey, above n1, 28.

<sup>29</sup> See, for example, Case Summary 11 in Bailey, above n1, Appendix A.

<sup>30</sup> *Ibid*, 64: Proposals 2, 49 and 50.

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

In January 2008, the Allen Consulting Group (ACG), on behalf of the Federal Government, released the *Review of the Disability Standards for Accessible Public Transport: Draft Report* (the Draft Report).

In January 2008, PIAC made a submission in response to the release of the Draft Report.<sup>31</sup> PIAC's submission is critical of the general quality of analysis of the Draft Report, the adequacy of the information sources, level of analysis and whether the evidence supports the recommendations in the Draft Report. In particular, PIAC is concerned that the Draft Report:

- does not recommend any strategies to deal with the many issues that have emerged in relation to air travel since the introduction of the Transport Standards;
- fails to acknowledge the differences between air travel and other modes of transport;
- ignores the question of how airlines have interpreted and applied the Transport Standards;
- does not respond to the gaps in the Transport Standards outlined in Appendix B of *Flight Closed*;
- claims that the introduction of lifting devices is an 'improvement' for passengers with disability, but ignores the case studies of passengers who describe the sometimes inappropriate use of such devices, or untrained staff causing injury and distress to passengers;
- fails to seriously consider compliance with standards from the perspective of air travel, claiming a lack of information and other data; and
- fails to respond to the needs and concerns of people with disability who experience problems accessing air travel.

PIAC refers the Department instead to the Part 4 of the *Flight Closed* report, which sets out 57 recommendations, or proposals to improve air travel for people with disabilities. These proposals cover compliance, service quality, policies and practice of airline services and training of personnel. They include:

- a proposal for a specific code of practice to be developed for the airline industry and administered by an authority that administers other regulatory requirements for the airline industry;<sup>32</sup>
- a system for ongoing consultation with people with disabilities and their organisations that is integrated into the design, planning and delivery of air transport services<sup>33</sup>; and
- mandatory standards for staff training, particularly in respect of disability awareness, and for communications processes within airlines.<sup>34</sup>

---

<sup>31</sup> Bailey, above n2.

<sup>32</sup> Bailey, above n1, 64: Proposal 50.

<sup>33</sup> Ibid, 63: Proposal 44.

PIAC strongly urges the Department to give serious consideration to the recommendations, given that they reflect the lived experience of people with disability in attempting to access airline travel. They provide practical solutions for increasing accessibility of airlines and are consistent with practices in countries with similar human rights and economic standards to Australia, such as the USA and Canada. PIAC notes that most of the proposals for reform outline improvements that could be implemented at nominal or low cost.

PIAC notes that Draft Recommendation 6 of the Draft Report makes significant recommendations about the complaint process to empower HREOC to refer cases of breaches of the Transport Standards directly to the Federal Court.<sup>35</sup> In PIAC's view, this does not go far enough. HREOC should have the powers to instigate cases in the Federal Court where it identifies broader or systemic non-compliance; and to notify prospective representative complainants of what it required by the Federal Court or Federal Magistrate's Court in relation to representative proceedings.

### **Are current complaint and compliance mechanisms effective?**

The existing process for dealing with failure to comply with the Transport Standards is not appropriate for adequately and equitably addressing the implementation of standards in respect of airline transport.

A major limitation is that the process can only be initiated by an 'aggrieved person'. There is no ongoing monitoring process by an appropriate regulatory authority that is able to identify and act on non-compliance. Airlines are not required to report action plans and or to monitor compliance against such plans and the Transport Standards. This means that the onus continues to be on individuals with disability to enforce the Transport Standards through individual complaints.

Taking legal action to enforce the Transport Standards is a time-consuming, resource intensive and slow process. Should the matter be resolved at conciliation, the settlement is binding only between the parties to the complaint. Therefore, while a settlement may provide for systemic outcomes such as training and policy changes, only the complainant who is a party to that settlement agreement can enforce the settlement if the respondent fails to fulfil its obligations under that agreement. Further, conciliated agreements are usually confidential and cannot be used by other people as a precedent to seek improvements generally. If the matter proceeds to a hearing, complainants face the risk of an adverse costs order if they are unsuccessful (although PIAC notes that in the Federal Court cases referred to above, the Court has indicated that it intends to make an order pursuant to Order 62A, Rule 1 of the Federal Court Rules that will limit the amount of costs payable in the matter).<sup>36</sup> These, and other limitations of the use of the legal process for people with disabilities, are detailed at Parts 2.25 and 2.26 of *Flight Closed*.

As noted in *Flight Closed*, there is little understanding of the current arrangements for making complaints about accessibility. The evidence from advocates and legal practitioners in advocacy organisations and community legal centres is that only informed and well-resourced people make complaints through formal (including legal) processes.<sup>37</sup> The number of case studies received for the study on which *Flight Closed* is based show that formal complaints taken either to the airlines directly or through the anti-discrimination process do not

---

<sup>34</sup> Ibid, 63-64: Proposals 46 -48.

<sup>35</sup> Allen Consulting Group, *Review of the Disability Standards for Accessible Public Transport: Draft Report* (2008), Draft Recommendation 6.

<sup>36</sup> *Corcoran v Virgin Blue Airlines Pty Ltd* [2008] FCA 864.

<sup>37</sup> Bailey, above n1, 41.

represent the extent of the problem. A very small percentage of people who told their story for this study made official complaints to the airlines, fewer still made enquiries of or complaints to the HREOC. It is clear that the complaint process is not working for individuals or contributing to systemic improvements in the industry.

In *Flight Closed*, PIAC recommended a general overhaul of the current complaint and compliance mechanisms. Specific recommendations included:

- An industry-wide guide describing rights and obligations and complaint processes developed in consultation with customers. This should be widely available and promoted by airline staff: Proposal 49.
- A specific code of practice should be developed for the airline industry and administered by an authority that administers other regulatory requirements for the airline industry: Proposal 50.
- A complaint process should be established that allows consumers and their representative bodies to seek changes to transport infrastructure and practices based on compliance with Standards. It should not rely on an individual seeking redress for a specific occasion: Proposal 51.
- Complaint systems should allow compensation for individuals as well as the imposition of obligations on the industry to correct infrastructure or services delivery practices: Proposal 52.
- Complaint processes should be established within the airline industry that meet the *United Nations Guidelines for Consumer Protection* enabling consumers to obtain redress. That is, the process should be 'expeditious, fair, inexpensive and accessible' and take into account the needs of low-income consumers: Proposal 53.

PIAC urges the Department to give serious consideration to these Recommendations.

## Security: Issues Paper, Part 5

### Do we adequately address the requirements of people with special needs?

Current airline and/or airport practices in relation to the security screening process do not adequately address the requirements of people with disabilities.

Passengers with disabilities often travel with mobility aids and/or assistance animals that are required in flight. These aids and animals must therefore pass through security screening. Current airline and airport practices do not adequately address the proper management of mobility aids and/or assistance animals. Consequently mobility aids and assistance animals are often mishandled and can be damaged or disturbed by airline and airport staff, including security screening staff. More generally, the attitude of and treatment by all airline and airport staff, including security screening staff, towards both passengers with disabilities and their mobility aids and assistance animals can at times be disrespectful and humiliating.

Examples of some of the difficulties experienced by passengers with disabilities are set out at Part 4.14 of *Flight Closed* and include the following:

- passengers being required to undergo physical checks if unable to pass through scanning equipment;

- passengers experiencing difficulty in removing their shoes and other items of clothing or supports as part of a physical check;
- passengers being unable to understand requests and directions from airport security staff; and
- passengers being required to undergo physical checks in view of members of the public, and finding this confronting and embarrassing.

The Report submits that airline and airport practices, policies and processes need to be reviewed with reference to these examples.<sup>38</sup> In particular, the report submits that:

- any passenger with a disability who passes through security without activating a device should be treated the same as any other passenger<sup>39</sup>;
- searches should be done in private if so requested by the passenger<sup>40</sup>;
- searches should be done in a timely manner and with the passenger's departure time in mind<sup>41</sup>; and
- 'meet and assist' staff members should be able to provide direct assistance with security processes if requested.<sup>42</sup>

PIAC urges the Department to incorporate these recommendations into the proposed National Aviation Policy Statement.

## Conclusion

PIAC welcomes the initiation of the process to develop a National Aviation Policy Statement and the efforts being made by the Department to engage the public and other stakeholders in consultation about the content of this Statement.

It is crucial that the National Aviation Policy Statement be formulated in such a way that it ensures that the rights of people with disability as reflected in the DDA and the UN *Convention on the Rights of Persons with Disabilities*<sup>43</sup> are protected.

Under existing arrangements, people with disability are being systematically locked out of air travel. This has had adverse consequences not only for people with disability and their families, but also for the community as a whole.

---

<sup>38</sup> Ibid, 65: Proposal 54.

<sup>39</sup> Ibid.

<sup>40</sup> Ibid.

<sup>41</sup> Ibid.

<sup>42</sup> Ibid, 65: Proposal 55.

<sup>43</sup> Australia signed the UN *Convention on the Rights of Persons with Disabilities* on the day it was opened for signature in New York: 31 March 2007. On 19 June 2008, the Federal Parliamentary Joint Standing Committee on Treaties recommended that Australia ratify the Convention as a matter of urgency (see <[http://www.hreoc.gov.au/disability\\_rights/convention.htm](http://www.hreoc.gov.au/disability_rights/convention.htm)>).

In PIAC's view, equitable access to airline travel for people with disabilities can best be achieved by the development of Transport Standards for the airline industry that specifically address the needs of people with disability in accessing air travel. These should be developed and implemented in consultation with people with disability.