



public interest
ADVOCACY CENTRE LTD

**Airport Security – ensuring equality and dignity
for people with disability**

Submission to the Aviation Security Screening Review

25 September 2008

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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.

NSW Disability Discrimination Legal Centre

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

The centre's objectives are briefly summarised below:

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

Background

PIAC and the NSW Disability Discrimination Legal Centre (DDLC) have an ongoing project on redressing the barriers to airline travel for people with disability through legal and policy initiatives. In 2006, PIAC began work with DDLC on the National Accessible Airlines Project (the Project). The work of the Project included collecting case studies from people with disability around Australia, and their carers, in which they outlined their experiences of airline travel (both positive and negative). The Project analysed the case studies and produced a report, *Flight Closed*¹, that identified the key barriers to air travel for people with disability, 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 for the Federal Government. DDLC also made a separate submission to that review dealing with issues beyond airline travel.² PIAC and DDLC have subsequently provided comments on the Draft Report released by ACG.³

More recently PIAC made a submission to the Department of Infrastructure, Transport, Regional Development and Local Government Issues Paper: *Towards a National Aviation Policy Statement*.⁴ In that submission, PIAC addressed consumer protection, the *Disability Standards for Accessible Public Transport 2002* (Cth) (Disability Standards) and security issues. Within each of these areas, PIAC focused on issues of relevance to people with disability. DDLC also made a submission in response to the Issues Paper.⁵

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). DDLC recently represented a complainant in the Federal Magistrates Court of Australia against Jetstar. PIAC and DDLC have also assisted a number of other clients in conciliation proceedings in the Australian Human Rights Commission (previously the Human Rights and Equal Opportunity Commission) in relation to complaints of disability discrimination by various airlines. Recently, PIAC and DDLC made submissions to the Australian Human Rights Commission opposing an application by Regional Express Airlines (REX) for an exemption from the *Disability Discrimination Act 1992* (Cth) (DDA) to allow it to place certain restrictions on passengers with disability in its SAAB aircraft.⁶

Aviation Security Screening Review

PIAC, in co-operation with DDLC, is pleased to have the opportunity to make this submission to the Department of Infrastructure, Transport, Regional Development and Local Government (the Department) review of *Aviation Security Screening*. It is encouraging that, in addition to the general issues of aviation security, a specific paper on *Special Circumstances Screening* is included in the consultation package. In this

¹ Brenda Bailey, *Flight Closed: Report on the experiences of People with Disabilities in Domestic Airline Travel in Australia* (2007) <http://www.piac.asn.au/publications/pubs/rep2007123_20071201.html> at 25 June 2008.

² NSW Disability Discrimination Legal Centre, *Submission: Review of the Disability Standards for Accessible Public Transport 2002* (2007).

³ Brenda Bailey, *Flight still closed? Response to the Review of the Disability Standards for Accessible Public Transport: Draft Report* (2008) <http://www.piac.asn.au/publications/pubs/sub2008042_20080411.html> at 26 June 2008.

⁴ Anne Mainsbridge and Jessica Cruise, *Flying in the face of adversity: Comments on the Issues Paper: Towards a National Aviation Policy Statement* (2008) <http://www.piac.asn.au/publications/pubs/sub2008062_20080627.html> at 23 September 2008.

⁵ NSW Disability Discrimination Legal Centre, *Submission: Towards a National Aviation Policy Statement* (2008).

⁶ Brenda Bailey, *Response to the Application for an Exemption under the Disability Discrimination Act 1992 by Regional Express Holdings Limited (REX Airlines)* (2007) <http://www.piac.asn.au/publications/pubs/sub2007121_20071210.html> at 26 June 2008. NSW Disability Discrimination Legal Centre, *Submission: Application for Temporary Exemption: Regional Express (REX)* (2007).

submission, we focus on the questions raised in the Department's *Consultation Paper: Overview of Issues* that have implications for people with disability as well as those in the specific document on special needs.

Where appropriate, evidence and recommendations from previous submissions (as outlined above) will be provided in response to the issues raised in the consultation documents.

Summary of recommendations

Recommendation 1: Prohibited items - Systems should be in place to allow prior security clearance of personal aids that people need during flight, for example, for removing clothing or eating meals. The system should also ensure that the approval is recognised by all airlines and security points throughout the journey.

Recommendation 2: National consistency - A nationally uniform approach to standardise practices and training of staff should be in place. Ongoing discussion with passengers, including those with special needs, should form an essential part of the process of developing standards and procedures.

Recommendation 3: Performance targets and measures - There should be public reporting of performance targets, measurement frameworks and the results achieved. Regular review of policies and standards should be incorporated into any procedures as a normal part of good practice. The requirement for public accountability should be regulated, along with screening practices, to achieve uniform practices.

Recommendation 4: Delegated duties - All regulated screening requirements imposed on the relevant screening authority should be expressly extended to any contracted third-party screening provider. The relevant screening authority should remain vicariously liable for a failure by its sub-contractor to comply with the regulated requirements.

Recommendation 5: Screening point design - Design of screening points should facilitate the independence of people with disability. Screening points should be designed to make use of technology that can assist security staff and passengers.

Recommendation 6: Special circumstance screening - If, for any reason, a passenger cannot move through the security barrier without setting an alarm or causing harm to herself or himself, alternative screening should be available. Passengers should be permitted determine whether they need special assistance, unless there is a clear and obvious reason to override their assessment.

Recommendation 7: Special needs' queue - The use of a special needs queue should be optional. Passengers should determine whether they need special assistance, unless there is a clear and obvious reason to override this assessment.

Recommendation 8: Dedicated customer service officer - All screening staff should receive training on how to appropriately screen people with special needs, including training in communicating with people with intellectual disability and brain injuries.

Recommendation 9: Complaints handling - The Department should consider and implement the recommendations about complaint processes at Appendix B to this submission, drawn from the report, *Flight Closed*. The Department should consult with PIAC, DDLC and similar organisations on the complaint processes, as well as with industry representatives.

Recommendation 10: Conflict between aviation screeners and passengers - The effective training of staff to facilitate people with disability through the screening process and to ensure consistent practice would alleviate passenger frustration.

Recommendation 11: Circumstances of frisk of passengers - Screening staff should be permitted to work with an attendant carer to screen a person with a disability, and take into account the advice provided by the person with the disability about what is appropriate.

Recommendation 12: Approval of a frisk - The Department should seek advice from organisations representing people with disability, including people with intellectual disability and brain injuries, to develop tools and training modules for screening staff to ensure they are able to effectively explain to passengers the purpose and conduct of screening and their rights.

Recommendation 13: Private screening rooms - Private screening rooms should be available and offered to the person with a disability. The passenger should have the right to be screened in public if they prefer. Where a passenger opts for screening in a private screening room they should be permitted to be accompanied by a person of their choice.

Recommendation 14: Other issues - The Department, in this conduct of this review, should also consider:

- The development of a process for approving of personal aids that may not meet normal security clearance.
- Whether or not and in what circumstances it is appropriate to transfer relevant information provided to airlines by passengers about their needs to the security staff and the privacy protections necessary to protect the individual where any transfer takes place.
- Ensuring airline ground staff are available to provide assistance once passengers are cleared by security.
- Ensuring consistent practice, and that practice is compatible with the principles in the *Disability Standards for Accessible Transport 2002* (Cth) and the *Disability Discrimination Act 1992* (Cth)

Response to Consultation Paper: Overview of Issues

1. Purpose of screening

1.1 Clearance of prohibited items

Should the list of prohibited items be amended to remove low risk items?

The list of prohibited items and the discretion of the screening staff to decide what can be carried results in restrictions on passengers who use mechanical aids to dress, eat or otherwise allow them independence. Removal of aids for dressing, for example, can be the difference between independent use of toilet facilities and dependency on an attendant, or a total restriction from air travel. Passengers with disability are also frustrated by the inconsistent decisions at security points, and must plan their travel with the anxiety of not knowing what the outcome will be at each interaction with security or airline staff during their journey. The case study at Appendix A describes the difficulty a passenger experienced in bringing her dressing sticks—which are essential for her independent undressing—through security, and the prolonged process involved in getting the matter finally resolved.

People with disability are accustomed to making long-term and detailed plans for the most basic of trips. A system designed to allow prior security clearance of special items, with directions on how they should be carried or stowed while in flight, and an assessment of whether the individual is likely to use the equipment for something other than its intended purpose, would reduce the stress of coping with reactionary and ill-informed decisions by security staff. To be effective, such a system would also require the approval to be recognised by all airlines and security points throughout the journey.

Recommendation 1: Prohibited items

Systems should be in place to allow prior security clearance of personal aids that people need during flight, for example, for removing clothing or eating meals. The system should also ensure that the approval is recognised by all airlines and security points throughout the journey.

2. National Consistency

2.1 Defining national consistency

In pursuing the goal of national consistency how should we define its parameters?

The reviewers are correct in raising the issue of inconsistency. Inconsistency, however, involves more than differences between airports. Differences occur between security points within the one airport. The case study at Appendix B, describes how a passenger missed a flight due to treatment by security staff. The delay was caused by the security officers insisting on removing her shoes for her rather than allowing her trained attendant to do so. In the description of her journey she stated that this only occurred at one check point with one airline; she was not requested to remove any clothing when traveling with any other airline or through any other security point within the same airport.

The majority of inconsistencies described by passengers were about procedures and practices of staff. There were no comments received about the layout of checkpoints or use of equipment.

A nationally uniform approach to training of staff and standard practices would go a long way to resolving the issue of inconsistency. The experience of passengers—that is the circumstances that lead to delays or inability to travel—should receive priority in defining parameters. Ongoing discussion with passengers, including those with special needs, would provide essential input to this development process.

Recommendation 2: National consistency

A nationally uniform approach to standardise practices and training of staff should be in place. Ongoing discussion with passengers, including those with special needs, should form an essential part of the process of developing standards and procedures.

2.2 Performance targets and measures

Would the industry be receptive to development (in partnership with the Department) of nationally consistent screening performance standards and KPIs? Should such a framework be regulated?

The reviewers in addressing this question to industry, point out that the commercial contracts prevent examination of performance data and result in the ‘potential for confusion about the relative priority of achievement of effective security and facilitation of positive customer service’.⁷ Public reporting of performance targets, measurement frameworks and the results are important to consumers; this is particularly the case if stakeholders are to be consulted on the screening policies and procedures (as suggested in 4.6 of the Review’s Special Circumstances Discussion Paper). Regular review of such practices should be incorporated into any procedures as a normal part of good practice. Assessing whether the practices are meeting the security needs as well as customer service outcomes is important in future review processes. Public accountability reporting should be regulated, along with screening practices; otherwise uniform practices will not be achieved.

Recommendation 3: Performance targets and measures

There should be public reporting of performance targets, measurement frameworks and the results achieved. Regular review of policies and standards should be incorporated into any procedures as a normal part of good practice. The requirement for public accountability should be regulated, along with screening practices, to achieve uniform practices.

2.3 Achieving consistency between different providers of screening services

Where aviation security screening is not actually conducted by the relevant screening authority, but rather by a contracted third-party screening provider, should the regulated screening requirements be extended more specifically to the screening provider as well?

As described above, a significant barrier to travel for people with disability is the unknown factor of how the passenger will be received by staff at different points in the journey. If the screening authority is delegating its responsibility through a contract, the only way to gain consistency, is to ensure that all of the obligations are transferred from the provider to the contractor.

Consistent practice will reduce the burden on and anxiety of passengers and allow the screening services to operate more efficiently. The case study at Appendix C describes a passenger who has faced difficulty

⁷ Department of Infrastructure, Transport, Regional Development and Local Government, *Aviation Security Screening Review: Consultation Paper: Overview of Issues* (2008) 16.

resolving discriminatory treatment because of the number of authorities involved in the incident and their inconsistent responses.

Recommendation 4: Delegated duties

All regulated screening requirements imposed on the relevant screening authority should be expressly extended to any contracted third-party screening provider. The relevant screening authority should remain vicariously liable for a failure by its sub-contractor to comply with the regulated requirements.

3. Technology

3.1 Minimum standards and specifications for equipment

Is it appropriate for minimum equipment standards and specifications to be Government mandated?

The current practice of regulating outcomes rather than prescribing particular types or models of screening equipment seems appropriate for areas that need to respond quickly to technological advances. However, there are requirements, which are constant, that could be regulated.

The United States of America Department of Transportation's Regulation, *Nondiscrimination on the basis of disability in air travel*⁸, provides an example of how regulation can be useful. It prevents people with disability from being required to undergo additional screening if they pass through a screening device without activating it, and provides specific details for staff training and complaint resolution schemes.

The Canadian Government also details a training program in a specific regulation⁹, and provides for a passengers complaint to initiate an inquiry into the service. If Australia adopted a similar regulation it would help prevent the problems the passenger experienced as described in Appendix C.

3.2 Screening point design

Should there be deliberate variations in screening point layout, and change without warning, in order to increase the challenge for an attacker wishing to bring through weapons and prohibited items without detection?

Neither PIAC nor DDLG are not in a position to comment on the relationship between screening layout and crime prevention. However, in deciding to change configurations, designers should keep in mind people with disability who are able to negotiate facilities independently because they have become familiar with the layout through repeated use, or, in the case of people with intellectual disability, have been given specific instructions and training on how to travel.

The discussion paper points out that 'lack of provision of space and facilities for secondary and special needs screening' contribute to shortcomings in the efficiency of the screening process.¹⁰ In order to alleviate this, the needs of people with disability should be accommodated in the design stage, and not

⁸ USA Department of Transportation, 14 CFR Part 382: *Non-Discrimination on the basis of disability in air travel* (2003) <<http://www.dotcr.ost.dot.gov/asp/airacc.asp>> at 24 September 2008.

⁹ *Personnel Training for the Assistance of Persons with Disabilities Regulations*, SOR/94-42. See also, Canadian Transportation Agency, *Air Travel Accessibility Regulations – Summary* (2004) <http://www.cta-otc.gc.ca/access/regs/air_e.html#18> at 24 September 2008.

¹⁰ Department of Infrastructure, Transport, Regional Development and Local Government, above n7,19.

retrofitted in as an afterthought. It is most likely that designs to facilitate the independence of people with intellectual disability, or those with vision and mobility impairments to move through security, will also help other passengers as the design becomes more customer-friendly.

Screening points should also be designed to make use of technology that can aid passengers, for example, electronic screens to display any questions being asked by the security officers to enable improved interaction with people who are hearing impaired; as one passenger from our case studies suggested 'is not rocket science'. Indicators that assist people who are vision impaired could also be integrated into the design.

Recommendation 5: Screening point design

Design of screening points should facilitate the independence of people with disability. Screening points should be designed to make use of technology that can assist security staff and passengers.

4. Human factors in screening – passenger facilitation

4.1 Passenger demographics and facilitation

The study that was undertaken of passengers' experiences for the *Flight Closed* report found that human interaction was the one factor that could delay or curtail the passenger's journey, fix a problem or make the trip go smoothly. Most passengers who had stories of missed flights or maltreatment from staff also had stories about staff who were sensitive, made sensible decisions and made an effort to help them through the process.

The consultation paper raises the possibility of differentiated screening regimes for frequent travelers¹¹; if this option is explored, people with disability should not be excluded from the potential benefits for the traveler that would result. If a pre-screening were to be possible, people with disability are likely to be attracted to this option, even if they are not frequent travelers. The case studies in the *Flight Closed* report show a high level of travel pre-planning by people with disability. Seeking an optional pre-security clearance would be welcomed by some passengers if it gave them an assurance that they could move smoothly through security without the risk of missing flights or being embarrassed by having to deal with untrained or inadequately trained staff.

The reviewers also refer to the 'Department's Observation Program', noting that airport security moves smoothly at some airports because:

... passengers are aware of requirements and will generally co-operate willingly with the screeners ... [whereas] [c]ertain airports have a higher than average proportion of elderly and special needs passengers presenting at the screening point, who require personal attention and can involuntarily impede the efficient flow of other passengers.¹²

This suggests that the difference between the groups is as much about consistency by staff practices at the screening point, which ensures passengers know what to expect because they are always treated in the same way. The group without disability, it is assumed, may also be able to negotiate the process more smoothly as they may have less need to communicate and are less likely to be affected by communication barriers, so the staff do not need any special training or communication skills.

¹¹ Ibid, 20.

¹² Ibid.

People with disability do not receive consistent service, and some require the staff with whom they interact to be skilled communicators or have access to aids that will help them communicate effectively. Solutions to this situation seem to rest in better training of staff and a proactive approach on the part of companies to provide a service to people who need more information or education about the process. For example, people with intellectual disability or brain injuries receive training on using public transport; this could easily be extended to travel by air, with security companies providing specialist educators.

5. Special circumstance screening

Under what circumstances is special needs screening required?

If, for whatever reason, someone cannot move through the security barrier without setting off an alarm or causing harm to herself or himself, eg, people wearing hearing aids, assistance should be provided to them to facilitate alternative screening. There does not seem to be a need to define this requirement in terms of the characteristics of the individual. Nor would it be possible given the range of abilities and restrictions in the general population. It also assumes that the reason someone passes through a device without activating it relates to his or her disability. For example, there may be no reason why someone who is deaf cannot walk through security without assistance and no one will know or needs to know that they have a disability. However, if they then activate an alarm, security staff will need to communicate with that passenger about further screening.

The reviewers refer to a passenger survey conducted by Colmar Brunton, which supports dedicated 'special needs' queues.¹³ Without analysis of the responses of those surveyed who have a disability (if any), it is difficult to rely on this survey as supporting 'special needs' processes. This survey should be repeated with people with disability and, if implemented, with those who would be subjected to this service in order to achieve a balanced perspective.

Recommendation 6: Special circumstance screening

If, for any reason, a passenger cannot move through the security barrier without setting an alarm or causing harm to herself or himself, alternative screening should be available. Passengers should be permitted determine whether they need special assistance, unless there is a clear and obvious reason to override their assessment.

Do you support the idea of a 'special needs' queue at screening points for passengers with special needs?

The implementation of a 'special needs' queue should never result in the separation of friends or families traveling together. The case studies collected include several where passengers were separated from family members on flights on the pretext that they required special service. The use by a traveler of a 'special needs' queue should be optional. While some people would welcome the service, others do not want to be identified as 'special needs'. Passengers should determine whether they need special assistance, unless there is a clear and obvious reason to override their assessment. This approach is consistent with the principles of independent access in the *Disability Standards for Accessible Public Transport Guidelines 2004 (No3) (Cth)*.¹⁴

Recommendation 7: Special needs' queue

The use of a special needs queue should be optional. Passengers should determine whether they need special assistance, unless there is a clear and obvious reason to override this assessment.

¹³ Ibid, 22.

¹⁴ *Disability Standards for Accessible Public Transport Guidelines 2004 (No3) (Cth)*, Guideline 8.2.

Is there some value in restructuring a typical screening point to include a dedicated customer service officer who can assist with the facilitation of persons subject to special circumstances screening?

All staff should receive training on how to screen people with special needs, including training in communicating with people with hearing impairments, intellectual disability and brain injuries. Changes to staffing, the unlikelihood of specialists being available on every shift, or at smaller airports, will mean passengers are likely to meet the non-specialist screener at some point.

The population of people traveling who have a disability will increase as the population ages. Managing for people with disability as the norm rather than the exception will create a better prepared and trained workforce. There is an argument for a dedicated customer officer who is able to communicate in Auslan being available for each shift. Training support and a salary benefit for security officers who have translation skills, including in Auslan, would support such an outcome.

Recommendation 8: Dedicated customer service officer

All screening staff should receive training on how to appropriately screen people with special needs, including training in communicating with people with intellectual disability and brain injuries.

6. Complaints handling

Is guidance material regarding complaint handling at screening points from the Department an appropriate and useful tool?

PIAC and DDLC have made extensive recommendations about complaint processes in regard to discrimination in previous submissions. Relevant extracts are provided at Appendix D.

There is concern that the reviewers in the discussion paper propose that mechanisms for complaint processes are best developed with industry representatives.¹⁵ PIAC and DDLC, having represented clients through the conciliation and legal process, are well placed to comment on how complaints can be resolved at an early stage. It is in the interests of industry to have in place and implemented an effective complaints process in order to avoid potential lengthy and expensive legal processes. We encourage the Department to consult with PIAC, DDLC and similar organisations on the complaint processes.

Recommendation 9: Complaints handling

The Department should consider and implement the recommendations about complaint processes at Appendix B to this submission, drawn from the report, Flight Closed. The Department should consult with PIAC, DDLC and similar organisations on the complaint processes, as well as with industry representatives.

7. Human factors in screening

7.1 The nature of the work

Is there a serious level of conflict between aviation screeners and passengers, and if so, how can we decrease that?

Based on case studies, there is a high degree of frustration among passengers with disability. However, there were no reports of aggressive behaviour or a serious level of conflict. There were reports of

¹⁵ Department of Infrastructure, Transport, Regional Development and Local Government, above n7, 22.

passengers being, what to staff may seem to be, 'unco-operative'. By the time they get to security clearance, passengers with disability may have already had difficulty moving from the taxi to the check-in counter, asked rude, intrusive or inappropriate questions, or had to argue to be booked on a flight or a particular seat at check-in, received no assistance with luggage, been moved to a wheelchair that is not their own and as a consequence have reduced mobility and independence, arrived several hours early knowing they would face problems at each stage of the journey, even though they had advised the airline of their needs several months previously.

Passengers in the case studies understood that their behaviour at times might seem unco-operative, but explained that following instructions from airport or airline staff in the past had led them to miss flights. For example, a common instruction was to wait at a certain spot for a staff member to take them to security or a waiting area. This would inevitably result in being 'forgotten' and missing their booked flight. They would therefore stand at the counter, in view of staff, so they were not 'forgotten'.

In order for passengers to progress smoothly and without undue delay at each stage of their journey they needed to be assertive and continually make it clear to staff of their needs since information was not passed between areas in the airport, for example, between ground and air crew. Staff being trained in facilitating people with disability through the screening process and assisting the passenger to the ground crew for boarding would alleviate this frustration.

Recommendation 10: Conflict between aviation screeners and passengers

The effective training of staff to facilitate people with disability through the screening process and to ensure consistent practice would alleviate passenger frustration.

DISCUSSION PAPER: HUMAN FACTORS – SPECIAL CIRCUMSTANCES SCREENING

It is encouraging that the review process has considered the specific needs of special circumstance screening, which includes the needs of people with disability. The following responses are to questions listed in the discussion paper from the perspective of the people with disability.

Under what circumstances is special screening required?

Passengers should determine whether they need special assistance, unless there is a clear and obvious reason to override this assessment: see recommendations 6 and 7 above. This approach is consistent with the principles of independent access in Guideline 8.2 of the *Disability Standards for Accessible Public Transport Guidelines 2004 (No3)* (Cth).

Should there be differing types of frisk for differing parts of the body in differing circumstances?

In the research undertaken, there were no specific complaints about frisk searches. There were complaints about expectations from staff about the passenger's their ability to move and about pain caused by inappropriate touching the passenger. For example, one case study involved a staff member asking a person with paraplegia if they could walk a few meters, and another asking a person with quadriplegia to raise her arms. The case study attached at Appendix B is an example of how the removal of shoes caused great distress to a passenger. In these circumstances there should be flexibility on the part of the security officer to work with an attendant carer.

Recommendation 11: Circumstances of frisk of passengers

Screening staff should be permitted to work with an attendant carer to screen a person with a disability, and take into account the advice provided by the person with the disability about what is appropriate.

How should each type of frisk search be conducted and what form of approval needs to be sought?

The diversity of disability and particular circumstances of individuals with disability means that it is necessary for screening staff to be trained to both effectively communicate about the purpose and conduct of particular types of frisk searches and the rights of the passenger, and to sensitively and appropriately implement such searches. The Department should seek advice from organisations that represent people with intellectual disability and brain injuries to develop tools and training modules to help screening staff explain to passengers the purpose of screening and their rights.

Recommendation 12: Approval of a frisk

The Department should seek advice from organisations representing people with disability, including people with intellectual disability and brain injuries, to develop tools and training modules for screening staff to ensure they are able to effectively explain to passengers the purpose and conduct of screening and their rights.

Where should frisk searches be conducted and in what circumstances?

People with disability should not be treated differently from other passengers. If a person with a disability passes through a security device without activating it, they should be permitted to proceed without further review.

Is security screening a significant issue for relevant special interest groups who represent persons subject to special circumstances screening?

Yes

Would it be beneficial for peak bodies representing special needs persons to offer feedback regarding the screening practice guidelines developed by the Department?

Yes, peak bodies of people with disability should be engaged by the Department to provide input to the development of screening practice guidelines.

Is there some value in re-structuring the typical screening point to include a dedicated customer service officer who can assist with the facilitation of persons subject to special circumstances screening?

All staff should receive training on how to screen people with disability, including training in communicating with people with intellectual disability and brain injuries. Changes to staffing, likelihood of specialists being available on every shift, or at smaller airports will mean passengers are likely to meet the non-specialist screener at some point.

What options are available to identify persons requiring special circumstances screening?

Information about options should be made available to all passengers, including in accessible formats. Passengers should self identify where they require information in an alternative format, but the availability of alternative format materials should be signposted at all screening points. If passengers with a disability does not request special service they should not be forced into receiving a particular service unless there is good reason to do so, for example, because they activate a security device.

Would it be worthwhile to use private screening rooms to undertake special circumstance screening?

It is essential that private screening rooms be available, however their use should be optional, at the request of the person with a disability. There was a mixed response from passengers in the case studies in relation to this option. Some found it embarrassing to be moved away from other passengers to a separate room, with the implication that they were a serious danger to others, while others preferred this option.

Where a person opts to be screened in a private screening room, they should be permitted to be accompanied by a companion.

Recommendation 13: Private screening rooms

Private screening rooms should be available and offered to the person with a disability. The passenger should have the right to be screened in public if they prefer. Where a passenger opts for screening in a private screening room they should be permitted to be accompanied by a person of their choice.

Other issues

Based on the issues raised by people with disability in the case studies appended to this submission and those that form the basis of the *Flight Closed* report, the review should also consider:

- The development of a process for approving of personal aids that may not meet normal security clearance.
- Whether or not and in what circumstances it is appropriate to transfer relevant information provided to airlines by passengers about their needs to the security staff and the privacy protections necessary to protect the individual where any transfer takes place.
- Ensuring airline ground staff are available to provide assistance once passengers are cleared by security.
- Ensuring consistent practice, and that practice is compatible with the principles in the *Disability Standards for Accessible Transport 2002* (Cth) and the *Disability Discrimination Act 1992* (Cth).

Case Study – Aids and equipment

A client of DDLC experienced difficulty with the aviation security authorities in relation to taking a 'prohibited item' through security. She has stunted growth in her arms as a result of her mother taking Thalidomide in early pregnancy. She requires dressing sticks to help her undress when she goes to the bathroom. She tried other options but none are viable. These aids are required on board if she is to be independent with personal care and hygiene.

The woman has on several occasions experienced difficulty taking such essential personal care disability aids through security. She was told by staff at a security screen point that having a dressing aid is not permissible on board and if she attempts to bring it, confiscation would result, even if she has a doctor's letter with a photo of her dressing stick. As well as the client's own need for the aids, she was organising a Thalidomide Conference where some participants would need to travel with disability-related aids on board aircraft.

The issue was resolved when a particular airline company negotiated that passengers attending the conference could travel through security with these aids as long as a doctor's certificate was produced. However, the claim took more than three months to resolve and was only resolved shortly before the commencement of the conference.

Case Study – Physical handling

PIAC received information from a woman with a disability who was travelling from Brisbane to Melbourne on a Jetstar flight. She was prepared for the worst going through security and had not worn her callipers, or socks but a pair of slip-on shoes that could be easily removed by her attendant carer if required. She was transferred to a wheelchair at the Check-in counter. This wheelchair was being pushed by her attendant carer.

Arriving at security the woman was requested to remove her shoes. When she said that she would need to get her attendant carer to remove them and put them back on, she was told that that was not possible; the security personnel had to do the removal if she could not. The woman explained the great difficulty and pain that shoe removal caused, but was told by the security personnel, 'not to be a bloody sook'. The security person then proceeded to remove one shoe. She asked that he stop because of the pain and then he said he would call a supervisor. Twenty minutes later and with no resolution the woman and her attendant carer had missed the booked flight, and were forced to return home, devastated and in no frame of mind to travel or to wait for another flight.

Case Study - Communication

A client of DDLC who is Deaf was selected to undergo additional security screening at Sydney International Airport. He was questioned by at least seven different officers. No effort was made to arrange for an Auslan interpreter so to allow the client to be able to properly understand and answer the questions. He was taken into a separate room to be searched. The man who had limited English reading skills was asked to sign a form; he spoke both Farsi and Auslan but the form was not provided in either language. The response the client received when asking the security officers the purpose of the form was a pat on his suitcase. The situation the client found himself in after he signed the form was not what he has expected at all. The security officers gestured him to undo his clothing and did a strip search in addition to the thorough suitcase search.

When he came out of the search room, another security officer asked repeatedly what job the man did, despite him mouthing and gesturing that he did not have a job. Again no interpreter was arranged to foster better understanding and communication. The client was left feeling misunderstood and confused.

The client filed a complaint of disability discrimination. However, there were three different authorities involved in the incident, and in each of their responses to the complaint they denied the allegation of discrimination and each nominated some other party as being responsible. Frustrated, the client has withdrawn his complaint and the issues remain unaddressed.

Recommendations

The following recommendations are from the *Flight Closed* publication submitted in December 2007 to the recent review of the *Disability Standards for Accessible Public Transport 2002* (Cth). The Government has not, as of September 2008, responded to the recommendations from the review. The recommendations selected for submission to this review of aviation security deal with security clearances, customer service and general issues such as complaint schemes, on which the reviewers specifically request comment.

Security clearances

Proposal 54

Security divisions at airports should undertake security checks in a timely manner, so that passengers can get to their flights. They should also note the complaints in the case studies described in this report and review their processes and policies.

Proposal 55

'Meet and assist' staff should provide direct assistance with security processes if requested.

Customer Service: Part 37 Guidelines and Guideline 38.3

Proposal 45

The Review Panel should consider the regulatory practice of the European Union, Canada and the United States of America in the area of customer service and include Standards comparable with best practice as part of airline compliance monitoring and licensing conditions.

Proposal 46

Airlines should ensure staff are trained and regularly updated in requirements of providing appropriate assistance in respect of a range of disability (training requirements to be determined in the Standards). The training program schedule should be available to the public and list the general content.

Proposal 47

Airline staff should be trained in and understand the use of boarding devices.

Proposal 48

The passenger is the most appropriate person to advise staff on what assistance they need and how this should be provided. Staff should be trained how to consult and work with passengers with a disability while maintaining their dignity.

Compliance and complaint processes

Proposal 50

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 51

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 the Standards. It should not rely on an individual seeking redress for a specific occasion.

Proposal 52

Complaint systems should clearly allow compensation for individuals as well as the imposition of obligations on the industry to correct infrastructure or service delivery practices.

Proposal 53

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 of the needs of low-income consumers.

References

Legislation

Disability Standards for Accessible Public Transport 2002 (Cth)

Disability Standards for Accessible Public Transport Guidelines 2004 (No 3) (Cth)

Canadian Government

Transportation Act (1996 c.10) Part V, *Transportation of persons with disabilities and Transportation Regulations* (SOR/88-58) Part VII, Terms and Conditions of Carriage of Persons

SOR/94-42 January 1994, *Personnel Training for the Assistance of Persons with Disabilities*

Canadian Transportation Agency

Code of Practice: Removing Communication Barriers for Travellers with Disabilities (2004)

The Accessibility Complaint Guide (September 2001)

Code of Practice. Aircraft Accessibility for Persons with Disabilities (March 2001)

United States of America Department of Transportation

New Horizons, Information for the Air Traveler with a Disability (February 2004)

14 CFR Part 382, *Non-discrimination on the basis of disability in air travel* (July 2003)

Public Interest Advocacy Centre

Brenda Bailey, *Flight Closed: Report on the experiences of People with Disabilities in Domestic Airline Travel in Australia*, (2007)

<http://www.piac.asn.au/publications/pubs/rep2007123_20071201.html> at 25 June 2008

Brenda Bailey, *Response to the Application for an Exemption under the Disability Discrimination Act 1992 by Regional Express Holdings Limited* (REX Airlines) (2007)

Anne Mainsbridge and Jessica Cruise, *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* (2008)

NSW Disability Discrimination Legal Centre

Submission: *Toward a National Aviation Policy Statement* (2008)

Submission: *Application for Temporary Exemption: Regional Express* (REX) (2007)

Submission: *Review of the Disability Standards for Accessible Public Transport 2002* (2007)