

# Submission to the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability

Experiences of people with disability accessing  
air travel and pursuing complaints against  
airlines and airports

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## About the Public Interest Advocacy Centre

The Public Interest Advocacy Centre (PIAC) is a leading social justice law and policy centre. Established in 1982, we are an independent, non-profit organisation that works with people and communities who are marginalised and facing disadvantage.

PIAC builds a fairer, stronger society by helping to change laws, policies and practices that cause injustice and inequality. Our work combines:

- legal advice and representation, specialising in test cases and strategic casework;
- research, analysis and policy development; and
- advocacy for systems change and public interest outcomes.

Our priorities include:

- Reducing homelessness, through the Homeless Persons' Legal Service
- Access for people with disability to basic services like public transport, financial services, media and digital technologies
- Justice for First Nations people
- Access to sustainable and affordable energy and water (the Energy and Water Consumers' Advocacy Program)
- Fair use of police powers
- Rights of people in detention, including equal access to health care for asylum seekers (the Asylum Seeker Health Rights Project)
- Improving outcomes for people under the National Disability Insurance Scheme
- Truth-telling and government accountability
- Climate change and social justice.

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The Public Interest Advocacy Centre office is located on the land of the Gadigal of the Eora Nation.

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***Recommendation 1 – The Australian Government, and airlines and airports, are abusing and neglecting people with disability***

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*The Royal Commission should find that actions and omissions of the Australian Government, airlines, and airports, in failing to protect the rights of people with disability in air travel constitutes abuse and neglect of people with disability, within the meaning of those terms as they apply to the Royal Commission.*

***Recommendation 2 – Australia should comply with the CRPD and the Chicago Convention***

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*The Australian Government should ensure aviation legislation and policies are consistent with the CRPD. The Australian Government should also implement Annex 9 of the Chicago Convention in relation to the transportation of people with disability in full.*

***Recommendation 3 – Complaints process should be reformed***

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*Federal, State and Territory Governments should reform the complaints process under the Disability Discrimination Act 1992 (Cth), the equivalent State and Territory anti-discrimination legislation and the Transport Standards to address failures in reporting, investigating and responding to instances of abuse and neglect with air travel in Australia. Reforms should address issues such as standing to make complaints and costs protection and be developed in consultation with people with disability. PIAC considers an ‘Equal Access model’ otherwise known as ‘qualified one-way costs shifting’ should be implemented for discrimination claims.*

***Recommendation 4 – Specific enforceable standards or legislation for air travel should be co-designed with people with disability***

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*Specific enforceable standards or legislation for air travel should be co-designed with people with disability. These standards should comply with the Guiding Principles of Australia’s Disability Strategy 2021-2031 and be administered, monitored for compliance and enforced by an appropriate body in consultation with people with disability.*

***Recommendation 5 – A guide for air travel for people with disability should be developed on an industry-wide basis***

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*A plain language guide for air travel outlining the rights and obligations of people with disability, airlines, and airports, as well as the complaints process, should be developed in consultation with people with disability. This should be developed on an industry-wide basis, be published in accessible formats, and promoted by airlines as part of the booking process, and prior to arrival at airport terminals.*

***Recommendation 6 – Security screening rules should be harmonised across Australian airports***

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*The Department of Home Affairs should harmonise aviation security screening rules across Australian airports to ensure consistency in screening people with disability and to comply with the Guiding Principles of Australia’s Disability Strategy 2021-2031. People with assistance animals should have the choice to be screened using the security screening method available to other customers, rather than secondary screening methods.*

***Recommendation 7 – Disability awareness training***

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*All customer-facing staff working at airports and with airlines in Australia should undertake disability awareness training with specific reference to responsibilities under the Disability Discrimination Act 1992 (Cth) and any other enforceable standards or legislation that are introduced.*

***Recommendation 8 – Royal Commission findings and recommendations to be provided to Aviation White Paper Branch***

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*Any findings and recommendations made by the Royal Commission regarding the barriers encountered by people with disability in accessing air travel, and experiences of abuse and neglect, should be provided to the Aviation White Paper Branch to consider in developing the Aviation White Paper, as well as relevant Ministers and Government departments.*

# 1. Introduction

The Public Interest Advocacy Centre (**PIAC**) welcomes the opportunity to make this submission to the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (**Royal Commission**).<sup>1</sup>

PIAC has considerable experience in disability discrimination litigation and public policy development in the area of public transport. Equal access to air travel is a current priority in our equality and non-discrimination practice. We have represented clients in disability discrimination claims against airlines and airports in the Australian Human Rights Commission (**AHRC**) and in the Federal Court of Australia. We also work on law reform in consultation with disability advocates and disability representative organisations.

In November 2022, the Royal Commission held two online workshops to engage with the community about experiences of violence, abuse, neglect, and exploitation in air travel. The workshops exposed discrimination, humiliation, violations of privacy and dignity, and physical and emotional neglect. People with disability also described being deprived of their independence, mobility, and access to services and facilities, due to acts and decisions of airlines and airports. These experiences prevent people with disability from equally accessing air travel in Australia and commonly contribute to discrimination, exclusion, personal injury, and damage to mobility devices. In PIAC's view, the failure by government, airlines, and airports, to protect the rights of people with disability in air travel constitutes abuse and neglect.

The Royal Commission's Terms of Reference require it to inquire into:

- (a) what governments, institutions and the community should do to prevent, and better protect, people with disability from experiencing violence, abuse, neglect and exploitation, having regard to the extent of violence, abuse, neglect and exploitation experienced by people with disability in all settings and contexts;
- (b) what governments, institutions and the community should do to achieve best practice to encourage reporting of, and effective investigations of and responses to, violence against, and abuse, neglect and exploitation of, people with disability, including addressing failures in, and impediments to, reporting, investigating and responding to such conduct;
- (c) what should be done to promote a more inclusive society that supports the independence of people with disability and their right to live free from violence, abuse, neglect and exploitation.<sup>2</sup>

This submission is informed by PIAC's experience representing clients in disability discrimination complaints against airlines and airports and consulting with disability advocates and representative organisations.

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<sup>1</sup> PIAC has also lodged the following submissions: PIAC, Submission to the Disability Royal Commission, *Institutional economic neglect of people with disability and homelessness* (21 April 2022), PIAC, Submission to the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, *Experiences of people with disability enforcing rights under the CRPD* (December 2022); PIAC, Submission to the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, *Experiences of people with disability in immigration detention* (December 2022).

<sup>2</sup> Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, *Commonwealth Letters Patent*, 4 April 2019 <<https://disability.royalcommission.gov.au/publications/commonwealth-letters-patent>> [(a) – (c)].

Our experience highlights and establishes:

- systemic abuse and neglect that prevents people with disability from equally accessing air travel and airports; and
- the limitations of the legal framework in pursuing disability discrimination complaints and achieving systemic change.

We recommend the Royal Commission find the actions and omissions of the Australian Government, airlines, and airports, in failing to protect the rights of people with disability amounts to abuse and neglect. The Royal Commission should make recommendations to improve the domestic legal framework to prevent this abuse and neglect. Specifically, the Government should develop legislation or enforceable standards for air travel through co-design with people with disability.

## 2. Systemic instances of abuse and neglect

PIAC's casework and stakeholder engagement has identified the following systemic issues:

- People who use manual or electric wheelchairs may be required to check in their customised wheelchair at the check-in counter and transfer to an airline chair which must be pushed by someone else through the terminal to the boarding gate. This means people who use wheelchairs are denied independence and freedom of movement to access facilities within the airport including accessible toilets, shops, and food outlets. Additionally, people are at risk of injury due to being pushed and required to sit in an unsafe and unsuitable airline chair for extended lengths of time. On disembarking a flight, passengers may be pushed in an airline chair to the oversize luggage collection area to collect their customised wheelchair rather than their customised chair being brought to the arrival gate.
- Limits on the number of customers requiring wheelchair assistance on flights and limits on the number of electric wheelchairs that can be carried per flight. This affects accessibility and inclusion by preventing people from taking their preferred flight or flying with family, friends or colleagues who also use wheelchairs.
- People who are required to travel with an assistant or carer may not be able to book low cost or discount airline tickets.
- Inadequate policies or staffing or equipment shortages mean assistance is not always provided to people who require assistance to transfer from their customised wheelchair to an airline chair. If assistance is not provided people may be denied service of the flight. Where assistance is provided, transfer methods may be unsafe and result in people experiencing discomfort or personal injury.
- People are required to give advance notice to airlines when travelling with a wheelchair despite already having a valid Dangerous Goods Certificate for the battery, which denies people who use wheelchairs the opportunity to fly at short notice.
- Wheelchairs are lost or broken by airlines leaving people stranded without access to an appropriate wheelchair for mobility and incurring expense to repair the damage.

- Assistance animals (for example psychiatric assistance dogs) may not be approved for travel in the aircraft cabin with their handler.
- Aircrafts without accessible toilets leave people who use wheelchairs depriving themselves of food and water for unsafe lengths of time.
- On board aircraft information and services may not be accessible to people who are blind or vision impaired (such as in-flight entertainment devices).
- People with disability may be subject to alternative airport screening measures involving the use of a handheld metal detector, an explosive trace detection test or a frisk search, despite preferring to use body scanners or walk-through metal detectors.
- People who travel with a guide dog experience inconsistent security screening procedures at different airports.

### 3. Legal framework

#### 3.1 International human rights law

The rights of people with disability to live without discrimination and to enjoy full economic, social and cultural rights on an equal basis with others are protected by international law, including the International Covenant on Economic, Social and Cultural Rights<sup>3</sup> and the Convention on the Rights of Persons with Disabilities (**CRPD**).<sup>4</sup>

Relevantly, Article 9 of the CRPD provides that States Parties shall take appropriate measures to ensure persons with disabilities have access to transportation on an equal basis with others.<sup>5</sup>

The Convention on International Civil Aviation (**Chicago Convention**) establishes principles for safe international civil aviation and for international air transport services to be established on the basis of equality of opportunity.<sup>6</sup> The International Civil Aviation Organization (**ICAO**) publishes Standards and Recommended Practices (**SARPs**) for Contracting States to the Chicago Convention. The SARPs specify internationally agreed standards and recommended practices for the many different aspects of aviation. Chapter 8 of Annex 9 contains facilitation provisions covering specific subjects, and specifically Part H covers facilitation of the transport of people with disability.

Australia, as a foundation member of ICAO was one of the first States to ratify the Chicago Convention, which is given effect to in Australia by the *Air Navigation Act 1920* (Cth).<sup>7</sup> If a State Party 'finds it impracticable to comply in all respects with any such international standard or procedure' or 'deems it necessary to adopt regulations or practices differing in any particular respect from those established by an international standard', the State is to notify ICAO of any

<sup>3</sup> *International Covenant on Economic, Social and Cultural Rights*, opened for signature 16 December 1966, 993 UNTS 3 (entered into force 3 January 1976).

<sup>4</sup> *Convention on the Rights of Persons with Disabilities*, opened for signature 30 March 2007, 2515 UNTS 3 (entered into force 3 May 2008) ('*CRPD*').

<sup>5</sup> *Ibid* art 9.

<sup>6</sup> *Convention on International Civil Aviation*, opened for signature on 7 December 1944, 15 UNTS 295 (entered into force 4 April 1947) ('*Chicago Convention*').

<sup>7</sup> 'Australia and ICAO', *Department of Infrastructure, Transport, Regional Development, Communications and the Arts* (Web Page) <<https://www.infrastructure.gov.au/infrastructure-transport-vehicles/aviation/international-aviation/multilateral-forums/icao>>.

differences between national legislation and the SARPs and procedures published by ICAO.<sup>8</sup> This is published in Australia by Airservices Australia.

While Australia's differences have been notified as at 22 November 2022 (as set out in the table below),<sup>9</sup> it is not clear why the differences are impracticable to comply with or why it is necessary to adopt different practices to those in Annex 9. PIAC considers ICAO SARPs that apply to the transportation of people with disability should be implemented in full to prevent violations of the rights of people with disability.

| Recommended Practice   | State Reference   | Difference level   | State Difference   |
|--|---|--|--|
| 8.27<br><i>Contracting States should take all necessary steps to secure the cooperation of aircraft, airport and ground handling operators in order to establish and coordinate training programmes to ensure that trained personnel are available to assist persons with disabilities.</i>  | Disability Discrimination Act 1992; Disability Standards for Accessible Public Transport 2002; Disability (Access to Premises - Buildings) Standards 2010; Australian Government Department of Infrastructure and Regional Development Guidance on the Development of Disability Access Facilitation Plans (DAFP) | Less protective or partially implemented not implemented | Australia does not provide explicit advice to operators on the content, conduct or coordination of staff training.   |
| 8.29<br><i>Contracting States should ensure that lifting systems or any other appropriate devices are made available in order to facilitate the movement of persons with disabilities between the aircraft and the terminal on both arrival and departure as required where telescopic passageways are not used. Manual lifting should be avoided.</i> | Disability Discrimination Act 1992; Disability Standards for Accessible Public Transport 2002; Disability (Access to Premises - Buildings) Standards 2010; Australian Government Department of Infrastructure and Regional Development Guidance on the Development of Disability Access Facilitation Plans (DAFP) | Less protective or partially implemented not implemented | Australia does not specify the types of lifting or other systems that an operator should make available.   |
| 8.36<br><i>Contracting States should introduce provisions by which aircraft coming newly into service or after major refurbishment should conform, where aircraft type, size, and configuration permit, to minimum uniform standards</i>   | Civil Aviation Act 1988; Civil Aviation Regulations 1988; Civil Aviation Safety Regulations 1998; Disability Discrimination Act 1992; Disability Standards for  | Different in character or other means of compliance      | The type and specification of onboard equipment carried on an aircraft, e.g. carriage of an onboard wheelchair, is generally a matter for individual airlines, |

<sup>8</sup> Chicago Convention (n 6) art 38.

<sup>9</sup> 'Differences from ICAO Standards, Recommended Practices and Procedures', *Airservices Australia* (Web Page, 1 December 2022) Annex 9 <[https://www.airservicesaustralia.com/aip/current/icao/icao\\_standards.asp](https://www.airservicesaustralia.com/aip/current/icao/icao_standards.asp)> <[https://www.airservicesaustralia.com/aip/current/icao/Annex9\\_01DEC2022.pdf](https://www.airservicesaustralia.com/aip/current/icao/Annex9_01DEC2022.pdf)>.

|  |   |  |   |
|--|---|--|---|
| <p><i>of accessibility with respect to equipment on board aircraft which would include movable armrests, on-board wheelchairs, accessible washrooms and suitable lighting and signs.</i></p>   | <p>Accessible Public Transport 2002</p>   |  | <p>subject to the requirements of civil aviation regulations, and the Disability Standards for Accessible Public Transport 2002 which include some minimum requirements with respect to aircraft.</p> |
| <p>8.37</p> <p><i>Disability aids required by persons with disabilities should be carried free of charge in the cabin where space, weight and safety requirements permit or should be carried free of charge and designated as priority baggage.</i></p> | <p>Civil Aviation Act 1988; Civil Aviation Safety Regulations 1998; Civil Aviation Regulations 1988; Disability Discrimination Act 1992</p> | <p>Different in character or other means of compliance</p> | <p>The Disability Discrimination Act 1992 requires airlines to carry disability aids (subject to safety and operational requirements), but legislation does not address charging.</p>                 |

### 3.2 Domestic law

The domestic law framework includes the *Disability Discrimination Act 1992* (Cth) (**DDA**) and equivalent State and Territory anti-discrimination legislation, the *Disability Standards for Accessible Public Transport 2002* (Cth) (**Transport Standards**) and the *Disability (Access to Premises - Buildings) Standards 2010* (Cth) (**Premises Standards**).

The objects of the DDA are:

- (a) to eliminate, as far as possible, discrimination against persons on the ground of disability in the areas of:
  - (i) work, accommodation, education, access to premises, clubs and sport; and
  - (ii) the provision of goods, facilities, services and land; and
  - (iii) existing laws; and
  - (iv) the administration of Commonwealth laws and programs; and
- (b) to ensure, as far as practicable, that persons with disabilities have the same rights to equality before the law as the rest of the community; and
- (c) to promote recognition and acceptance within the community of the principle that persons with disabilities have the same fundamental rights as the rest of the community.<sup>10</sup>

Under the DDA, complaints can be lodged against airlines and airports if passengers experience discrimination accessing flight services, the aircraft, or premises or facilities in the airport.<sup>11</sup> Complaints can also be lodged if a person is discriminated against in the performance of a function, the exercise of a power or the fulfilment of responsibilities under a Commonwealth law or program.<sup>12</sup>

<sup>10</sup> *Disability Discrimination Act 1992* (Cth) s 3.

<sup>11</sup> *Ibid* ss 23, 24.

<sup>12</sup> *Ibid* s 29.

The purpose of the Transport Standards is to mandate minimum accessibility requirements that operators and providers of *all* modes of transport to which the Standards apply are expected to achieve over specified time periods.

The Premises Standards specify how public buildings including airports must provide access for people with disability.

As providers and operators of services relating to transport or travel and/or premises, airlines and airports in Australia must comply with the DDA, Transport Standards and Premises Standards. However, difficulties with enforcing rights against well-resourced commercial respondents and the lack of remedies to address discriminatory practices means the current domestic framework is not fit for purpose.

### **3.2.1 Transport Standards are not fit for purpose for air travel**

In contrast to other modes of transport, regulated by State, Territory and local government agencies, the aviation industry is federally regulated, by the Department of Infrastructure, Transport, Regional Development, Communications and the Arts (**Department of Transport**). The Department of Home Affairs is also responsible for establishing security standards and requirements at airports. However, a lack of oversight and enforcement mechanisms have resulted in the inconsistent application of accessibility standards by airlines and airports. Inconsistencies between air travel services limits choice for consumers. This lack of regulation and an absence of clear guidance has reduced access to air transport for people with disability.

As the Royal Commission heard in the workshops, instances of abuse and neglect can be identified across the whole journey, from booking a flight ticket to arriving at the destination. The Transport Standards fail to adequately address all elements of air travel, and the level of complexity passengers with a disability encounter when travelling by air. For example, the Transport Standards contain no provisions to ensure the accessibility of an airline's ticket booking process or the minimum assistance to be provided to move through an airport and to/from an aircraft.

Despite three reviews of the Transport Standards over 20 years, and an ongoing reform process, there are no specific reform processes targeted at improving the accessibility of air travel.

There has also been inadequate monitoring of public transport operators and providers to ensure they are meeting compliance targets. Since the introduction of the Transport Standards in 2002, sporadic legal action by individuals has been the only mechanism to enforce compliance. However, as outlined below, the individual complaints mechanism has significant limitations.

## **4. Disability discrimination complaints**

### **4.1 Complaints made to the AHRC against airlines**

Data obtained from the AHRC reveals that from 2016-2021, there have been approximately 118 disability discrimination complaints made under the DDA against airlines. The 118 complaints are categorised as follows:

| Nature of complaint <sup>13</sup> | 2016-2018 | 2018-2021 | Total (5 years) |
|-----------------------------------|-----------|-----------|-----------------|
| Wheelchair                        | 15        | 19        | 34              |
| Assistance animals                | 7         | 27        | 34              |
| Masks                             | 0         | 4         | 4               |
| Behavioural                       | 3         | 3         | 6               |
| Appliances                        | 0         | 7         | 7               |
| Other                             | 21        | 12        | 33              |
| <b>Total</b>                      | <b>46</b> | <b>72</b> | <b>118</b>      |

The above statistics reveal an increasing number of complaints under the DDA against airlines from 2018-2021 compared to 2016-2018. We suggest the Royal Commission request updated statistics from the AHRC about complaints made against airlines and airports under the DDA. However, given the barriers to pursuing discrimination complaints and the high number of recent media reports of alleged discrimination, it is reasonable to assume there are many more instances of alleged discrimination than is represented in AHRC complaint statistics.

## 4.2 Limitations of an individual complaints-driven process

The current legal framework relies on individuals to make complaints under federal or state anti-discrimination legislation to hold discriminators to account. This places a significant burden on individuals often for limited benefit. It is time-consuming, financially risky and can be stressful and humiliating. Individuals also face a significant power imbalance pursuing complaints against well-resourced commercial airlines and airports many of whom, in PIAC's experience, respond to complaints in a very litigious and heavy-handed way.

Undoubtedly this means that many instances of discrimination do not result in a complaint to the AHRC and results in a lack of accountability and meaningful action to improve the accessibility of air travel. Even if an individual is legally represented, in PIAC's experience it is difficult to obtain systemic outcomes as respondents strongly oppose changing their operational models.

If a discrimination complaint is resolved before the AHRC, settlements are binding only between the parties to the complaint. Therefore, even if a settlement includes systemic outcomes, such as training or policy changes, only the complainant who is a party to that settlement agreement can

<sup>13</sup> The AHRC has provided PIAC with the following explanation in relation to these statistics:

- Many complaints in the 'assistance animal' category are from individuals claiming that airlines refuse to accept the evidence provided that their animal (in 99% of cases it is a dog) is in fact an 'assistance animal'. Complainants assert that the evidence sought by airlines is in excess of what appears to be allowed under the DDA.
- 'Masks' includes complaints from individuals who say they are unable to wear a mask due to a disability and are required to wear a mask to travel.
- 'Behavioural' includes complaints from people who have had a psychotic episode on a flight and as a result have been subsequently banned from flying, people who drink to excess while on medication and disturb other passengers, and people who have been banned from flights and/or airport facilities (i.e., airline lounges) due to behaviours that they claim are a characteristic of their disability (i.e., talking loudly, quickly and/or in an animated manner).
- 'Appliances' includes Continuous Positive Airway Pressure (CPAP) machines, walking aids and scooters.
- 'Other' includes issues such as dietary requirements, medications, exit row seats, leg room and harness/transfer issues.

enforce it if the respondent fails to fulfil its obligations. Enforcing a settlement agreement in court requires additional significant resources.

In addition, settlement agreements are commonly negotiated on the condition that the terms of settlement remain confidential. This means the substance of any outcomes or improvements that result from the complaint, even if it is merely to enforce the current legal standards, cannot be disclosed or used by other people as a precedent to seek improvements more generally.

PIAC is also aware of respondents insisting on clauses barring complainants from bringing future claims related to the subject matter of the current complaint. Such clauses seek to protect respondents from being exposed to future claims from the complainant about the same allegedly discriminatory conduct. Requiring complainants to surrender legal rights is inconsistent with the objective of the DDA to ensure people with disability have the same rights as others to equality before the law and is contrary to the beneficial purpose of anti-discrimination legislation.

If conciliation fails and a complainant proceeds to a hearing in one of the federal courts, they will face many obstacles – including the significant cost of bringing litigation, a need for legal representation, the time-consuming nature of litigation and a considerable adverse costs risk. PIAC considers an ‘Equal Access’ model otherwise known as ‘qualified one-way costs shifting’ should be implemented to limit adverse costs risk for complainants in discrimination claims.<sup>14</sup>

If a complainant succeeds at hearing, the outcome will generally be a declaration of unlawful discrimination and a modest award of compensation. These remedies are often inadequate in eliminating discriminatory practices. Respondents may still seek to avoid implementing systemic changes arguing a declaration of unlawful disability discrimination only relates to the specific facts of that case. A desirable systemic outcome sought by many complainants is for the respondent not to repeat or continue the unlawful conduct. However, courts are generally reluctant to make orders requiring ongoing supervision, favouring instead the finality of litigation at final hearing and judgment.

Due to the risk of an adverse costs order, many discrimination complaints, including complaints with strong prospects, do not proceed, or settle prior to hearing. In turn, complainants lose the opportunity to obtain declarations and a published judgment in their favour which can be important for developing precedent and improving industry compliance.

## 5. Recommendations

The deficiencies in the legal framework in Australia should be addressed through the introduction of specific enforceable standards or legislation for operators and providers of air transport. The United States and the European Union provide examples of how such legislation or standards

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<sup>14</sup> Grata Fund, *The Impossible Choice: Losing the family home or pursuing justice – the cost of litigation in Australia* (Report, 2022) 22-28  
<[https://assets.nationbuilder.com/gratafund/pages/729/attachments/original/1661739373/The\\_impossible\\_choice\\_-\\_adverse\\_cost\\_reform\\_Grata\\_Fund\\_.pdf?1661739373](https://assets.nationbuilder.com/gratafund/pages/729/attachments/original/1661739373/The_impossible_choice_-_adverse_cost_reform_Grata_Fund_.pdf?1661739373)>.

could be developed in Australia, and what they could cover.<sup>15</sup> The development of a new framework should be co-designed with people with disability and representative organisations.

Specific standards or legislation must be administered and monitored for compliance. One option could be for the Department of Transport to be the responsible body. The Department of Transport currently provides guidance to airline and airport operators to develop Disability Access Facilitation Plans and publishes those plans on its website.<sup>16</sup> It also provides secretariat support to the Aviation Access Forum.<sup>17</sup> Notwithstanding the Department's current functions, it is essential that people with disability and their representative organisations are consulted on an appropriate body to commence co-design, administer the specific air travel standards or legislation that is developed and implement compliance measures along with other regulatory requirements. Additionally, PIAC suggests that compliance with the specific air transport standards or legislation should be a core requirement of airline licensing.

The Australian Civil Aviation Safety Authority (**CASA**) publishes 'advice for flying safely' for travellers with disabilities on its website.<sup>18</sup> This advice is limited and appears to acknowledge the inconsistent and discriminatory practices across airlines. For example, the advice states that people with disability should '[l]earn what services are available and arrange them ahead of time', but '[i]f an airline doesn't or can't meet your needs, try booking with another airline.'<sup>19</sup> CASA's advice also states '[y]ou should get your wheelchair or mobility aid back as close as possible to the door of the aeroplane, unless you've asked them to deliver it somewhere else.'<sup>20</sup> However, despite this advice stating what 'should' occur, this is not reflected in all airline policies and practices which demonstrates the need for specific standards or legislation.

The national transport agencies of the United States, Canada and the European Union produce specific guidance for people with disability travelling by air describing their rights and obligations based on their respective regulations, standards and codes of practice.<sup>21</sup> Guidance should also

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<sup>15</sup> *Air Carrier Access Act of 1986*, 49 USC § 41705; *Nondiscrimination on the Basis of Disability in Air Travel*, 14 CFR § 382; *Regulation (EC) No 1107/2006 of the European Parliament and of the Council of 5 July 2006 concerning the rights of disabled persons and persons with reduced mobility when travelling by air* [2006] OJ L 204.

<sup>16</sup> 'Disability Access Facilitation Plans', *Department of Infrastructure, Transport, Regional Development, Communications and the Arts* (Web Page) <<https://www.infrastructure.gov.au/infrastructure-transport-vehicles/aviation/aviation-access-forum-aaf/dafp>>.

<sup>17</sup> 'Aviation Access Forum (AAF)', *Department of Infrastructure, Transport, Regional Development, Communications and the Arts* (Web Page) <<https://www.infrastructure.gov.au/infrastructure-transport-vehicles/aviation/aviation-access-forum-aaf>>.

<sup>18</sup> 'Passengers with disability and reduced mobility', *Civil Aviation Safety Authority* (Web Page) <<https://www.casa.gov.au/operations-safety-and-travel/travel-and-passengers/passengers-disability-and-reduced-mobility>>.

<sup>19</sup> 'Planning for travel with a disability', *Civil Aviation Safety Authority* (Web Page, 13 July 2022) <<https://www.casa.gov.au/operations-safety-and-travel/travel-and-passengers/passengers-disability-and-reduced-mobility/planning-travel-disability>>.

<sup>20</sup> 'Wheelchairs and mobility aids', *Civil Aviation Safety Authority* (Web Page) <<https://www.casa.gov.au/operations-safety-and-travel/travel-and-passengers/passengers-disability-and-reduced-mobility/wheelchairs-and-mobility-aids>>.

<sup>21</sup> 'Traveling with a Disability', *U.S. Department of Transportation* (Web Page, 17 October 2022) <<https://www.transportation.gov/individuals/aviation-consumer-protection/traveling-disability>>; 'Airline Passengers with Disabilities Bill of Rights', *U.S. Department of Transportation* (Web Page, 26 July 2022) <<https://www.transportation.gov/airconsumer/disabilitybillofrights>>; 'Take Charge of Your Travel: A Guide for Travellers with Disabilities', *Canadian Transportation Agency* (Web Page, 9 October 2020) <<https://otc.cta.gc.ca/eng/publication/take-charge-your-travel-a-guide-travellers-disabilities>>; 'Rights for travellers with disabilities or reduced mobility', *European Union, Your Europe*, (Web Page, 26 October 2022) <[https://europa.eu/youreurope/citizens/travel/transport-disability/reduced-mobility/index\\_en.htm#plane](https://europa.eu/youreurope/citizens/travel/transport-disability/reduced-mobility/index_en.htm#plane)>.

be developed in Australia for the benefit of customers with disability, airlines, and airports, to clarify rights, obligations and to promote uniformity.

Based on the experiences heard by the Royal Commission at the workshops and in the media, it is clear not enough has been done to require airlines and airports to improve their practices. The introduction of enforceable standards or specific legislation administered and enforced by a federal agency will promote a more inclusive society that supports the independence of people with disability and their right to equally access air travel free from abuse and neglect.

Furthermore, aviation security screening rules should be harmonised across Australian airports to ensure consistency in screening people with disability and to avoid diverting and subjecting people with disability to secondary screening methods in circumstances where they may prefer to use screening methods available to other customers.

*Australia's Disability Strategy 2021-2031* sets out eight Guiding Principles which should be applied to the development of policies and services by Governments, business and non-government sectors and the broader community.<sup>22</sup> These principles should drive the development of standards and legislation to govern air travel and inform the development of aviation policies in the upcoming Aviation White Paper.<sup>23</sup>

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***Recommendation 1 – The Australian Government, and airlines and airports, are abusing and neglecting people with disability***

*The Royal Commission should find that actions and omissions of the Australian Government, airlines, and airports, in failing to protect the rights of people with disability in air travel constitutes abuse and neglect of people with disability, within the meaning of those terms as they apply to the Royal Commission.*

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***Recommendation 2 – Australia should comply with the CRPD and the Chicago Convention***

*The Australian Government should ensure aviation legislation and policies are consistent with the CRPD. The Australian Government should also implement Annex 9 of the Chicago Convention in relation to the transportation of people with disability in full.*

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***Recommendation 3 – Complaints process should be reformed***

*Federal, State and Territory Governments should reform the complaints process under the Disability Discrimination Act 1992 (Cth), the equivalent State and Territory anti-discrimination legislation and the Transport Standards to address failures in reporting, investigating and responding to instances of abuse and neglect with air travel in Australia. Reforms should address issues such as standing to make complaints and costs protection and be developed in consultation with people with disability. PIAC considers an 'Equal Access model' otherwise known as 'qualified one-way costs shifting' should be implemented for discrimination claims.*

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<sup>22</sup> Commonwealth, Department of Social Services, *Australia's Disability Strategy 2021-2031* (2021) 38, 57-58 <<https://www.disabilitygateway.gov.au/sites/default/files/documents/2021-11/1786-australias-disability.pdf>>

<sup>23</sup> 'Aviation White Paper', *Department of Infrastructure, Transport, Regional Development, Communications and the Arts* (Web Page) <<https://www.infrastructure.gov.au/infrastructure-transport-vehicles/aviation/aviation-white-paper>>.

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**Recommendation 4 – Specific enforceable standards or legislation for air travel should be co-designed with people with disability**

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*Specific enforceable standards or legislation for air travel should be co-designed with people with disability. These standards should comply with the Guiding Principles of Australia’s Disability Strategy 2021-2031 and be administered, monitored for compliance and enforced by an appropriate body in consultation with people with disability.*

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**Recommendation 5 – A guide for air travel for people with disability should be developed on an industry-wide basis**

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*A plain language guide for air travel outlining the rights and obligations of people with disability, airlines, and airports, as well as the complaints process, should be developed in consultation with people with disability. This should be developed on an industry-wide basis, be published in accessible formats, and promoted by airlines as part of the booking process, and prior to arrival at airport terminals.*

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**Recommendation 6 – Security screening rules should be harmonised across Australian airports**

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*The Department of Home Affairs should harmonise aviation security screening rules across Australian airports to ensure consistency in screening people with disability and to comply with the Guiding Principles of Australia’s Disability Strategy 2021-2031. People with assistance animals should have the choice to be screened using the security screening method available to other customers, rather than secondary screening methods.*

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**Recommendation 7 – Disability awareness training**

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*All customer-facing staff working at airports and with airlines in Australia should undertake disability awareness training with specific reference to responsibilities under the Disability Discrimination Act 1992 (Cth) and any other enforceable standards or legislation that are introduced.*

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**Recommendation 8 – Royal Commission findings and recommendations to be provided to Aviation White Paper Branch**

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*Any findings and recommendations made by the Royal Commission regarding the barriers encountered by people with disability in accessing air travel, and experiences of abuse and neglect, should be provided to the Aviation White Paper Branch to consider in developing the Aviation White Paper, as well as relevant Ministers and Government departments.*