



**Submission of the
Anti-Discrimination Commissioner
of Tasmania**

on the

**Draft Policy Paper – Airline Two
Wheelchair Policies**

9 May 2014

Office of the Anti-Discrimination Commissioner
Celebrating Difference, Embracing Equality

Level 1, 54 Victoria Street, Hobart • GPO Box 197, Hobart, Tasmania, Australia, 7001
Telephone: [03] 6165 7508 • Statewide: 1300 305 062 • Facsimile: [03] 6233 5333
E-mail: antidiscrimination@justice.tas.gov.au • Website: www.antidiscrimination.tas.gov.au

Contents

1. INTRODUCTION.....	1
2. REGULATORY STANDARDS.....	2
Air Carrier Access Act (US)	5
European Union (EU)	8
Canada.....	12
3. THE WAY FORWARD.....	15

1. Introduction

Thank you for providing me with the opportunity to comment on the Draft Policy Paper – Airline Two Wheelchair Policies (the Draft Policy Paper).

This submission is based on the views previously expressed in response to the Airline Two Wheelchair Policy Issues paper of June 2013 and an examination of approaches taken in other jurisdictions operating air transport systems similar to those found in Australia.

I appreciate that the Department of Infrastructure and Regional Development (the Department) has responsibility for developing a way forward that attempts to meet the needs of passengers with mobility disability, whilst at the same time taking into account the operational and related needs of airline operators.

It is my view, however, that the policy (the Draft Policy) proposed in the Draft Policy Paper fails in this regard. The removal of formal reference to airline-imposed limits on the number of wheelchairs—or more relevantly passengers who use wheelchairs—able to be carried from airlines' Disability Access Facilitation Plans and the proposal to allow airlines to advise passengers that there are operational circumstances where they may not be able to carry more than two passengers requiring wheelchair assistance does little to achieve a consistent national approach or provide improved certainty to people with disability or compliance with existing law.

Similarly, whilst I am supportive of increased clarification around early notification requirements and improved booking processes, I do not consider that this will be sufficient to drive a more consistent approach across the industry.

It is my view that the obligations on carriers and those providing air services need to be more clearly prescribed and that any approach should include a commitment to the development and introduction of effective and legally binding obligations on both carriers and airport owners, together with transitional arrangements that will ensure that all carriers and airport operators meet their service obligations, including requirements under discrimination law.

I will examine these matters in more detail in the body of the submission and would be happy to discuss these matters further with you as the development of the policy proceeds.

2. Regulatory standards

The national *Disability Standards for Accessible Public Transport 2002* (the Transport Standards) required that by the end of 2012, 55% of air services and airport infrastructure were to have complied with the particular standards in relation to boarding ramps or devices to assist people getting on and off aircraft; manoeuvring areas; passing areas; the size of doorways and the use of automatic doors; the provision of toilets; waiting areas; and other matters including the provision of information on aircraft and in air terminals. In addition, all new airport terminals are to be accessible.

The Transport Standards apply to all aircraft that have a seating capacity of 30 or more.

The Aviation Access Working Group (AAWG) was charged with the review and consideration of measures and actions that can provide people with disability access to air travel while ensuring the safety and security of all fare paying passengers.¹ The Aviation Access Forum, which replaced the AAWG in 2013, has as its stated purpose to ‘provide advice to the Australian Government on policy, operational and administrative issues associated with disability access to airline and airport services’.² The Forum is also to ‘progress the implementation of agreed aviation recommendations from [relevant government or industry reviews]’.³

Disappointingly it would appear, from the information I have received from people with disability, that accessing air services remains a significant challenge for people with mobility restrictions and that the recommendations arising from the 2007 review of Transport Standards have yet to be addressed.

The proposal advanced in the Draft Policy Paper is that Australian domestic airlines that have two wheelchair policies update their Disability Access Facilitation Plans and operating practices to remove reference to a limit of two wheelchairs per flight, and instead advise passengers that there are operational circumstances where the airline may not be able to carry more than two passengers requiring wheelchair assistance.

¹ See Aviation Access Working Group *Terms of Reference* as circulated at the 6 February 2009 AAWG meeting

² See Aviation Access Forum – Terms of Reference, available at *Aviation Access Forum* (2014) <<https://www.infrastructure.gov.au/aviation/aaf/index.aspx>> at 28 April 2014.

³ Ibid.

The rationale behind this approach is to provide airlines with greater flexibility to enable a larger number of passengers who require minimal wheelchair assistance to board their preferred flight.

Given the difficulty that many people with disability have with the existing two-wheelchair policy, I am of the view that the policy approach proposed is flawed and the introduction of flexibility in the manner proposed would in effect enable airlines to reduce the levels of service available to passengers requiring mobility assistance.

It is my view that the requirements set out in the Transport Standards could only be met by the introduction of clear legally binding obligations requiring air service operators to meet minimum standards in all relevant circumstances in relation to both the minimum level of service that must be provided and approach to considering increased level requests.

For this to occur I believe it is necessary that aviation regulations (or possibly the Transport Standards) be amended to specify minimum standards levels that must be met according to aircraft size. Should air service operators wish to extend their service delivery beyond the minimum standards, this should be encouraged. Those airlines that retain limits on carriage at or above the minimum legislated standards should also be required to have an accessible, transparent and appropriate mechanism for considering requests for the provision of services above that level.

It is my view that any alternative approach (including that proposed in the Draft Policy Paper) will mean that air services in Australia will increasingly be at odds with comparable services being offered by competitors or equivalents in comparable jurisdictions and standards that should reasonably be expected in a modern and relatively wealthy country such as Australia.

The United States of America, member states of the European Union and Canada have a much more advanced approach than Australia. Eventually this will give rise to a shift in requirements here as modern aircraft and associated services are designed to meet international regulatory standards. As national and international air services become even more integrated and global air movement increases, there will be an increased expectation of a consistent level of service delivery. To do otherwise is confusing both to people with disability seeking to use air services and to airport service providers. The failure to meet those expectations will impact on Australia as a travel destination as people with disability seeking to travel alone or in groups will identify that their travel options in Australia are much more restricted than in other parts of the world.

I note in this context that the International Air Transport Association (IATA) has expressed the view that passengers with reduced mobility must have equal or equivalent access to the services available to the general public and have called for a global standard to be implemented.⁴ This is entirely consistent with the current laws relating to disability

⁴ International Air Transport Association (IATA), *All passengers this way* (2012) Airlines International <<http://www.iata.org/publications/airlines-international/april-2012/Pages/accessibility.aspx>> at 27 April 2014.

discrimination in Australia and is becoming increasingly important as accessibility requirements in relation to new infrastructure and services (such as airline websites and self-service kiosks) are developed.

It is not appropriate that we continue to read of seriously inequitable treatment of people with disability in airline travel such as that experienced by Sam Cawthorn who was required to stand for 3 hours on a domestic flight in Australia because his particular seating requirement could not be accommodated (attached).⁵ Nor is the ongoing level of complaints received in relation to discrimination in the provision of air services acceptable as it indicates a continuing failure to seriously address the travel needs of people with disability.

In the absence of mode-specific transport standards, it would appear all too easy for airlines and airport operators to hide behind 'safety' concerns or 'unjustifiable hardship' as a mechanism for avoiding the provision of services that are now available as a matter of course in other countries with comparable aviation industries.

I refer in this context to the decision in *King v Jetstar Airways Pty Ltd (No 2)* [2012] FCA 8 and note that with respect to that case and others that in determining whether or not the respondent has complied with its obligations under the law, the *Disability Discrimination Act 1992* (Cth) (DDA) requires consideration of a number of matters specific to the case. Section 5 of the DDA makes unlawful direct discrimination in situations where a person with disability is or is proposed to be treated less favourably than a person without the disability 'in circumstances that are not materially different', and section 6 makes unlawful indirect discrimination whereby a requirement or condition is imposed, which has the effect of disadvantaging a person with disability, unless the requirement or condition or the failure to provide reasonable adjustments 'is reasonable, having regard to all the circumstances'.

In *King v Jetstar Airways Pty Ltd*, Robertson J found that the case for a finding of discrimination was made out, but upheld the respondent's defence of 'unjustifiable hardship' after weighing the particular circumstances of the case. The question of whether a respondent has made out the defence of unjustifiable hardship is to be determined on the facts of the particular case. Robertson J, cites the approach taken by Sir Roland Wilson in *Scott v Telstra Corporation*.⁶

All relevant circumstances are to be taken into account, including the nature of the benefit or detriment, the effect of the disability, and the financial circumstances and cost to the respondent in eliminating discrimination.

In my opinion, the content of the term 'unjustifiable hardship' will depend upon the circumstances of each case.

The findings in *King v Jetstar Pty Ltd (No 2)* do not, therefore, constitute a basis on which it is possible to make the case that in all circumstances providing airline transport for a person requiring wheelchair assistance where there are already two other people who require such

⁵ The Mercury newspaper 6 May 2014;

⁶ *King v Jetstar Airways Pty Ltd (No 2)* [2012] FCA 8 [246]

assistance are already booked on the flight would amount to 'unjustifiable hardship'. This would have to be tested on a case-by-case basis.

As with other budget carriers across the globe and with business across a range of other sectors, complying with legal obligations including providing appropriate accommodations to people with disability is to be built into operational costs. There is no evidence to suggest that 'budget carriers' have been exempted from the requirements in other jurisdictions simply on the basis that it will cost them money and might mean adjustments to their chosen business model. Adopting a discriminatory business model is not an acceptable basis on which to exclude people with disability from accessing air services on the same basis as others in the community. IATA also asserts that it is 'clear that airlines will need to absorb the costs within their business models'.

At the same time, however, I do not consider that the development of arrangements to accommodate people with disability, including those who use wheelchairs, to be a matter that should be left to carriers themselves to resolve. This will only result in inconsistency on the one hand and failure to seek industry-wide solutions on the other. It also ignores the responsibility that airport owners and controllers have in delivering accessible services and the purpose of the already existing Transport Standards.

These are not matters that can, will or should be resolved at the carrier's discretion. There is too much evidence that discretion simply results in the delivery of services at minimal or sub-minimal standards. It also creates a situation where those that choose to ignore or minimise their obligations under discrimination laws may obtain an unfair market advantage and drive other carriers' standards down in order to compete.

I note that the approach adopted in other jurisdictions where much greater progress has been made on this issue is to develop industry-wide standards.

United States of America (USA)

Under the regulations developed to implement the *Air Carrier Access Act 1986* (USA) (ACAA) domestic and foreign carriers operating in the United States are prohibited from discriminating against passengers on the basis of disability; are required to make aircraft, other facilities and services accessible; and must take steps to accommodate passengers with a disability: section 382.1.⁷

Provisions relevant to the provision of services to passengers with mobility restrictions include:

- **Section 382.17:** Carriers are not permitted to limit the number of passengers with disability who travel on a flight.

⁷ Code of Federal Regulations (US) Part 382 – *Nondiscrimination on the basis of disability in air travel* available at <<http://www.ecfr.gov/cgi-bin/text-idx?SID=6ea42c9dc41908bd622e57ea6e2f313e&node=14:4.0.1.4.64&rgn=div5#14:4.0.1.4.64.1.24.1>>.

- **Section 382.19:** Carriers may refuse transport on the basis of disability in limited circumstances where it would otherwise violate aviation or safety regulations. If a carrier's reason for excluding a passenger on the basis of safety is that an individual's disability creates a safety problem, the carrier's decision must be based on a 'direct threat' analysis. Individualised assessment, as opposed to generalisation or stereotyping, is required taking into account the nature, duration and severity of the risk; the probability that actual harm will occur and whether reasonable mitigating measures can reduce the risk to the point where the individual no longer poses a direct threat. If the carrier refuses to provide transport to a passenger on his or her originally-scheduled flight on a basis relating to the individual's disability, they must provide the person with a written statement of the reason for the refusal.
- Section 382.25: Carriers must not require a passenger with disability to provide advance notice of the fact that he or she is travelling on a flight other than in specified circumstances.
- Section 382.27: A passenger with disability may be required to provide up to 48 hours' notice and check in one hour before check in time to receive certain services, including the transportation of an electric wheelchair on an aircraft with fewer than 60 seats, accommodation of a group of 10 or more individuals with disability who wish to travel as a group; packaging of batteries or other assistive devices; or provision of an on-board wheelchair on an aircraft with more than 60 seats that does not have an accessible toilet.
- Section 382.61: All new or upgraded aircraft with a capacity of over 30 passengers are required to have a specified number of removable armrests or a suitable alternative accommodation which permits the horizontal transfer of the passenger from a boarding wheelchair to the aircraft seat.
- Section 382.63: Aircraft with more than one aisle in which toilets are provided are required to have at least one accessible toilet.
- Section 382.65: On aircraft with more than 60 seats with an accessible toilet, the carrier must equip the aircraft with an on-board wheelchair. Some models of aircraft are exempt from this requirement.
- Section 382.67: Aircraft with 100 or more passenger seats must have priority space to stow at least one folding manual passenger wheelchair (of specified dimensions).
- Section 382.93: Carriers must offer pre-boarding to passengers with disability who identify themselves at the gate as needing additional time or assistance to board, to stow accessibility equipment, or to be seated.
- Section 382.103: Boarding and deplaning assistance must be provided through the use of lifts or ramps at any US commercial service airport with 10,000 or more annual

enplanements where boarding and deplaning by level-entry loading bridges or accessible passenger lounges is not available.

- Section 382.125: Wheelchairs that cannot be carried in the cabin are to be carried as baggage and returned to users as closely as possible to the door of the aircraft. These devices have priority over other items. Special regulations exist covering batteries and a one-hour advance check in time may be established. Size and dimension are also relevant and carriers operating aircraft with a small cargo compartment or where a large wheelchair may cause a load imbalance or violate other weight or balance safety requirements can be legitimately declined for transportation. But assistance must be given in identifying another flight that can accommodate the passenger's requirements.
- Section 382.141: Carriers operating aircraft with 19 or more passenger seats must train their personnel to proficiency concerning ACAA requirements and providing services to passengers with disabilities. They are also required to consult with organisations representing people with disability.
- 382.159: Carriers and airport operators are to have internal complaints procedures and resolution arrangements.

Under the approach adopted in the USA, a number of carriers have criticised the prescriptive nature of regulations regarding the provision of non-discriminatory air services. The argument advanced is that regulations should stipulate an overall objective of non-discrimination and service to persons with disabilities, whilst leaving the details of implementation to the discretion of carriers, guided by codes of practice issued by various governments or international organisations.⁸

The Department of Transportation (DOT) issued the following response:⁹

It is the Department's experience, over the 21 years since the enactment of the Air Carrier Access Act, that in order to ensure that carriers are accountable for providing non-discriminatory service to passengers with disabilities, detailed standards and requirements are essential. If all that carriers are responsible for is carrying out, in their best judgement, general objectives of non-discrimination and good service, or best practices or recommendations, or regulations that are not enforceable by the Department, then effective enforcement of the rights Congress intended to protect in the ACAA becomes impracticable. It is understandable that carriers would wish to implement their own goals through policies of their own devising and to limit potential compliance issues. However the Department is responsible for ensuring consistent non-discriminatory treatment of passengers with disabilities, including implementation of the variety of specific accommodations that are essential in providing such treatment. We must structure our response to this mandate in a way that allows for clear and consistent

⁸ Department of Transportation (US) *Non-discrimination on the basis of disability in air travel: final rule 14 CFR Part 382* (Federal Register Vol 73, No. 93, Tuesday May 13 2008) 27615.

⁹ Ibid.

implementation by the carriers, and clear and consistent enforcement by the Department.

Also of interest is DOT's approach to requests by airlines to limit the number of passengers with disabilities on board any given flight. The key reason advanced by carriers was the safety of passengers, particularly if an emergency evacuation was required. The DoT argued that the approach was 'intrinsically discriminatory' and argues that this is borne out by the fact that 'during the 17 years since the original rule was issued, we are not aware of any instances of safety problems resulting from the existing rule's prohibition on number limits'.¹⁰

European Union (EU)

The European Parliament and Council adopted EC Regulation No. 1107/2006 on 5 July 2006 to allow people with disability, including reduced mobility, to have the same possibility to travel by air as other citizens.¹¹

The regulation imposes a single consistent framework throughout the EU and provides a clear division of responsibilities between air carriers and airport operators.

Key provisions include:

Article 3 Prevention of refusal of carriage

An air carrier or its agent or a tour operator shall not refuse, on the grounds of disability or of reduced mobility:

- (a) to accept a reservation for a flight departing from or arriving at an airport to which this Regulation applies;
- (b) to embark a disabled person or a person with reduced mobility at such an airport, provided that the person concerned has a valid ticket and reservation.

Article 4 Derogations, special conditions and information

1. Notwithstanding the provisions of Article 3, an air carrier or its agent or a tour operator may refuse, on the grounds of disability or of reduced mobility, to accept a reservation from or to embark a disabled person or a person with reduced mobility:
 - (a) in order to meet applicable safety requirements established by international, Community or national law or in order to meet safety requirements established by the authority that issued the air operator's certificate to the air carrier concerned;
 - (b) if the size of the aircraft or its doors makes the embarkation or carriage of that disabled person or person with reduced mobility physically impossible.

¹⁰ Ibid, 27622.

¹¹ EC Regulation No. 1107/2006 on 5 July 2006, available at <<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02006R1107-20060815&rid=1>>.

In the event of refusal to accept a reservation on the grounds referred to under points (a) or (b) of the first subparagraph, the air carrier, its agent or the tour operator shall make reasonable efforts to propose an acceptable alternative to the person in question.

A disabled person or a person with reduced mobility who has been denied embarkation on the grounds of his or her disability or reduced mobility and any person accompanying this person pursuant to paragraph 2 of this Article shall be offered the right to reimbursement or re-routing as provided for in Article 8 of Regulation (EC) No 261/2004. The right to the option of a return flight or re-routing shall be conditional upon all safety requirements being met.

2. Under the same conditions referred to in paragraph 1, first subparagraph, point (a), an air carrier or its agent or a tour operator may require that a disabled person or person with reduced mobility be accompanied by another person who is capable of providing the assistance required by that person.
3. An air carrier or its agent shall make publicly available, in accessible formats and in at least the same languages as the information made available to other passengers, the safety rules that it applies to the carriage of disabled persons and persons with reduced mobility, as well as any restrictions on their carriage or on that of mobility equipment due to the size of aircraft. A tour operator shall make such safety rules and restrictions available for flights included in package travel, package holidays and package tours which it organises, sells or offers for sale.
4. When an air carrier or its agent or a tour operator exercises a derogation under paragraphs 1 or 2, it shall immediately inform the disabled person or person with reduced mobility of the reasons therefor. On request, an air carrier, its agent or a tour operator shall communicate these reasons in writing to the disabled person or person with reduced mobility, within five working days of the request.

Article 7 Right to assistance at airports

1. When a disabled person or person with reduced mobility arrives at an airport for travel by air, the managing body of the airport shall be responsible for ensuring the provision of the assistance specified in Annex I in such a way that the person is able to take the flight for which he or she holds a reservation, provided that the notification of the person's particular needs for such assistance has been made to the air carrier or its agent or the tour operator concerned at least 48 hours before the published time of departure of the flight. This notification shall also cover a return flight, if the outward flight and the return flight have been contracted with the same air carrier.
2. Where use of a recognised assistance dog is required, this shall be accommodated provided that notification of the same is made to the air carrier or its agent or the tour operator in accordance with applicable national rules covering the carriage of assistance dogs on board aircraft, where such rules exist.
3. If no notification is made in accordance with paragraph 1, the managing body shall make all reasonable efforts to provide the assistance specified in Annex I in

such a way that the person concerned is able to take the flight for which he or she holds a reservation.

4. The provisions of paragraph 1 shall apply on condition that:
 - (a) the person presents himself or herself for check-in:
 - (i) at the time stipulated in advance and in writing (including by electronic means) by the air carrier or its agent or the tour operator, or
 - (ii) if no time is stipulated, not later than one hour before the published departure time, or
 - (b) the person arrives at a point within the airport boundary designated in accordance with Article 5:
 - (i) at the time stipulated in advance and in writing (including by electronic means) by the air carrier or its agent or the tour operator, or
 - (ii) if no time is stipulated, not later than two hours before the published departure time.
5. When a disabled person or person with reduced mobility transits through an airport to which this Regulation applies, or is transferred by an air carrier or a tour operator from the flight for which he or she holds a reservation to another flight, the managing body shall be responsible for ensuring the provision of the assistance specified in Annex I in such a way that the person is able to take the flight for which he or she holds a reservation.
6. On the arrival by air of a disabled person or person with reduced mobility at an airport to which this Regulation applies, the managing body of the airport shall be responsible for ensuring the provision of the assistance specified in Annex I in such a way that the person is able to reach his or her point of departure from the airport as referred to in Article 5.
7. The assistance provided shall, as far as possible, be appropriate to the particular needs of the individual passenger.

Article 10 Assistance by air carriers

An air carrier shall provide the assistance specified in Annex II without additional charge to a disabled person or person with reduced mobility departing from, arriving at or transiting through an airport to which this Regulation applies provided that the person in question fulfils the conditions set out in Article 7(1), (2) and (4).

Annex I stipulates the responsibility of the managing bodies of airports:

Assistance under the responsibility of the managing bodies of airports

Assistance and arrangements necessary to enable disabled persons and persons with reduced mobility to:

- communicate their arrival at an airport and their request for assistance at the designated points inside and outside terminal buildings mentioned in Article 5,
- move from a designated point to the check-in counter,
- check-in and register baggage,
- proceed from the check-in counter to the aircraft, with completion of emigration, customs and security procedures,
- board the aircraft, with the provision of lifts, wheelchairs or other assistance needed, as appropriate,
- proceed from the aircraft door to their seats,
- store and retrieve baggage on the aircraft,
- proceed from their seats to the aircraft door,
- disembark from the aircraft, with the provision of lifts, wheelchairs or other assistance needed, as appropriate,
- proceed from the aircraft to the baggage hall and retrieve baggage, with completion of immigration and customs procedures,
- proceed from the baggage hall to a designated point,
- reach connecting flights when in transit, with assistance on the air and land sides and within and between terminals as needed,
- move to the toilet facilities if required.

Where a disabled person or person with reduced mobility is assisted by an accompanying person, this person must, if requested, be allowed to provide the necessary assistance in the airport and with embarking and disembarking.

Ground handling of all necessary mobility equipment, including equipment such as electric wheelchairs subject to advance warning of 48 hours and to possible limitations of space on board the aircraft, and subject to the application of relevant legislation concerning dangerous goods.

Temporary replacement of damaged or lost mobility equipment, albeit not necessarily on a like-for-like basis.

Ground handling of recognised assistance dogs, when relevant.

Communication of information needed to take flights in accessible formats.

Annex II stipulates the assistance to be provided by air carriers:

Assistance by air carriers

Carriage of recognised assistance dogs in the cabin, subject to national regulations.

In addition to medical equipment, transport of up to two pieces of mobility equipment per disabled person or person with reduced mobility, including electric wheelchairs (subject to advance warning of 48 hours and to possible limitations of space on board the aircraft, and subject to the application of relevant legislation concerning dangerous goods).

Communication of essential information concerning a flight in accessible formats.

The making of all reasonable efforts to arrange seating to meet the needs of individuals with disability or reduced mobility on request and subject to safety requirements and availability.

Assistance in moving to toilet facilities if required.

Where a disabled person or person with reduced mobility is assisted by an accompanying person, the air carrier will make all reasonable efforts to give such person a seat next to the disabled person or person with reduced mobility.

Canada

Under Canadian Air Transportation Regulations made pursuant to the *Canada Transportation Act 1996* (Can), as of 1 January 1994 air operators have been required to offer uniform services to travellers with disabilities. Regulations also cover personnel training for the assistance of persons with disabilities.¹²

The Canadian Transport Agency (CTA) has responsibility for ensuring that all travellers (including those with disabilities) can use Canada's federally regulated air services. The CTA has developed a *Code of Practice regarding Aircraft Accessibility for Persons with Disabilities* which details aircraft equipment accessibility criteria. The Code applies to fixed wing aircraft with 30 or more passenger seats.

The Code sets minimum standards that all air operators are expected to meet and have been developed to harmonise with standards implemented in the United States and the International Civil Aviation Organisation (ICAO) and the European Civil Aviation Conference (ECAC). The CTA is responsible for monitoring the Code, which includes a complaint mechanism.

With regard to passengers travelling with wheelchairs, the Code provides:

¹² Canadian Transport Agency, *Code of Practice: aircraft accessibility for persons with disabilities* (Minister of Public Works and Government Services Canada, March 2010)

2.10 Storage Space for Passenger-Owned Wheelchairs

If the configuration of an aircraft with 100 or more passenger seats permits it, the aircraft should have storage space in the passenger cabin to carry at least one manually-operated folding or collapsible wheelchair owned by a passenger.

If it is not possible to carry a passenger's manual wheelchair in the cabin, an air carrier should make every reasonable effort to ensure that the passenger has prompt access to their own wheelchair stored in the baggage compartment of the aircraft. This access should be granted not only at their destination, but also at every stop between their origin and destination at which the passenger requests the use of their wheelchair and all passengers are permitted to deplane.

2.11 Armrests

At least 50 per cent of the aisle armrests on the passenger aisle seats in a newly manufactured aircraft should be movable. If possible, the passenger seats with movable aisle armrests should be evenly distributed throughout the aircraft.

For existing passenger seats in aircraft that are being replaced with newly manufactured passenger seats, the aisle armrests on the newly manufactured passenger seats should be movable. This practice should continue until such time as the above criteria concerning 50 per cent movable armrests and even distribution are satisfied.

Also, in those instances where the space around a passenger seat in first or business class permits the transfer of a passenger to and from an onboard wheelchair without the requirement to lift the passenger over the armrest, that seat can be considered as one with a movable armrest for the purpose of satisfying the 50 per cent and even distribution criteria.

With respect to passenger seats in first or business class that do not have enough space for such a transfer and whose current design does not permit the armrest to be movable, air carriers are encouraged to explore new designs and technology that would result in a passenger in an onboard wheelchair being able to transfer with ease to and from these seats.

2.12 Washrooms

There are two categories of aircraft: those with one aisle and those with more than one aisle. Aircraft with more than one aisle have more space. Air carriers are therefore expected, as set out below, to have these aircraft designed or retrofitted to include a wheelchair-accessible washroom. Carriers are also encouraged to be innovative and to pursue the possibility of having a washroom on these aircraft that is large enough to accommodate a person in an on-board wheelchair and their attendant.

Aircraft with only one aisle have space limitations that, in most cases, prevent a washroom from having enough room to accommodate a person in an on-board wheelchair. For this reason, air carriers are not expected to have these aircraft designed or retrofitted to include a wheelchair accessible washroom. However, these aircraft are still expected to have a washroom that contains accessibility features other than those space and location features that would make it accessible to persons in an on-board

wheelchair. Again, carriers are encouraged to be innovative and to pursue possibilities of devising means to accommodate a person in an on-board wheelchair in a washroom on these aircraft.

2.12.1 Washrooms on Aircraft with More than One Aisle

For all aircraft with more than one aisle, at least one washroom should be accessible to persons with disabilities including persons in an on-board wheelchair.

2.12.2 Washrooms on Aircraft with One Aisle

For all aircraft with one aisle, at least one washroom should be accessible to persons with disabilities with the exception of persons in an on-board wheelchair.

2.13 On-board Wheelchairs Provided by Air Carriers

On an aircraft with a washroom able to accommodate a person in an onboard wheelchair, there should be, at all times, at least one on-board wheelchair. The on-board wheelchair should have a design that permits easy transfer of an occupant and easy manoeuvring of the chair, with assistance, in the aircraft. It should have footrests, armrests that are movable or removable, an occupant restraint device and wheel locks.

In some instances, a person may be able to use a washroom that cannot accommodate an on-board wheelchair but is not able to reach the washroom from a passenger seat without the use of an on-board wheelchair. To satisfy a request for this type of wheelchair made in advance by such a person, an air carrier that operates an aircraft with 60 or more passenger seats that does not have a washroom able to accommodate an on-board wheelchair should ensure that it can carry an on-board wheelchair in the passenger cabin of such an aircraft.

I note that the Canadian approach does not contemplate airlines being permitted to limit carriage of people requiring wheelchair assistance to two.

3. The Way Forward

It is clear from concerns raised with me that there remains considerable divergence of approaches across airlines in Australia, promoted in part by the framing of the *Disability Transport Standards for Accessible Public Transport 2002* and the absence of sufficiently detailed standards in relation to airlines. This has led to differences in interpretation of legal requirements.

It is important that people with disability can consistently depend on legally enforceable and clear standards to ensure they have access to travel on a non-discriminatory basis. Reliance on purely voluntary action by carriers does not achieve this objective.

In relation to air services, as with other transport modes, it is my view that a modality-based approach must be developed at the national level to ensure that obligations on operators are clear and the intent of the DDA and the Transport Standards is achieved.

Concerns expressed in relation to air travel services by people with disability consulted as part of the 2007 review of the Transport Standards included:

- the limits imposed by airlines on the number of passengers with mobility disability;
- the failure of airline information systems to accurately record or identify the travel needs of passengers with disability;
- the inadequate training of airline staff;
- the inconsistent application of independent travel criteria, where some airlines restricted people with disability from travelling independently and some did not;
- limits imposed by airlines on the carriage of mobility aids;
- the allocation of seats that did not permit the arm-rest to be raised to allow the ease of transfer from airline seat to wheelchair; and
- dissatisfaction with boarding procedures and inconsistent policies on the use of airport wheelchairs.

Having no transparent, clear and legally enforceable standards in relation to the number of passengers who require wheelchair assistance leaves too much to chance, does not set a reasonable or measureable standard of performance and, in my view, provides too much discretion to carriers.

The lack of standardisation across the industry, even between companies that are operating similar aircraft and are subject to the same operational and safety requirements, demonstrates the urgent need for an industry-wide approach to the provision of services.

Whilst there are important differences in the regulations adopted by other jurisdictions, there are several common features that I consider should form the basis for improved outcomes in Australia:

1. A common regulatory approach across all airlines and other service providers that provides a standard level of service.
2. A clearly stated commitment to the objective that passengers with disability have the right to equal or equivalent access to services available to the general public.
3. Any refusal of service to be based on legally binding flight safety standards or the characteristics of the specific aircraft and not on the recommendations or commercial policy of air carriers or airport operators.
4. A requirement to have clear and transparent process for considering all requests for carriage of more passengers with disability on a particular flight than is stipulated by the minimum standards or the airlines own above-standard limits.
5. A requirement to provide detailed written reasons that deal with the particular circumstances if transport is denied.
6. Clear responsibility for monitoring and enforcement of implementation, including the provision of arrangements for making and addressing complaints.
7. Effective and efficient pre-notification arrangements where there is a substantiated requirement to do so, including the clear identification of responsibilities of both passengers and air service operators
8. Mandatory training of personnel.

It is acknowledged that there is often a disconnection between air service providers and those who own or control airports themselves and this can lead to a conflict over who is responsible for the delivery of non-discriminatory services. In the USA, for example, carriers are responsible for ensuring the accessibility of terminal facilities they own, lease or control; whereas in the EU airport operators are given most of the responsibility for accommodating passengers with disabilities in airports.

A number of the issues raised in relation to the current standards of air services available to people with mobility disability relates to the infrastructure and equipment available at terminals. This is a matter that requires further consideration in the Australian context, with a view to developing a consistent approach across both carriers and airport operators.

As I have indicated in earlier submissions, I believe that an industry-wide approach in which the responsibilities of airport operators and carriers are clearly articulated and comprehensive monitoring and oversight by transport regulatory authorities provides the basis for a sustainable approach to this issue.