

Thursday 30 November 2023

The Hon Catherine King MP
Minister for Infrastructure, Transport, Regional Development and Local Government
PO Box 6022
House of Representatives
Parliament House
Canberra ACT 2600

RE: Response to the *Aviation Green Paper's* Disability Access Settings

Dear Minister

Thank you for the opportunity to provide a submission to inform the *Aviation White Paper* due to be finalised and published in 2024¹. What follows is:

- A summary of Physical Disability Australia's (PDA's) members' air travel experiences as informed by responses to the *PDA Flight Experience Survey*²,
- Our thoughts on the legislative context of disability access and inclusion rights in Australia; and
- Our answers to the *Aviation Green Paper's* Disability Access discussion text and our answers to its questions³.

PDA Member Experiences

Our *Flight Experience Survey* received 25 responses in the final week of this consultation's submission window. Of relevance to this submission, the survey asked all respondents for details on:

1. Which airline they generally used;
2. How they rated their general experiences as a passenger with disability on a 5 point scale from 'Very Poor' to 'Very Good' (with the option to provide comments); and
3. If they'd had any "bad experiences" as a passenger with disability.

Respondents who answered 'Yes to the third question were then asked:

4. On which airline did these experiences occur;
5. At which airport did they occur;
6. On which part of the journey did they occur; and
7. To summarise their bad experiences.

¹ <https://www.infrastructure.gov.au/infrastructure-transport-vehicles/aviation/aviation-white-paper>

² Invitations to submit responses (through <https://www.surveymonkey.com/r/7SGQTWQ>) were sent to member via email on Wednesday 22 November with 25 responses collected by Thursday 30 November.

³ https://www.infrastructure.gov.au/sites/default/files/documents/aviation_green_paper.pdf pp.53-55

To summarise responses to the first 3 questions:

- The majority of respondents (16) mainly used Qantas when flying, with 3 using Virgin Australia, and 4 using Jetstar.
- A slim majority (13) reported their general flying experiences as either 'Poor' or 'Very Poor', 5 assessing their flying experiences as 'Neither good nor poor', and 7 declaring they were 'Good'; and
- Eighty-eight percent (22) answered 'yes' to the question: 'Have you ever had a bad experience as a passenger with disability?'

The most positive and negative of the 23 submitted comments about our members' general flying experiences were:

- ✓ I feel that Virgin Australia staff need more disability awareness training, but their aircraft are better. And vice versa with Qantas staff being well trained but [aircraft] accessibility and seats could be improved. I've had staff escort [me] from my getting out of the taxi to getting onto the plane, and someone to assist me off the plane to my taxi for both airlines so I've always felt safe when travelling alone being a person with disability.
- ✗ [I am often] treated and spoken to like cargo / an inconvenience. [I am] told I shouldn't travel alone even though I can self-transfer. [I have] had my power wheelchair broken badly at least once per year, every year for the last 20 years... [I have once] been off-boarded because they figured out too late they didn't know the size of their own cargo hold and my chair wouldn't fit even though I had provided dimensions. [I have] been physically hurt by staff not paying attention to my needs or words.

Overall, there were only 2 positive and 2 neutral comments with the remaining 19 describing experiences ranging from 'minor inconveniences' and 'inconsistent procedures' to 'traumatic'.

Twenty-one respondents provided details of specific 'bad' air travel experiences. In a similar pattern to their answers to the first question (about usual airline used for air travel), 11 named Qantas, 2 named Virgin Australia, and 4 named Jetstar as the providers responsible for this, with the remainder (4) nominating non-Australian airlines.

When asked about which airport was involved in respondent's most significant 'bad' experiences, Sydney was named by 5, Brisbane by 4 Melbourne by 3, and Perth, Adelaide, Canberra, and Newcastle by 1 each. The other responses were either international airports or unspecified.

The parts of the journey identified as being central to survey respondents' 'bad' experiences were spread across the whole air travel process. Ticketing was called-out 5 times, Check-in 5 times, Getting Through Security 4 times, Boarding and Disembarking 17 times, In-Flight 7 times, and 'Other' 3 times.

The most noteworthy comments about respondents' bad experiences were about –

Check-In

- Staff insisted that I transfer into the airport wheelchair or even a tiny aisle chair instead of allowing me to keep my own manual wheelchair up to the door of the aircraft.

Boarding and Disembarking

- Qantas wanted me to get out of my chair and crawl up the steps to board the plane because their lift wasn't working.
- [There were] delays in providing an aisle wheelchair. [Staff were] trying to debate whether it is needed, therefore contributing to [my] anxiety and worries about throwing the whole day out.
- [At the destination airport I had] to use stairs to disembark [and it] proved to be extremely challenging, painful, physically exhausting and time consuming.
- At Newcastle airport [there was no hoist] to transfer me from my wheelchair onto the aisle wheelchair. On the tarmac and in full view of everyone inside the terminal, [I had] an uncomfortable and very poor, awkward [experience being] man-handled! It resulted in my t-shirt and bra rising right up, while my pants were pulled down leaving me quite exposed!

In-Flight

- [I was told] the toilet cannot be accessed in-flight, [and that] limits the distance I can fly. [I think it's] discrimination that some people cannot use a toilet onboard.

'Other' – Lack of Care with Mobility Aids

- [My] power wheelchair was dragged from the hold, [it] bounced off the luggage conveyor belt, and became a write-off. [Airline staff] then asked me if I brought a spare chair.

PDA acknowledges that this survey has a small number of respondents⁴. However, all our Directors, with many collective years of service to the organisation between them have heard many recounts of upsetting air travel experiences on both international and domestic routes. When this and our survey respondents' testimony is considered, it is reasonable to conclude that disrespectful, discriminatory, negligent, and abusive treatment of passengers with disability is happening far too frequently in air travel contexts in Australia; a country where a lot of this alleged conduct is illegal.

Australia's Human Rights Legislative Framework

That passengers with disability still experience disrespect, discrimination, abuse and neglect at the hands of air travel operators, and that many air travel services are still inaccessible to would-be passengers with disability 30 years after the commencement of the *Disability Discrimination Act 1992*⁵ (DDA) and 20 years after the first version of the *Disability Standards for Accessible Public Transport 2002*⁶ speaks to the fundamental failure of this legislation to effectively enforce laws that are supposed to prevent the systematic mistreatment of Australians living with disability by any public transport operators and their employees, let alone those who operate in the aviation sector.

PDA asserts that this is the result of the Australian Government's long-ago decision to implement a complaint-based, and not a compliance-based, framework for its human rights legislation and attendant standards.

⁴ The survey is still open and a comprehensive report on its findings will be available on request at a later date.

⁵ <https://www.legislation.gov.au/Details/C2023C00355/>

⁶ <https://www.legislation.gov.au/Details/F2011C00213/>

Complaint-based frameworks rely on people who believe they have been subject to unlawful treatment to take responsibility themselves for bringing it to relevant authorities' attention and to prove, on the balance of probabilities, their cases.

Compliance-based frameworks, on the other hand, require those who wish to provide products and services to prove their offerings meet relevant standards before they are granted permission to sell them and, in many cases, prove ongoing compliance on a regular basis. These frameworks are also characterised by active regulation clauses that provide for meaningful breach notifications and potentially punitive and legally binding orders.

In an ideal world, the DDA and DSAPT (and all Australia's human rights legislative instruments) would have compliance-based structures such that before any air-travel operators are granted permission to provide products and services in Australia, they would have to prove:

- They have robust systems in place to support equitable access to passengers with disability;
- They operate infrastructure and vehicles that are in full compliance with the DSAPT and the *Disability (Access to Premises – Buildings) Standards 2010*⁷ (DBS); and
- Their compliance with the DDA, DSAPT and DBS is regularly audited and reported to the Department of Infrastructure, Transport, Regional Development and Local Government, the Civil Aviation Safety Authority (CASA) and a properly resourced and empowered Australian Human Rights Commission (AHRC) on a scheduled basis.

If Australia's human rights legislative framework was compliance-based, passengers with disability with grievances about their treatment by air travel operators could notify the AHRC of these and confidently expect prompt investigations of the relevant instances. They could also expect adverse findings by AHRC investigators to result in meaningful consequences for the air travel operators concerned.

Instead, Australia's complaint based human rights legislation leaves passengers with disability on their own. If they feel they have been mistreated by air-travel operators or denied access to services on an inequitable basis, they must themselves raise matters with the air travel operators concerned and/or lodge complaints with the AHRC (who can investigate and assist in the resolution of complaints, but not make any legal determinations of unlawful discrimination, nor make any legally binding orders)⁸.

PDA understands that the Australian Government is not about to change its human rights legislative framework from complaints-based to compliance-based. However, we felt it was important to include our thoughts on the implications of this arrangement to give context for our answers to the *Aviation Green Paper's* questions below.

The *Aviation Green Paper* itself notes the DSAPT *does* "articulate specific responsibilities to remove discrimination from aviation services, [but] people living

⁷ <https://www.legislation.gov.au/Details/F2020C00976>

⁸ PDA acknowledges people with complaints not resolved by the AHRC and its processes can apply to the Federal Circuit and Family, and Federal Courts to get actual legal determinations and enforced orders, but this is a daunting prospect that requires complainants to carefully assess the significant emotional and financial risks involved in such decisions.

with disability continue to encounter barriers when traveling by air". We argue that this is not surprising given the Australia's human rights legislative framework's 'lack of teeth'.

PDA's Answers to the Green Paper's Questions

1. What further improvements can be made to the DSAPT to accommodate the unique requirements of air travel?

As per the above points relating to the complaint-based nature of Australia's human rights legislative framework, PDA understands the DSAPT to be more of an aspirational target for public transport operators rather than a set of rules that must be adhered to.

That being said, there are many improvements that could be made to it that would allow justly aggrieved air travel passengers with disability to make acceptable complaints to the AHRC if they chose to do so.

To begin with, the DSAPT has many clauses that allow air travel operators to refuse or limit services to passenger with disability. These include:

- ✘ A general exemption for "small aircraft (less than 30 seats), and airports that do not accept regular public transport services from the general physical access provisions of most other public transport conveyances and infrastructure;
- ✘ No requirement for any aircraft to have special seating provisions for people with mobility and positional impairments;
- ✘ No requirement for toilets accessible with on-board aisle wheelchairs except on "wide body twin-aisle aircraft"; and
- ✘ Allowing aircraft operators to insist on "advance notice of a requirement for accessible travel" (without a reciprocal obligation to provide it);

Recommendation 1

That the general exemptions for small airports and aircraft used for public transport be revoked with the understanding that operators of these air travel assets can apply to the AHRC for an exemption from relevant DDA and DSAPT provisions⁹.

Recommendation 2

That all aircraft be required to have special seating provisions and aisle wheelchair accessible toilets (where present).

Recommendation 3

That the provision allowing airlines to require advance notice of accessible travel needs be revoked.

The above notwithstanding, PDA accepts that aircraft cannot generally incorporate the access features of land and water based public transport vehicles and so we accept the *in lieu* requirement for airlines to provide "equivalent access by direct assistance to passengers". What is missing from the DSAPT, though, are any details of what must be included in any 'equivalent access' arrangement.

⁹ As detailed in section 55 of the Disability Discrimination Act 1992

Recommendation 4

That the DSAPT incorporate minimum acceptable equipment and staff training/qualification standards for all air travel 'equivalent access' allowances.

2. *What improvements can be made to aviation accessibility that are outside the scope of the Disability Standards for Accessible Public Transport?*

In PDA's critique of Australia's human rights legislation above, we argued that its complaint-based framework was ineffective and that it allowed, for example, air travel operators to routinely fail to provide accommodations for the reasonably expectable and specific access needs of passengers with disability using air travel services, to continue doing so until apprehended.

In highlighting these consequences, PDA also accepted that the Australian Government will not be repealing and replacing all the relevant Acts and their associated Instruments, nor will it be giving the AHRC any additional powers, for the same example, to convict and sentence air travel operators for breaking the law, nor compel them to treat passengers with disability and their belongings equitably and respectfully, nor require proper compensation to them for the psychological, physical and material damages which may have resulted from offences under the DDA.

However, this does not mean that disability access provisions cannot be included in the compliance-based legislation that regulates the commercial aviation industry generally.

The legislation that compels standards compliance in all other technical and operational aspects of public transport conveyances and infrastructure should also compel operators and providers of these services to include disability access provisions too.

Just as airlines and airports are compelled by compliance-based legislation¹⁰ to ensure their premises and conveyances are fit-for-purpose, are safe to operate, and be operated in ways that are safe by appropriately qualified personnel, so too should they be compelled to provide a range of enhanced accommodations for passengers with disability so that they have equitable access to air travel.

Recommendation 5

That detailed disability access provisions be included in the enforceable regulations governing airport and aircraft certification and operation.

3. *What are the specific challenges faced by people with disability wishing to travel by air in regional and remote areas?*

PDA's Fight Experience Survey did not ask respondents about their air travel experiences in regional and remote areas. However, we have heard many reports of aircraft boarding and disembarking difficulties due to regional and remote airport not having functional passenger lifting platforms. PDA has also heard that passengers with disability have been told the small aircraft used by minor commercial aviation services are 'not accessible' and that they need to use land transport options to reach their intended destinations.

These problems would be mitigated if the Australian Government adopted this submission's recommendations 1, 2, 4 and 5.

¹⁰ <https://www.infrastructure.gov.au/infrastructure-transport-vehicles/aviation/aviation-legislation-regulation-policy/aviation-policy-regulation>

4. How can Disability Access Facilitation Plans by airlines and airports be improved?

If PDA's Recommendation 5 were to be adopted, airlines and airports would not need to develop their own Disability Access Facilitation Plans, they would just need publicly and internally assert that they will fully operate in full compliance with the disability access provisions of the commercial aviation industry's regulations... and deal with the consequences if they don't.

If disability access requirements are not written into Australia's civil air transport regulations, PDA would like to see every airport, airline, and their subcontractors instead commit to signing-on to a nationally recognised *Air Travel Operator Code of Conduct for Supporting Passengers with Disability* setting out how personnel involved in each aspect of air travel journeys – ticketing, check-in, security checking, boarding/disembarking, in-flight, and baggage handling/collection – are expected to support passengers with disability so that they have equitable access to all air travel services, and have their belongings handled with care and respect.

PDA would like to see this, and its explanatory text, developed in a codesign process that involves passengers with disability and their representative organisations. Its explanatory text should also include details about how to make complaints to an independent body (such as CASA) with the authority to make determinations about whether or not breaches of the Code have occurred and the power to hold transgressing operators to account as appropriate.

Physical Disability Australia (PDA) is **the** national peak organisation representing most passengers with disability who have experienced problems accessing air travel on an equitable basis to passengers without disability... and we have **never** been officially approached by any air travel operator to provide advice or feedback on their Disability Access Facilitation Plans. It appears to us that they are documents created by each air travel operators in vacuums such that there is no one standard access support commitment that passengers with disability can expect when the book an air travel journey.

Recommendation 6

That the Australian Government oversee the development and implementation of a compulsory and enforceable *Air Travel Operator Code of Conduct for Supporting Passengers with Disability* that guarantees universal provision of support to all passengers with disability across all stages of air travel journeys to a minimum standard of equity to passengers without disability.

5. How should the Aviation Access Forum be restructured to be more effective and better able to drive and enforce change to address issues faced by travellers living with disability?

The *Aviation Green Paper* notes that, “the [Aviation Access Forum] AAF [has] encouraged many major airline and airport operators to put in place Disability Access Facilitation Plans. However, AAF members have expressed dissatisfaction about the ineffectiveness of the AAF.”

PDA is not surprised by this. One of our Associate Directors (Pater Simpson) has attended many AAF meetings as our representative and has reported that, while many suggested improvements to air travel operator practices are made by forum members with disability, few commitments are provided by operator representatives to implement them. This is a common situation faced by many disability access and

inclusion committees established by local government and commercial entities. These groups' status as advisory bodies allow their commissioners to tick the 'consultation' box and still leave them with complete discretion on whether or not to implement committee recommendations.

In concordance with this general circumstance, the AAF's terms of reference¹¹ list only four broadly specified functions that lie strictly within the advisory realm. There is no suggestion that members of this group have any capacity to directly shape air travel operator policy, nor does the Forum's membership explicitly include air travel operator representatives with the authority to commit to adopting the Forum's recommendations for disability access improvements. If the Australian Government truly wants the AAF to be a "key forum for government and industry to come together and develop a response to deal with the discrimination", then its Terms of Reference need to be rewritten to encompass this task, and its membership needs to be expanded to include senior airline and airport office bearers (instead of just their association representatives) and similarly senior employees of the relevant government agencies that currently in the membership list¹².

Recommendation 7

That the Aviation Access Forum have its terms of reference expanded to include an active role in air travel operators' disability access relevant policies and procedural guidelines, and that its membership include air travel operator and government senior decision makers.

Conclusion

PDA has put a lot of work into this submission.

We hope its exposition of the troubling air travel experiences of passengers with disability (particularly those with mobility and positional impairments) is both shocking and disturbing.

We hope its explanation of how Australia's human rights legislative framework is not up to the task of compelling Australia's air travel operators to obey the law is both convincing and convicting.

We hope you find the bold recommendations provided in our answers to the *Aviation Green Paper's* five disability access focussed questions to be reasonable means by which you can decisively deliver dignified, respectful, and most importantly equitable air travel access for passengers with disability.

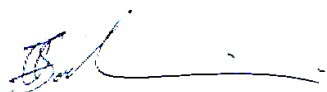
And finally, we hope you will invite Physical Disability Australia (and all the national peak Disability Representative Organisations¹³) to be key partners in finalising those sections of the forthcoming *Aviation White Paper* that will fulfil the Australian Government's commitment to "removing barriers to enable people with disability to exercise full choice and control over their lives, including accessing air travel."

¹¹ <https://www.infrastructure.gov.au/infrastructure-transport-vehicles/aviation/aviation-access-forum-aaf/terms-reference>

¹² <https://www.infrastructure.gov.au/infrastructure-transport-vehicles/aviation/aviation-access-forum-aaf>

¹³ <https://www.dss.gov.au/our-responsibilities/disability-and-carers/program-services/consultation-and-advocacy/national-disability-peak-bodies>

Yours Sincerely,



Andrew Fairbairn
President and Director (WA)
Physical Disability Australia



Simon Burchill
Executive Officer
Physical Disability Australia

About Us:

Physical Disability Australia (PDA) is a national peak membership-based representative organisation run by people with physical disability for people with physical disability. PDA was founded in 1995 and have over 1,200 members from all Australian States and Territories. Our purpose is to:

- Remove barriers through systematic advocacy to all levels of government to enable every Australian living with a physical disability opportunities to realise their full potential;
- Proactively embrace and promote difference and diversity for an inclusive society; and
- Actively promote of the rights, responsibilities, issues and participation of Australians with physical disability.

Copies of this submission will be sent to:

The Hon Amanda Rishworth MP, Minister for Social Services
The Hon Mark Dreyfus KC MP, Attorney-General
Emeritus Professor Rosalind Croucher AM, President, Australian Human Rights Commission
Ms Rosemary Kayess, Australian Disability Discrimination Commissioner
Ms Vanessa Hudson, Chief Executive Officer, Qantas Group
Ms Jayne Hrdlicka, Chief Executive Officer, Virgin Australia Group
Mr Tim Jordan, Chief Executive Officer, Bonza Aviation Pty Ltd
Mr James Goodwin, Chief Executive, Australian Airport Association
Senator the Hon Bridget McKenzie, Shadow Minister for Infrastructure, Transport, Regional Development and Local Government
The Hon Michael Sukkar MP, Shadow Minister for Social Services
Senator the Hon Michaelia Cash, Shadow Attorney General