

**SUBMISSION TO THE
REVIEW OF THE DISABILITY STANDARDS FOR
ACCESSIBLE PUBLIC TRANSPORT**



**DEPARTMENT OF INFRASTRUCTURE,
TRANSPORT, REGIONAL DEVELOPMENT &
LOCAL GOVERNMENT**

Introduction

Virgin Blue Airlines Pty Ltd (Virgin Blue) has already made a detailed submission to the *Review of the Disability Standards for Accessible Public Transport*. Virgin Blue repeats that submission and relies on it for the purposes of this further submission about the Draft Report. Virgin Blue's additional responses to issues of concern within the Draft Report are below.

Chapter 6 – Key Findings “Air Travel” – Dot Point #3

“A range of measures are in place to facilitate access to air travel for people with disability. However, experience has been that recent restrictions on the conditions of travel, for example travelling with a carer, limiting access to available space in the body of the plane and in the hold, have constrained access to air travel for people with disability.”

A significant amount of public comment has been made about carriers developing and implementing independent travel criteria, however this commentary has failed to acknowledge the obligations placed on carriers by safety regulators.

The written submission made by Virgin Blue to the *Review of the Disability Standards for Accessible Public Transport* contain a detailed analysis of the obligations placed on carriers by safety regulators and the safety criteria that underpin Virgin Blue's Independent Travel Criteria. In Virgin Blue's opinion, the Draft Report fails to comprehend that background. The Draft Report should be reviewed in that context.

Chapter 6 – Page 63 – Dot Point #4

“a reduced ability to travel independently for people with a mobility impairment. This was linked to new ‘independent travel criteria’ used by one airline to assess whether or not a person can travel without a carer.”

Again, the Draft Report fails to comprehend the obligations placed on carriers by safety regulators and the safety criteria that underpin Virgin Blue's Independent Travel Criteria. The Draft Report should be reviewed in that context.

Chapter 6 – Page 63 – Dot Point #5

“difficulties with transporting mobility aids such as wheelchairs and scooters. All airlines have limits on the size and height of mobility devices that they can carry on different aircraft due to the size of the entrance to the cargo hold. Some airlines are refusing to carry mobility aids over a certain weight and size due to occupational health and safety concerns for baggage handling staff.”

Virgin Blue has conducted a detailed analysis of the physical tasks associated with transporting wheelchairs and the risks to its ground crew in performing those tasks. In summary, that analysis (like all other analyses of manual handling restrictions across industry) demonstrates that there are limits on what Virgin Blue can safely require its baggage handling staff to do. Those safety considerations are the basis of Virgin Blue's policy to refuse to carry mobility aids over a certain weight.

Chapter 6 – Page 64 – Dot Point #1

“dissatisfaction with boarding procedures adopted by airlines that required them to transfer from their personal purpose-built wheelchairs into airport wheelchairs at the time of check-in.”

The written submission made by Virgin Blue to the *Review of the Disability Standards for Accessible Public Transport* contain a detailed analysis of the regulatory framework relevant to the carriage of wheelchairs and the practicalities of carrying these items in Virgin Blue’s aircraft. The Draft Report fails to comprehend that background and should be reviewed in that context.

For example, it is completely unrealistic to expect an airline operator to allow guests to use their personal wheelchair beyond check in **and** for the airline to comply with the *Aviation Transport Security Act 2004* and *Aviation Transport Security Regulations 2005* **and** have the aircraft leave on time.

It should be noted also that airport wheelchairs are specifically designed (sealed tubing with welded seals and seams) so as to ensure that explosives, firearms and prohibited items are not able to be hidden within the wheelchairs. This means that unlike personal wheelchairs, airport wheelchairs are more easily screened at airport screening points, which in turn assists airline operators to board mobility impaired guests in airport wheelchairs in a timely manner.

Chapter 13 – Draft Recommendation 6 – Page 172

“HREOC to be provided with powers to refer cases of breaches of the Transport Standards directly to the Federal Court.”

In Virgin Blue’s opinion, draft recommendation 6 is highly problematic. To grant HREOC a power to refer cases of breach to the Federal Court could compromise HREOC’s conciliatory function and cause participants in a HREOC conciliation to be guarded in their approach. Accordingly, if HREOC is to be granted such a power, great care will have taken to ensure that the relevant power does not compromise the integrity of the conciliation process.

Conclusion

Virgin Blue cannot and will not compromise the safety of its passengers and employees.

Clearly, Virgin Blue will do all that it reasonably can to ensure that its services are available to passengers with special needs, including those requiring mobility assistance.

However, it is Virgin Blue’s view that it is untenable to face liability for breach of discrimination laws in circumstances where the decision/action causing that liability was necessary to maintain safety and comply with safety legislation.

Virgin Blue believes that the exemptions currently provided in the *Disability Discrimination Act 1992 (Cth) (DDA)* are inadequate to deal with the circumstance where safety and discrimination obligations conflict.

In the interests of addressing the conflict between safety laws, occupational health and safety laws and the DDA, the DDA needs to be amended. The DDA clearly lacks protection in relation to decisions or actions made to discharge safety obligations.

The current exemptions provide little if any certainty or guidance about how the conflict between safety obligations and the obligations in the DDA are to be reconciled.

To address this, the unjustifiable hardship exemption in the DDA should be amended or a new exemption should be inserted to ensure that where safety and discrimination obligations conflict, safety obligations prevail as was clearly intended and articulated by the then Minister for Transport and Regional Services when he was speaking to the amendments contained in the *Civil Aviation Amendment Act 2005*, and said:

The proposed amendments will put beyond doubt the validity of some actions carried out in accordance with safety regulations where these actions may appear inconsistent with either Disability Discrimination Act 1992 or the Sex Discrimination Act 1994. In the higher interests of aviation safety it is important that the Governor-General has the power to make regulations, from time to time, that could be construed by some as inconsistent with anti-discrimination legislation.