



SUBMISSION

REVIEW OF THE DISABILITY STANDARDS FOR ACCESSIBLE PUBLIC TRANSPORT

20 July 2007

The Australian Airports Association completely supports the policy underlying the Disability Discrimination Act 1992 and the Disability Standards for Accessible Public Transport 2002. We and our member airports are very keen to ensure that, to the greatest extent practicable, people with disabilities are able to access and enjoy the facilities and services of our member airports.

At the same time, airports have onerous obligations in respect of the safety of those who use their facilities and many of these obligations derive from legally binding requirements of the Regulations, Orders and other instruments made under the Civil Aviation Act 1988.

Our concern is that, as matters stand at present, there is no way in which a conflict between the requirements of the Standards and those of the Civil Aviation legislative regime can be satisfactorily resolved by an airport operator in all cases. While the current legislation provides various mechanisms by which such conflicts could conceivably be resolved, these are either unused by Government or impracticable from an airport operator's perspective.

The Association believes that, to the extent that there is a conflict between the Standards and the Civil Aviation legislative regime, the latter should prevail because the overriding priority must be public safety. This simple objective could be achieved either by a general statement to that effect in the Standards themselves, or by the making of Regulations under section 47(2) of the Disability Discrimination Act 1992, which clearly allows for the resolution of such conflicts by regulations under that Act. We urge the review to make firm and clear recommendations for action of this nature.

We further recommend that the Standards should be amended to make clear that an airport operator can make its facilities available for use by airlines and others under leases or licences that require the lessee or licensee to meet obligations under that Standards that would otherwise fall on the airport operator.

We outline below the reasons for making these recommendations.

Part 33 of the Standards allows compliance either by meeting relevant specifications set out elsewhere in the Standards or by using methods, equipment or facilities that provide alternative means of access to the public transport service concerned with equivalence of amenity, availability, comfort, convenience, dignity, price and safety.

No doubt there may be some situations where an airport operator can take advantage of Part 33 to ensure full compliance with the Standards. The Association's concern, however, is that this is unlikely to provide a comprehensive or operationally and commercially acceptable solution to the problems we have raised.

This is perhaps best illustrated by two theoretical but nevertheless conceivable examples.

First, assume that the Standards require lighting of a particular intensity but that Civil Aviation legislation requires that lighting not exceed a specified and lesser intensity. Clearly there is irreconcilable conflict between the two. And, so far as we can see, there is no equivalent access that can be provided - other methods, equipment or facilities cannot provide equivalent amenity to that which would be provided by the lighting intensity specified in the Standards.

In such a case, we believe that the necessary solution is to allow the Civil Aviation safety requirement to override the Standards requirement. We believe this avenue should be used rather than leaving airports in a state of doubt and uncertainty as to their legal obligations and note that the Productivity Commission appears to be of the same view.

Second, assume that the Standards require that resting points be located on an apron between the terminal and the aircraft, but Civil Aviation legislation requirements ban any obstruction in the relevant areas of the apron. Part 33 would seem to allow compliance to be achieved by the provision of a wheelchair service. But this service would have to be provided by the airport operator rather than the aircraft operator. This is because the Standards tie resting points and similar obligations to the infrastructure or premises and not to the conveyances operated from them, and because the requirement for compliance is cast upon the provider of infrastructure and premises and not on the operator of conveyances using those facilities.

Generally speaking, airport operators are, from a passenger perspective, relatively “passive” providers of infrastructure and premises such as terminals and aprons, and it is airline staff who interact with passengers by operating those facilities on a day-to-day basis. For the airport operator to now be obliged to ensure that, in this example, it has sufficient additional staff and equipment available to meet and provide a wheelchair service for any flight that may arrive or depart and that may (or may not) be carrying disabled passengers is commercially and operationally onerous. In some cases this burden may be sufficient to render smaller regional and rural airports simply uneconomic to operate.

In such cases, we believe the Standards ought to specifically allow the airport operator, as infrastructure or premises provider, to make those facilities available for use by airlines and other facility lessees and licensees on the condition that it is the lessee or licensee that is bound to provide any equivalent service that is necessary to meet Standards that are not met by the facilities themselves. That is, we believe the Standards should be amended to reflect the commercial reality of airport operations by allowing the airport operator to pass on to its customers the obligation to provide equivalent access where that is necessary to meet the Standards.

We acknowledge that airports could seek exemption under the Disability Discrimination Act 1992 in order to seek to resolve conflict between the Standards and Civil Aviation safety laws. However, for a variety of reasons this is neither a satisfactory nor a practicable option:

- (a) the test for exemption, that compliance would cause ‘unjustifiable hardship’, is extremely vague and subjective and, more fundamentally, simply not apposite to a fundamental conflict between legislative requirements imposed by the one Government;

- (b) as a result, without seeking exemption in every case of possible conflict, airport operators cannot have a sufficient degree of certainty about the likely impact of the Standards on their operations to give them the confidence they need to enter into the capital expenditure and other financial commitment, now and in the future, that is necessary to ensure a progressive airport industry; and
- c) the ‘opportunity’ to seek and obtain from HREOC an exemption from the Disability Standards the Disability Discrimination Act is uncertain and inadequate, as exemptions are only available case-by-case, airport-by-airport, and for a maximum period of 5 years.

As a result, it is not possible for an airport operator to readily ascertain with clarity and certainty the law with which it is bound to comply. Affected parties are likely to face legal and practical difficulties in ascertaining whether or not the consequences of not complying with a Civil Aviation safety requirement amount to an ‘unjustifiable hardship’ and would attract an exemption, or in determining the maximum extent to which they can comply with the Disability Standards without incurring ‘unjustifiable hardship’.

In conclusion, therefore, the Association urges the review to recommend that a clear mechanism be adopted (whether in the Standards themselves or by Regulations under the Act) to ensure that, because of the predominant interest of the community in ensuring safe access to aeronautical facilities, civil aviation safety requirements should always prevail over requirements set out in the Standards in the event of any inconsistency between the two, and further that the Standards be amended to allow an infrastructure owner to contract with its lessees or licensees so that they are required to meet obligations under the Standards that would otherwise have to be met by that owner.