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Senate Rural and Regional Affairs and Transport Committee  
Department of the Senate  
PO Box 6100  
Parliament House  
Canberra ACT 2600

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## **Senate Inquiry into the investment of Commonwealth and State funds in public passenger transport infrastructure and services**

### **Introduction:**

The NSW Disability Discrimination Legal Centre Inc (NSW DDLC) welcomes the opportunity to contribute to the Senate Inquiry into the investment of Commonwealth and State funds in public passenger transport infrastructure and services.

We would like to state from the outset, that it is our position that the needs of people with disability be considered in every aspect of the investment of Commonwealth and State funds in public passenger infrastructure and services.

Attached to this letter, at Appendix 1, is a description of the work of our organisation.

This submission will focus on:

1. An assessment of the state of public passenger transport, including domestic airline travel, and public passenger transport more generally in Australia in providing reliable, consistent and accessible services to people with disability;
2. Highlighting the lack of improvement of infrastructure and provision of services within public passenger transport for people with disability;
3. Demonstrating the benefits of providing accessible public passenger transport;
4. Highlighting the best practice international examples of public passenger transport services and infrastructure.

5. Making recommendations for how the Commonwealth Government could facilitate improvement in public passenger transport services and infrastructure; and
6. The role of Commonwealth Government legislation, taxation, subsidies, policies and other mechanisms that either discourage or encourage public passenger transport; and

This submission largely draws from two recent studies the NSW DDLC has contributed to: *the 2007 Submission to the Review of the Disability Standards for Accessible Public Transport 2002*, and *Flight Closed: a Report on the experience of People with Disabilities in Domestic Airline Travel in Australia*, a 2007 report. These submissions are attached at Appendix 2 and Appendix 3.

*The Submission on the Review of the Disability Standards for Accessible Public Transport 2002* was based largely on anecdotal case studies collected by the NSW DDLC with the assistance of People with Disability Australia Inc (PWD). Case studies were called for by way of an email to the membership of PWD, requesting that members call, email or mail NSW DDLC about their experience of using public transport.

*Flight Closed: a Report on the experience of People with Disabilities in Domestic Airline Travel in Australia* was prepared by the Public Interest Advocacy Centre (PIAC) in collaboration with the National Accessible Airlines Steering Group, with the NSW DDLC undertaking a collaborative role. Between November 2006 and May 2007, 110 case studies were collected for the writing of *Flight Closed*.

The two key instruments which regulate disability access to public passenger transport are the *Disability Standards for Accessible Public Transport 2002* made under the *Disability Discrimination Act 1992*, (the standards), and the *Disability Standards for Accessible Public Transport Guidelines 2004 (No. 3)* (the guidelines.)

**1. An assessment of the state of public passenger transport, including domestic airline travel, and public passenger transport more generally, in Australia in providing reliable, consistent and accessible services to people with disability;**

Case studies collected from the two studies that the NSW DDLC has been involved in show that the state of public passenger transport in providing service to people with disability is unsatisfactory. Case studies highlight problems with:

- Announcements being made over audio equipment on ferries and other forms of transport which are not accessible to those with hearing impairments;
- Operators of transport sometimes are unaware of their obligations, for example, in one situation a bus driver refused to carry a passenger who used a wheelchair, saying he did not take electric wheelchairs, when in fact he was required to; taxi drivers or bus drivers refusing to carry passengers with guide dogs or assistance animals.

- An emergency evacuation of a train left a passenger with a mobility aid, alone, after everyone else had been evacuated, in a train at night time for 4 hours, and was not rescued until he called the police.
- People with “invisible” disabilities reported being challenged by service providers about their disability, and in one case, a woman with arthritis was unable to board a bus as it pulled up too far from the kerb.
- A person with an intellectual disability was not given access to an accessible toilet, as he did not use a mobility aid, yet he required assistance from his companion in a larger toilet.
- Communication and assistance on airline travel: a passenger with slight cerebral palsy met the requirements for independent travel. Because she met these requirements, she was not given assistance in wheeling her chair to and from the aircraft, or assistance with collecting her luggage. Similarly, another case study highlighted a lack of assistance for the traveller getting around the different parts of airport facilities. One passenger was allowed to travel independently on one leg of his trip, but upon his return, was told that the policy had changed and he was now required to travel with a companion. He was given no notice of this change in policy.
- Inflexible application of rules – one airline’s policy states that wheelchairs must be stowed upright in the free wheel mode. However, many wheelchairs which are typically stored on their side, when put in the upright position, are too large for the hold, and thus cannot be carried.
- Passengers on airlines and other forms of transport often have to rely on other passengers to help them move from one part of a terminal to another, due to unreliable assistance from the airline.
- Public passenger transport is particularly poor in rural and regional areas. The incidence of people with a disability is higher in rural areas than it is in urban areas<sup>1</sup>. The long distance travel involved in rural travel often mean that private vehicle travel is too expensive, especially for people with disability, who are often on disability support pensions, or work part time. Thus the need for accessible, frequent and reliable public passenger transport in regional areas is vital. The lack of public transport in rural areas is especially problematic for indigenous Australians with a disability: the incidence of disabilities is significantly higher for those living in Aboriginal communities, with a higher percentage of hearing and vision impairment<sup>2</sup>. Public funding in this area has potential to improve the quality of life for both Indigenous and non-Indigenous Australians with a disability living in remote areas.

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<sup>1</sup> [http://www.ofw.facsia.gov.au/publications/rural\\_womens\\_summit/p15.htm](http://www.ofw.facsia.gov.au/publications/rural_womens_summit/p15.htm)

<sup>2</sup> Moreover the incidence of disabilities is markedly higher for women with disabilities in Aboriginal communities, including a higher incidence of hearing and vision impairment - [http://www.ofw.facsia.gov.au/publications/rural\\_womens\\_summit/p15.htm](http://www.ofw.facsia.gov.au/publications/rural_womens_summit/p15.htm)

Poor training and understanding amongst staff, poor communication between different parts of the transport provider and to the customer, a lack of infrastructure, inflexible application of rules, and a lack of understanding some service providers have of their legal obligations seem to be the key problems.

## **2. The lack of improvement of infrastructure and provision of services within public passenger transport for people with disability;**

### **In relation to air travel**

The deregulation of the airline industry in Australia, together with technological advances, has meant that Australians now have increased access to a greater frequency of flights, going over more routes, for a cheaper price than in the past. However, these gains do not extend to many people with a disability. In fact, case studies from the *Flight Closed* study indicate that some people with disability feel they are perhaps even worse off than they were a decade ago.

Some participants in the *Flight Closed* study reported that they had travelled regularly for many years, but had only recently encountered problems. One of the main reasons for this are changes to baggage handling practises, due to occupational health and safety concerns, which have meant that often wheelchairs cannot be transported. Similarly, restrictive practises such as the application of 'independent travel criteria'<sup>3</sup>, as imposed by Virgin Blue and requirements when travel with assistance animals has made travel for people with disability less accessible. Case studies from the *Flight Closed* report also reveal how inflexible security arrangements lead to delays, embarrassment and in some cases injury<sup>4</sup>.

It is disappointing that since the introduction of the *Disability Standards for Accessible Public Transport 2002*, there has been little improvement.

## **3. Demonstrating the benefits of providing accessible public passenger transport**

### **In relation to public transport generally**

Providing public passenger transport services which are equally accessible to people with disability has far reaching benefits both to individuals with a disability, their families and friends, and the greater community.

Providing public passenger transport which is accessible to people with disability is necessary to ensure Australia's international human rights obligations are met. For example, Australia has ratified the *United Nations Convention on the Rights of Persons with Disabilities*, which in Article 9, provides that:

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<sup>3</sup><http://www.virginblue.com.au/Personal/Flightinfo/BeforeYouFly/SpecialNeedsandAssistance/IndependentTravelCriteria/index.htm>

<sup>4</sup> NSW Disability Discrimination Legal Centre Inc and Public Interest Advocacy Centre *Flight Closed: a Report on the experience of People with Disabilities in Domestic Airline Travel in Australia*, (December 2007) p.47

“To enable persons with disabilities to live independently and participate fully in all aspects of life, States parties shall take appropriate measures to ensure to persons with disabilities access, on an equal basis with others, to the physical environment, to transportation, to information and communications, ... and to other facilities and services open or provided to the public, both in urban and rural areas. These measures, which shall include the identification and elimination of obstacles and barriers to accessibility, shall apply to, inter alia (a) transportation....”

Providing an adequate and accessible system of public passenger transport has great benefits for all Australians, including those with a disability:

- It assists people gain and retain employment;
- It facilitates maintenance of family relations and social networks;
- It facilitates independent participation in social, community, academic, sporting, civic and political pursuits;
- It ensures that family and carers of people with disability are not relied on solely or primarily for the transportation of people with disability, and people with disability are able to travel independently;
- It allows everybody to make contributions towards decreasing private passenger transport, thus facilitating involvement of everyone in efforts to find a minimising environmental impact;
- It has the potential to facilitate reconciliation. The indigenous population has a high prevalence of disability, approximately twice that of the non-indigenous population<sup>5</sup>. This is a result of poor health care, poor nutrition, exposure to violence and psychological trauma, substance abuse and breakdown of traditional community structures. Many remote indigenous communities have little or no access to public transport. This has the effect of preventing indigenous people with a disability from participating in ‘mainstream’ and community activities. It results in confinement to homes, reduced access to employment or education and poor physical, social and mental health outcomes. By improving accessible public transport in remote communities, indigenous people’s access to health care, education, jobs, and community activities will improve. Improved participation in indigenous culture will help preserve these traditions. Thus improved access to public passenger transport in indigenous areas will assist in the process of reconciliation between indigenous and non-indigenous Australians.

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<sup>5</sup> Aboriginal Disability Network, *Telling it Like it Is*, a report on community consultations with Aboriginal people with disability and their associates throughout NSW, 2004-2005.

## **In relation to air travel**

Airline travel poses a particular problem in terms of accessibility for many people with disability. Practically, many destinations in Australia can only be reached by plane, and thus where public passenger airline services are inaccessible, unreliable or traumatic for people with disability and their companions, a serious problem is posed.

Minimum spending by airlines to improve service and accessibility to services would lead to greater economic, community, civic and social participation by people with a disability, and much broader community gain, by:

- Assisting people to gain and retain employment, undertake training and professional development, and minimising risk of job loss;
- Increasing respite options;
- Facilitating maintenance of family relationships, and reducing risk of premature entry into care as a result of family breakdown, thus improving quality of life for people with disability and their family members, and reducing reliance on social services and health care;
- Increasing opportunities for social, community and civic participation, thus reducing isolation and associated mental health risks, and reducing reliance on health care. For example, those participating in sporting, community, travel or social clubs, will be able to participate in inter-state activities. Reduced access to opportunities to engage in civic duties, such as consultation, means that government awareness of disability needs and decision-making is poorer;
- Supporting the tourism industry – domestic tourists account for 76% of the revenue for the industry<sup>6</sup>. If people with disability and their families had equitable access to airline services, the tourism industry would be bolstered;
- Upholding the intrinsic values of the community, such as promoting social justice, and ensuring that all people in our society are valued, treated fairly, and encouraged to participate in work, family, community and civic activities and treated with dignity; and

Accordingly, improving airline services for people with disability would have a profound impact not just on people with disability, but on the economy and the greater community. In fulfilling our international human rights obligations of providing a public passenger service that is accessible to everyone, all members of society are valued, everyone has the opportunity to contribute, and differences can be celebrated.

## **4. Highlighting the best practice international examples of public passenger transport services and infrastructure.**

### **In relation to public passenger transport generally**

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<sup>6</sup> Ibid., p. 47

Well trained staff is essential in ensuring that accessible infrastructure and vehicles actually results in the delivery of good transport service to people with disability. This view is shared by the US Department of Transportation and the New Zealand Human Rights Commission.

The US model could provide guidance for Australia in providing similar services. The US Code of Federal Regulations, in implementing the transport provisions of the *Americans With Disabilities Act 1990*, includes a requirement that operators:

“shall ensure that personnel are trained to proficiency, as appropriate to their duties, so that they operate vehicles and equipment safely and properly assist and treat individuals with disabilities who use the service in a respectful and courteous way, with appropriate attention to the difference among individuals with disabilities.”<sup>7</sup>

#### **Recommendations – in relation to public transport generally**

- *The NSW DDLC recommends that public passenger service providers are under an obligation to ensure that, at any given time, employees are trained to proficiency both in technical tasks and in the human dimension of providing services to people with disability. It is necessary that staff possess both technical skills, and understand the need to treat people with disability with dignity, courtesy and respect.*

#### **In relation to airline travel**

The European Union, Canada and the USA have separate regulations and standards for the airline industry’s provision of service for people with disability, which are monitored by their respective transport agencies<sup>8</sup>. In Australia, although the Civil Aviation Safety Authority monitors airlines in relation to safety, it does not regulate the airline in relation to their service for people with disability.

The Standards are applied to all forms of public transport, are not specific to the particular problems faced by air travel, and do not address issues specific to the industry.

In the USA, the US Department of Transportation has created a body called the ‘Aviation Consumer Protection Division’, which monitors complaints about airlines, and monitors adherence to various laws and rules applicable to airlines, such as the *Air Carrier Access Act 1986*, which prohibits discriminatory treatment of people with disability in air transportation. The Aviation Consumer Protection Division:

- Receives complaints from the public;

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<sup>7</sup> 49 CFR § 37.173.

<sup>8</sup> NSW Disability Discrimination Legal Centre Inc and Public Interest Advocacy Centre *Flight Closed: a Report on the experience of People with Disabilities in Domestic Airline Travel in Australia*, (December 2007) p. 36

- Verifies compliance with the Department of Transportation’s Aviation consumer protection requirements;
- Provides guidance to the industry and makes available to the public certain information;
- Makes annual submissions to the US Congress summarising key issues; and
- Manages a toll-free hotline which assists travellers with disability by providing general information, and assisting with time-sensitive disability related issues to be addressed urgently.

In the USA there are also regulations which provide that screening of people with disability must be the same as for other passengers<sup>9</sup>.

#### **Recommendations – in relation to airline travel**

- *The NSW DDLC recommends that a standard be developed specific to the airline industry, similar to that in the USA, Canada, the UK and the EU and that this standard be monitored by an independent agency. The national transport agencies of these countries also produce specific publications for people with disability travelling by air, describing their rights and obligations based on their respective regulations, standards and codes of practice. A similar industry wide publication would also be useful for domestic airline passengers in Australia.*

### **5. Recommendations for how the Commonwealth Government could facilitate improvement in public passenger transport services and infrastructure**

#### **In relation to airline travel**

In relation to airline travel, it is recognised that changes can be made without government intervention. For example, airlines could create internal policies in line with our recommendations, for minimal cost. Further changes to staff training policies, to increase training in both the technical and human element of providing services to people with disability would have a positive effect.

However, to ensure industry wide compliance, it is recommended that a separate industry body monitors the industry, and a Code of Practice is developed for the airline industry, including providing a consumer complaints body. Reliability is a very significant factor in motivating people to use airline services, and case studies have demonstrated that one bad experience can deter people from travelling on that form of transport for a very long time. Thus in order to achieve consistency across the board, an industry-wide body needs to be created.

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<sup>9</sup>Ibid., p. 51



### **Recommendations – in relation to airline travel**

- *The NSW DDLC understands that the Commonwealth Government proposes to create the Aviation Disability Access Working Group to consult with and give recommendations on legislative and policy changes. The NSW DDLC recommends that this be expedited.*
- *The NSW DDLC recommends the Commonwealth Government develop a code of practice for the airline industry, administered by an industry wide body. This code of practice could set out the obligations of the airline industry and the rights of consumers. It is recommended that a complaints process be established that allows consumers and their representative bodies to seek changes to transport infrastructure and practices based on compliance with the Standards. It should not be reliant on individuals seeking redress for a specific occasion. Transport providers should also demonstrate compliance by providing data to the responsible government department and to the public.*

## **6. Roles of commonwealth and other policies, laws, and mechanisms which have the effect of discouraging use of public transport, and encouraging it.**

The Standards have potential to significantly reform the state of public passenger transport in Australia. However, amendments to the Standards are required.

### **Recommendations**

*The NSW DDLC reiterates many of the recommendations made in the Submission to the Review of the Disability Standards for Accessible Public Transport, and recommends that:*

- *The Standards be amended to set out a statement of values, which embody the objectives sought to be achieved by the Standards, whilst maintaining the prescriptive and technical aspects of the Standards. This will lead to a greater understanding of the reasons underlying the Standards, and it is predicted this will promote compliance.*
- *The Standards include an obligation that operators ensure all their staff are proficiently trained in disability awareness, the operation of equipment and facilities and the treatment of people with disability with courtesy and respect. Many of our case studies demonstrate embarrassment, hurt and frustration was experienced by those travelling with a disability as a result of rudeness from staff when assistance was requested; challenges to disabilities that are less visible; inflexible application of policies; and embarrassment about having personal questions about toileting asked in front of other passengers. Such training should include training in relation to assistance animals, and in how to resolve conflicts between meeting safety requirements and providing accessibility.*

- *The Guidelines be clarified to ensure that an assistance animal is not subject to a fare or to any other charge that a person without an assistance animal is not subject to. Similarly, this submission recommends that there be no additional charge for assistance with boarding, carrying luggage etc.*
- *In an emergency situation, such as an evacuation, operators must take all steps reasonably practicable to minimise risk to people with disability. This recommendation stems from one of the case studies the Submission to the Review of the Disability Standards for Accessible Transport used, which told of a passenger being stuck on a train at night, alone, after all other passengers had been evacuated, for nearly 4 hours, being rescued only after calling the police.*
- *Guideline 15.1 be amended to state that the intent of the standards is that all people with a disability should have access to accessible toilets, as well as stipulating size so that those with mobility aids have access. A case study in the “Review of the disability standards for accessible public transport 2002” reports of an intellectually disabled man who was refused access to the accessible toilet where his carer could assist him, on the basis that he did not use a mobility aid, and was made to use a regular toilet. It is recommended that, where possible, accessible toilets are kept open, not locked, and are open to all people with a disability to use, whether or not they use a mobility aid.*
- *The Standards be amended to include a requirement that all information about service changes be provided in accessible formats as far as reasonably practicable*
- *Whilst the Standards set out a minimum size allotted for carry of a wheelchair, the standards do not currently require that a service provider carry a wheelchair. It is recommended that Standard 9.1 be amended to impose a requirement that operators carry the wheelchair or similar mobility aid of any passenger which fits within the minimum allocated space set down by Standard 9.1.*
- *The Standards should require operators to permit people with a disability to opt to use their own equipment where this achieves the same objective as the equipment provided by the operator.*

The cost of transport is always a significant factor in travel for people with disabilities, and thus it is vital that the Standards properly embody the fact that travellers with disabilities should not have to pay more, whether they are travelling with a mobility aid, assistant or companion animal. We note that while the introduction of the Companion Card<sup>10</sup> in NSW will enable assistants to travel free of charge on public transport, this is not consistent throughout Australia.

The Standards have not been tested by case law. Further, there is no body responsible for monitoring adherence to the Standards on an ongoing basis.

In order for the Standards to be tested, it is necessary for individuals to make complaints to AHRC. Only once a complaint has been made are investigations instigated. Due to the cost

<sup>10</sup> <http://www.dadhc.nsw.gov.au/dadhc/Carers/NSW+Companion+Card.htm>

risk burdened by the complainant, only a few cases which consider the Standards will end up in court. Therefore, a monitoring body, which deals with consumer complaints, and monitors adherence to Standards, and is not solely reliant on individual complaints is required.

- *Compliance with the Standards needs to be monitored, and consistently applied. Currently, the Standards are only monitored via individuals making a complaint to the Australian Human Rights Commission (AHRC).*
- *Monitoring adherence to the Standards will ensure a concrete progression towards a transport system which is free from discrimination against people with disability.*

## **Conclusion**


Our submission outlines the difficulties faced by people with disability of accessing public passenger transport infrastructure and services, including airline travel, and has made recommendations as to how these difficulties may be overcome. It also highlights the advantages of making public transport accessible.

It is our position that the needs of people with disability should be a fundamental consideration in all stages of investment of Commonwealth and State funds in public passenger transport infrastructure and services. In addition to the recommendations set out in the submission, it is imperative that mechanisms are put in place to ensure compliance with the *Disability Discrimination Act 1992* and the *Disability Standards for Accessible Public Transport 2002*.



**Fiona Given**

**Policy Officer, DDLC**



**Joanna Shulman**

**Principal Solicitor, DDLC**

## **Appendix One**

### **About NSW DDLC**

The NSW DDLC was established in 1994 to help people with disability understand and protect their rights under disability discrimination law. We do this through the delivery of direct legal services to people with disability, delivery of community legal education and undertaking policy work. NSW DDLC aims for a society where people will be able to participate in all aspects of life through the:

- removal of barriers;
- elimination of discrimination;
- empowerment of people with disabilities;
- promotion of awareness; and
- the ability to exercise rights.

NSW DDLC's objectives are:

- To promote community awareness of the potential to use discrimination laws to advance the rights of people with disabilities;
- To provide legal services for people with disabilities, their associates and representative organisations, who have been discriminated against;
- To ensure the effective participation of people with disabilities in the management and operation of the Centre;
- To reform laws and change policies, practices and community attitudes that discriminate against people with disabilities;
- To develop and be involved in appropriate networks; and
- To maintain the necessary infrastructures and administration systems in order to further the Centre's aims and objectives.

NSW DDLC's staff comprises of a principal solicitor, solicitor, policy officer, operations manager and volunteer law and social-work students and graduates. NSW DDLC services all of New South Wales.

NSW DDLC has recently been involved in the development of the Convention on the Rights of Disability at the United Nations level. We also convene the National Network of Disability Rights Legal Service Providers. More information about NSW DDLC and our work can be found at [www.ddlcnsw.org.au](http://www.ddlcnsw.org.au).

## **Appendix Two**

*Submission to the Review of the Disability Standards for Accessible Public Transport 2002*

## **Appendix Three**

*Flight Closed: a Report on the experience of People with Disabilities in Domestic Airline Travel in Australia*