



Australian
Human Rights
Commission

Submission to the Aviation Green Paper

Australian Human Rights Commission

30 November 2023

ABN 47 996 232 602
Level 3, 175 Pitt Street, Sydney NSW 2000
GPO Box 5218, Sydney NSW 2001
General enquiries 1300 369 711
Complaints info line 1300 656 419
TTY 1800 620 241

Australian Human Rights Commission
www.humanrights.gov.au

Contents

1	Introduction	3
2	Human Rights framework	3
2.1	United Nations Convention on the Rights of Persons with Disabilities (CRPD).....	3
2.2	Disability Discrimination Act.....	4
2.3	Complaints data.....	5
3	Recommendations.....	7
3.1	Consultation with people with disability	7
3.2	Reform to the human rights framework.....	8
3.3	Need for an Inquiry into disability issues.....	8
4	Appendix – Complaints data.....	2

1 Introduction

The Commission welcomes the opportunity to prepare this submission in response to the Aviation Green Paper.

The Commission acknowledges the commitment of the Australian Government, and particularly the Departments of Social Services and the Department of Infrastructure, Transport, Regional Development, Communications and the Arts (DITRDCAA) to improving the air travel experience for people with disability. The inclusion of disability access as a dedicated theme is a welcome and needed addition in the Green Paper.

2 Human Rights framework

2.1 United Nations Convention on the Rights of Persons with Disabilities (CRPD)

Australia is obligated by international human rights law, and as a signatory to the United Nations *Convention on the Rights of Persons with Disabilities* (CRPD), to ensure that the fundamental human rights and freedoms of all people with disability are promoted, upheld and protected.¹ This includes through effective legislative, administrative, or other measures, as outlined in Article 4 of the CRPD (general obligations),² which lays out a roadmap towards the progressive realisation of the CRPD in domestic law and policy.

The obligations under the CRPD apply to all levels of government in Australia (i.e. Australian, State, Territory and Local governments).³

Article 4 of the CRPD sets out the obligation of States to take ‘all appropriate measures to eliminate discrimination on the basis of disability by any person, organisation or private enterprise’.⁴ Non-discrimination is one of the general principles of the CRPD (article 3), guiding the interpretation of how individual CRPD rights apply.

Accessibility is a core principle⁵ and human right under the CRPD, with specific provisions outlined in Article 9.⁶ The CRPD also includes a general obligation to provide ‘reasonable accommodations’ to ensure people with disability can enjoy their human rights and fundamental freedoms on an equal basis as others.⁷ This obligation supports systemic accessibility provisions to ensure individuals receive tailored and appropriate supports to facilitate their participation. Furthermore, Article 31 of the CRPD states the requirement to collect appropriate information,

including statistical and research data, to enable the formulation and implementation of policies that give effect to obligations under the CRPD.⁸

Accessible transport is fundamentally connected to the rights to individual autonomy and independence, personal mobility, non-discrimination, community inclusion and participation for people with disability. It is therefore critical that the Aviation White Paper, where it concerns the accessibility of air travel, be framed in the context of, and in a way that seeks to give effects to obligations contained in, the CRPD.

2.2 Disability Discrimination Act

The *Disability Discrimination Act 1992* (Cth) (Disability Discrimination Act) is the federal legislation that aims to eliminate discrimination against people with disability in areas of public life, including in public transport.

The *Disability Standards for Accessible Public Transport 2002* (Transport Standards) are formulated under subsection 31(1) of the Disability Discrimination Act to remove discrimination for people with disability when accessing public transport services. The Transport Standards require all of Australia's public transport networks and associated infrastructure (except for buses and trams) to be fully accessible by the end of 2022. It should be clarified that this has not materialised.

Despite being in operation for 20 years, a lack of effective enforcement and reporting mechanisms under the Transport Standards – and the Disability Discrimination Act more broadly – results in low motivation and no incentive for compliance by transport providers. Reviews and reforms of the Transport Standards have not resulted in improvements in their operations, nor have they adequately considered airlines and the airline industry.

In its 2019 review of Australia's implementation of the CRPD, the United Nations (UN) Committee on the Rights of Persons with Disabilities recommended that Australia

Establish and enact a national framework for mandatory compliance reporting of the Disability Standards for Accessible Public Transport, the Disability (Access to Premises-Buildings) Standards, and the National Standards for Disability Services.⁹

This recommendation has still not been implemented and is repeated here.

Recommendation 1: The Australian Government should establish and enact a national framework for mandatory compliance reporting, as per the recommendation made by the UN Committee on the Rights of Persons with Disabilities. Compliance data should be collected on a mandatory basis on

all assets covered by the Transport Standards. All data collected should be done so at regular intervals, made publicly available and reported upon periodically.

The Commission refers DITRDCA to its submission to the 2022 review of the Transport Standards, provided in attachment, which outlines in great detail how the Transport Standards fail to achieve their intended purpose to remove discrimination in public transport. In its Free & Equal Project, the Commission has also considered the general effectiveness of Disability Standards made under the Disability Discrimination Act. The Commission recommends that existing Disability Standards be subject to an independent review, including the effectiveness of the current legislative, governance, policy and practice arrangement in place to implement and achieve compliance.

The Green Paper seeks views on the development of an aviation specific Standard under the Disability Discrimination Act. Further consideration needs to be given to this proposal to assess whether it would be effective and sufficient in achieving the changes required, given the known limitations of the current legal framework – see section 3.3.

It is also crucial to consider the significant reform agenda that will flow from the recommendations made by the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (Disability Royal Commission), particular those recommendations relating to the Disability Discrimination Act and enactment of a Disability Rights Act. While a government response to the Disability Royal Commission report has yet to be issued, there are likely to be legal implications that need to be considered.

2.3 Complaints data

The complaints mechanism available under the *Australian Human Rights Commission Act 1986* (Cth) remains the only legal avenue to monitor compliance with the Disability Discrimination Act and Transport Standards, but data from the last ten year clearly shows that this complaints pathway is underutilised in relation to discrimination on the ground of disability in air travel.

The Disability Discrimination Act receives the highest number of complaints compared to other Discrimination Acts. In the 2021–2022 reporting year, 52% of all complaints received by the Commission were lodged under the Disability Discrimination Act.

In the first six months of the 2022–2023 reporting year, there were approximately 41 complaints alleging discrimination against public transport providers lodged under the Disability Discrimination Act. Over half of these (58%)

were in relation to airlines or air travel, with the remainder including bus, train, tram, taxi and ride-share.

There are few complaints that specifically refer to the Transport Standards. In the 2022–2023 reporting year, only eight complaints were made under the Transport Standards. Of these, six were associated with air travel, the remaining two were train and tram complaints. See the **Appendix** for an overview of complaints made to the Commission in relation to air travel since 2013. The number of complaints has remained more or less consistent since 2013, with a noticeable increase in the last financial year.

It should be specified that the Commission’s complaints data is not a comprehensive representation of the issues because it does not account for complaints lodged directly with airlines or airports, or with State-based regulator (such as Transport Ombudsman and Equal Opportunity / Human Rights Commissions). The Commission does not have visibility of complaints made to other agencies, and therefore is unaware of alternative avenues being pursued by aggrieved persons with disability.

The model in federal discrimination law is complaints-based and reliant on a hybrid Alternative Dispute Resolution (ADR) model, based on conciliation of individual complaints. Aggrieved persons who allege discrimination on the basis of disability in air travel can lodge a complaint with the Commission and if accepted, the matter will proceed to conciliation. If a settlement cannot be reached through conciliation, the aggrieved person can institute civil proceedings in the Federal Circuit Court or Federal Court and seek a range of enforceable remedies, including damages.

In carrying out its complaints handling functions, the Commission observes that a number of complaints against airlines resolve through conciliation, however these tend to achieve individual remedies rather than systemic outcomes. Very few complaints about disability discrimination in air travel have been brought to court.

Furthermore, the complaint process is known to be onerous on individuals, and therefore it is also reasonable to suspect that many people who have poor experiences in air travel chose to not lodge a complaint at all. In the case of complaints related to air travel, the power difference between complainant and respondent (i.e. large airlines and airports) can feel insurmountable.

In its Free & Equal Position Paper – *A reform agenda for federal discrimination laws* – the Commission proposes a responsive regulatory framework to promote and enforce compliance with federal discrimination law, and to enhance complaints processes.¹⁰ While the Position Paper focuses on broad reform across all four

federal discrimination laws, it provides an insightful evidence base for strengthening and modernising regulatory frameworks, relevant to the Disability Discrimination Act and Disability Standards.

3 Recommendations

3.1 Consultation with people with disability

The Commission welcomes the references to the Aviation Access Forum (AAF) in the Green Paper, and the demonstrated willingness of the Australian Government and specifically DITRDCA to improve the AAF's operation.

The AAF provides advice to the Australian Government on policy, operational and administrative issues associated with disability access to airline and airport services. It does not have decision-making authority, with terms of reference being clear on the AAF being a consultation and information sharing mechanism.

The Disability Discrimination Commissioner sits alongside representatives from major Australian airlines and disability organisations as a member of the AAF.

As a consultative forum, the AAF has limited authority to influence policy decisions. DITRDCAA should re-establish a robust governance and reporting framework, and associated resourcing, for the AAF to have a meaningful impact. At a minimum, this should include:

- a clear mandate, with Ministerial and / or Senior Executive support, for the AAF to inform policy decisions
- a workplan setting out deliverables, timelines, and individual responsibilities among AAF members
- a clear reporting framework and structure into Senior Executive and / or Ministerial forums, for advice from the AAF to be dutifully considered in policy making
- necessary and adequate resourcing, including Secretariat support and funding, to undertake key activities set out in the workplan
- payments (for example, sitting fees) for people with disability to be involved in the AAF.

Recommendation 2: The Department of Infrastructure, Transport, Regional Development, Communications and the Arts should re-establish the Aviation Access Forum (AAF) as an advisory group with a clear governance

and reporting framework, prioritising the participation of people with disability as members and for lived experience consultation on the development and implementation of legislation, policies and services.

Recommendation 3: The Department of Infrastructure, Transport, Regional Development, Communications and the Arts should provide dedicated resourcing and funding for the administration and operation of the Aviation Access Forum (AAF).

3.2 Reform to the human rights framework

The Commission has long been advocating for reform to federal discrimination law, and for the re-establishment of a robust Australian Human Rights Framework.

In its Free & Equal Project, the Commission puts forward an agenda for legislative reform to discrimination law, including the Disability Discrimination Act, and proposes a model for a national Human Rights Act. Importantly, these two areas of reform would introduce legislative mechanisms (such as a positive duty) seeking to prevent human rights violation, in contrast with the reactive / complaints-based model presently in operation.

The Disability Royal Commission made recommendations for reform to the Disability Discrimination Act which, for the most part, align with the Commission's Free & Equal agenda.

Recommendation [#]: The Australian Government should implement the Australian Human Rights Commission's Free & Equal agenda for reform to discrimination law.

Recommendation [#]: The Australian Government should introduce a national Human Rights Act and Human Rights Framework.

3.3 Need for an Inquiry into disability issues

There are further regulatory complexities that are particular to air travel: the shared jurisdiction between the different levels of Government within Australia (state, territory, and Commonwealth) and between the domestic and international spheres; shared responsibilities between entities (airlines vs airports); and the necessarily strict security requirements that apply to aviation.

The Commission welcomes the Green Paper's intention to introduce a Customer Rights Charter for the aviation industry, and the proposal to strengthen the role of the Airline Consumer Advocate (ACA). It is unlikely that these measures will be

sufficient to shift the dial in relation to disability discrimination in air travel, since they do not introduce any new regulatory levers.

The Commission hoped the Disability Royal Commission would inquire into discrimination in public transport, and air travel specifically, but its final report fell short of making any recommendations on this issue. Aside from anecdotal evidence, there is a dearth of data available on the extent of the issue.

Further inquiry is required to understand the drivers and manifestations of discrimination in air travel, and to identify the solutions needed to achieve greater accessibility. Reform to discrimination law, as recommended above, will go some way, but will not specifically address the complexities particular to the aviation context. As mentioned above, without a comprehensive grasp on the issues, it is too early to determine with any certainty whether the introduction of an Aviation-specific standard under the Disability Discrimination Act is the most effective mechanism.

The Commission proposes to undertake a national inquiry into discrimination in air travel, with a focus on discrimination on the basis of disability. The aim of the inquiry would be to assess the extent of discrimination with a view of identifying systemic trends and making recommendations for improvements at the legislative, policy, regulatory, and operational levels. An inquiry of this scale would be significant in contributing policy solutions ensuring safer and more accessible travel for people with disability.

The inquiry would build on the findings made by the Disability Royal Commission in relation to accessibility in other areas (such as housing) and would seek to realise the Disability Royal Commission's vision for a more inclusive Australia. Integral to this vision, and the elimination of violence, abuse, neglect and exploitation of people with disability, is the need to embed human rights in legislation, policy, regulation and practice to address and remove barriers that contribute to the discrimination of people with disability.

The inquiry has the potential to demonstrate best practice on an international scale and influence aviation practices beyond Australia, as a result of the global intersections that exist in the aviation industry.

The Commission is uniquely placed to undertake an inquiry on this issue, under the leadership of the Disability Discrimination Commissioner, based on:

- its independent status as a statutory agency and Australia's National Human Rights Institution

- its reputable and independent standing, separate to Government and to civil society
- its legislative mandate in relation to disability discrimination under the Disability Discrimination Act
- its subject matter expertise in relation to disability accessibility
- its experience in conducting inquiries of this nature, for example, the Respect@Work inquiry and suite of ensuing reforms in relation to the Sex Discrimination Act.

The Commission can undertake the national inquiry relying on new powers introduced in section 35(L) of the *Australian Human Rights Commission Act 1986* (Cth) to inquire into any matter that may relate to systemic unlawful discrimination or suspected systemic unlawful discrimination. The inquiry would necessarily be limited to systemic issues rather than investigating or making findings about individual allegations of discrimination. While the Commission can initiate an inquiry under s 35(L), when it appears to the Commission to be desirable to do so, it would be more impactful to do so with the support of the Australian Government in the context of the White Paper. Dedicated government funding will also be required for the Commission to undertake an inquiry of this nature.

Preliminary scoping, based on the Commission's exposure to, and work on the issue, would, at minimum include:

- mapping out of the customer journey from end to end against regulatory responsibilities
- examining policies and protocols in place around accessibility, for example around access for assistance animals, travel with mobility equipment, costs for travelling with a support person
- seeking input from the lived experience of people with disability in relation to air-travel and discrimination
- examining the intersection with the National Disability Insurance Scheme (NDIS) and other disability support systems to understand delineation of responsibilities
- examining the appropriateness of the dispute resolution model (at all levels of complaints)

- ascertaining what data exists, whether a better data capture framework is required, and what this should look like
- researching international examples.

The inquiry would make recommendations in relation to the required operational improvements and law reform, including whether a new Disability Standard under the Disability Discrimination Act should be enacted specifically for aviation and/ or whether another avenue (for example, the introduction of standalone legislation) would be more effective.

It should be repeated that an inquiry of this nature is not at all possible without dedicated resourcing from the Australian Government.

Recommendation 4: The Australian Government should provide sufficient and dedicated resourcing to the Australian Human Rights Commission to undertake a National Inquiry into systemic disability discrimination in air travel.

4 Conclusion

Air travel is a vital part of modern life that all people should have access to as required. This includes equal opportunity to choose a provider, flight type, time and service. Unfortunately, options for people with disability are more than often reduced due to accessibility and personal support needs. People with disability also experience discrimination in air travel based on a multitude of factors such as inaccessible infrastructure, negative attitudes towards disability, and inaccessible policies, procedures and practices. Experiences of discrimination have a serious impact on the wellbeing, independence and inclusion of people with disability.

It is essential that the accessibility of air travel and aviation be marked as priority areas in the Aviation White Paper, which has a significant opportunity to improve the inclusion of people with disability in this industry and more generally.

Alongside the National Inquiry recommended in this submission, the Commission encourages DITRDCA to think innovatively in the interim about ways to implement enhanced accessibility practices to eliminate discrimination in air travel for people with disability.

Accessibility and universal design should not be an afterthought in any element the White Paper seeks to address and should be adequately integrated into all policy and practice considerations.

Australian Human Rights Commission

Submission title, 30 November 2023

The Commission will remain engaged in these issues and welcomes the opportunity to further discuss this submission with DITRDCA.

5 Appendix – Complaints data

The table below shows complaints made to the Commission in relation to air travel per financial year, since 2013.

Table 1: Complaints made to the Australian Human Rights Commission in relation to air travel – 2013 to 2023

Complaints	2013-14	2014-15	2015-16	2016-17	2017-18	2018-19	2019-20	2020-21	2021-22	2022-23
Total Complaints – Air related travel	28	29	23	29	24	39	33	20	31	50
Airlines	23	27	23	26	23	35	24	14	21	38
Airports	5	6	8	4	2	6	9	4	5	12
Disability Standards	4	2	2	4	3	4	2	3	2	8

Table two below shows the themes of complaints made to the Commission in relation to air travel per financial year, since 2013.

Table 2: Theme of complaints made to the Australian Human Rights Commission in relation to air travel - 2013 to 2023

Complaint themes	2013-14	2014-15	2015-16	2016-17	2017-18	2018-19	2019-20	2020-21	2021-22	2022-23
Assistance Animal	5	7	4	5	2	11	15	6	7	15
Carer or assistant	4	1	1	2	0	1	1	0	1	2
Mobility Aid	11	10	11	11	7	12	11	5	5	17
Disability Aid (not including mobility aid)	1	1	2	0	3	3	4	2	0	9
Security screening	2	0	0	1	0	3	3	2	5	11
Facilities related	15	11	12	14	12	5	1	4	4	6
Booking process	7	10	6	15	8	12	15	6	9	10

Complaint themes	2013-14	2014-15	2015-16	2016-17	2017-18	2018-19	2019-20	2020-21	2021-22	2022-23
At check in	2	3	1	4	4	6	4	0	1	5
Check in technology	3	0	0	0	1	0	0	0	0	0
On flight	13	7	7	10	5	10	5	7	8	8
Website	0	1	2	1	3	0	0	0	0	2
<i>COVID- Mask</i>								9	12	2
<i>COVID - Vaccination</i>								0	0	0

-
- ¹ *United Nations Convention on the Rights of Persons with Disabilities*, opened for signature 30 March 2007, 2515 UNTS 3 (entered into force 3 May 2008) ('CRPD').
- ² Ibid art 4(1)(b).
- ³ Ibid art 4(5).
- ⁴ Ibid art 4(1)(e).
- ⁵ Ibid art 3(f).
- ⁶ Ibid art 9.
- ⁷ Ibid arts 2, 4.
- ⁸ Ibid art 31.
- ⁹ *Committee on the Rights of Persons with Disabilities, Concluding Observations on the combined second and third periodic reports of Australia*, 22nd sess, UN Doc CRPD/C/AUS/CO/2-3 (15 October 2019, adopted 20 September 2019) 5 [18a].
- ¹⁰ See Australian Human Rights Commission, *Free and Equal: A reform agenda for federal discrimination laws* (Position Paper, December 2021) 91-186 < [Free and Equal: A reform agenda for federal discrimination laws \(2021\) | Australian Human Rights Commission](#)>.