

The legislation package will also respond to various concerns that have been raised by operators, including various technical issues that were canvassed in the discussion paper surrounding the way damages are awarded. The Government will have detailed proposals ready for further targeted industry consultation in 2010, and will have legislation ready for introduction to the Parliament following this process.

Passengers with Disabilities

BACKGROUND

Passengers with disabilities often face particular difficulties in accessing air services. Some of these difficulties may be due to reduced mobility, including the need to travel in a wheelchair. Different challenges are posed by negotiating airport and check-in procedures for the sight or hearing impaired. Passengers with some medical conditions or intellectual impairment may need special arrangements for their flight to ensure they can travel safely.

The Government recognises the significant difficulties people with disabilities often experience in accessing air travel and is assisting industry to identify and implement means to improve access.

The Government's commitment to the active participation of people with disabilities in the community is demonstrated by its recent ratification of the United Nations Convention on the Rights of Persons with Disabilities and accession to the Optional Protocol to that Convention. This international commitment complements the *Disability Discrimination Act 1992* (DDA) and other domestic legislation providing for equal opportunity for people with disabilities.

At the same time, the Government recognises the challenges faced by industry in achieving disability access to air travel. Variation within the aviation industry — such as the design and size of aircraft and the boarding facilities at airports — impacts on an operator's ability to provide consistency of service. At the same time, such variation also limits the Government's ability to regulate or provide firm guidance on the provision of disability access.

The Government also recognises that meeting aviation safety, occupational health and safety and other legislative requirements can hinder the provision of equal access to air services, or expose industry participants to a potential complaint under the DDA.

POLICY ISSUES

The Aviation Access Working Group

As proposed in the Aviation Green Paper, the Government has established an Aviation Access Working Group (AAWG) to focus on practical, functional improvements to disability access in the aviation industry. This initiative received widespread support from a broad range of organisations who made submissions to the White Paper including a number of airports, airlines, disability organisations, and state and territory governments.

With representatives from all key stakeholder groups — airlines, airports, peak disability groups and government agencies — the AAWG has met regularly since its first meeting in early February 2009. Meetings have been focussed and constructive, and feedback from industry and disability organisations on the value of the meetings has been positive.

With broad terms of reference, the AAWG has already demonstrated significant value as a forum for two distinct primary purposes:

- > advice to Government on disability access policy, the relevant legislative framework and practical measures that can be taken to improve disability access; and
- > sharing of experiences and expertise between disability organisations, industry participants and regulators, from which discrete initiatives towards solutions are often launched.

The AAWG has already made progress on a number of fronts.

In developing the content of new guidelines for airport security screening operators, the Government, through the Office of Transport Security, has consulted the AAWG. Disability organisation representatives provided valuable input on the experiences of people with disabilities at screening points, and advice on how the screeners can best meet their security objectives while respecting the dignity of passengers with disabilities. For example, screening of guide dogs can sometimes lead to unexpected consequences. Removing a working dog's harness during security screening can lead the dog to go into 'non-work' mode, creating confusion for the animal and disruption for its owner. Understanding this, and establishing consistent procedures, is important for security screeners in servicing passengers travelling with assistance animals.

In consultation with the AAWG, the Government is taking action to provide greater legal certainty to airline operators on two particular aviation safety issues as they relate to the carriage of some passengers with a disability.

The Government has amended the terms of Civil Aviation Order 20.16.3, to the extent that it relates to the allocation of emergency exit row seating in a passenger aircraft. Previously applicable to 'handicapped' and 'sick and injured' persons, the restriction on the exit row seating allocation now applies to any person who is unwilling or unable to assist with opening the emergency exit, or who could obstruct access to the emergency exit.

The new Order gives aircraft operators greater clarity of their safety obligations. To remove all legal uncertainty, the Attorney-General has recently prescribed the Order under Section 47 of the DDA. As a result, an airline operator acting in direct compliance with the Order will, in doing so, not be in breach of the DDA's prohibition of disability discrimination. These two legislative amendments provide certainty for both operators and travellers with disabilities where there has previously been scope for confusion and misunderstanding.

The Government is also taking steps to simplify pre-flight processes which ensure the safe carriage of a passenger's assistance animal in the aircraft cabin. Recent amendments to the DDA provide for state and territory-based assistance animal training accreditation regimes which are recognised under the DDA at a national level. The Government will be liaising with state and territory governments on the introduction and implementation of such schemes by those governments. This initiative will bring clarity for passengers travelling with assistance animals while ensuring aircraft operators meet their obligations to maintain a safe operating environment.

Disability Access Facilitation Plans

The Government believes that constructive and pro-active engagement between operators and regulators, combined with the provision of clear and transparent consumer information, is the best approach to generating tangible improvements for passengers with disabilities.

This collaborative approach underpins the development of the Disability Access Facilitation Plans Scheme, a major new initiative that has considerable potential to deliver concrete progress for disability access to the air transport sector. The proposed Plans, which will be published from mid-2010 and regularly updated, will be developed by airlines and airports to communicate in detail their approach to meeting the needs of travellers with disabilities. The Plans will cover the total travel experience on issues such as the extent to which the airline offers direct assistance (for example at check in, boarding and disembarking), procedures for the carriage of mobility aids, and processes for facilitating the carriage of assistance animals.

Airlines and airports will also have the opportunity to explain how a passenger can assist airlines to provide the kind of service that best suits his or her needs — for example, advance notice of requirements and/or advice on individual needs to staff at different stages in the process. Participants will also be encouraged to detail how a passenger with a disability can make a complaint or provide non-critical feedback to the operator on his or her experience.

The Disability Access Facilitation Plans Scheme initiative enables industry to better communicate its efforts to achieve disability access, and provides passengers with an improved level of transparency and accountability. It will assist consumers to make sound travelling decisions, for example whether a travelling companion will be necessary, based on a public undertaking from

an operator. By allowing for flexibility, the approach recognises the varied capacities within the Australian aviation industry and avoids the need for an overly prescriptive, possibly inflexible, Code of Practice and the inherent time delays associated with the creation of new legislation.

Preparation of a Plan will be encouraged among all industry participants operating in, to or from Australia. To assist with Plan preparation, the Department of Infrastructure, Transport, Regional Development and Local Government (Infrastructure) will provide participants with a model template and guidelines setting out Government expectations as to the matters to be addressed and the manner in which information is presented. Participating companies will be encouraged to consult disability organisations during the preparation of a draft Plan, and to consult the Australian Human Rights Commission and the Civil Aviation Safety Authority on a draft Plan's consistency with anti-discrimination and aviation safety legislation.

Participants will be encouraged to publish their finalised Plan on their website. Access to the plans will be available through a single, dedicated page of the Department of Infrastructure website, enabling consumers to consult and compare all available Plans from one platform.

The preparation of a Plan will not affect a participant's responsibilities under anti-discrimination, aviation safety and other legislation.

The Government has consulted the Aviation Access Working Group in depth on the Plans. The AAWG (including its industry representatives) has endorsed the scheme and has assisted the Government in its final design.

This form of assisted self-monitoring will promote transparency and accountability. While the scheme will provide airlines and airports with flexibility to develop a Plan tailored to their particular operations, it will lead to significant improvements for passengers with disabilities. The passenger will be empowered to not only make better-informed consumer choices, but to assist airlines and airports to provide a service that will best cater for their individual needs.

Review of Transport Standards

The Disability Standards for Accessible Public Transport (2002) (Transport Standards) specify levels of service, measures and actions that public transport operators must undertake to meet their obligations under the DDA. While the Attorney-General has formal responsibility for the DDA and the Transport Standards, the Minister for Infrastructure, Transport, Regional Services and Local Government has an advisory role in respect of the Transport Standards.

The Government has recently received the final report of the independent review of the Transport Standards. The Government is carefully considering its response to the review's recommendations.

The generic, multi-modal nature of the current version of the Transport Standards limits their capacity to address the access issues specific to individual sectors, such as aviation. Against such a background, the review's draft report proposed the establishment of modal sub-committees, such as the AAWG.

International developments

The International Civil Aviation Organization (ICAO) has recently established a working group to review guidelines relating to passengers with disabilities. The Australian Government has accepted an invitation to participate in the working group and is committed to making a meaningful contribution. In doing so, the Government will consult with the AAWG membership.

CONCLUSION

Customer satisfaction is integral to the success and sustainability of the aviation industry. While the Government will continue to afford airlines considerable flexibility in the way they manage and respond to consumer expectations, the Government will maintain — and strengthen where appropriate — its role in setting minimum benchmark standards for airline behaviour.

The Australian Government will safeguard the interests of consumers within the aviation industry by focussing on reforms in three key areas.

Australian Consumer Law

The Government has moved to improve Australia's broader consumer protection framework by:

- > introducing new laws to stop airlines from advertising misleading fares by toughening the rules on component pricing; and
- > introducing to the Parliament the *Trade Practices Amendment (Australian Consumer Law) Bill 2009* providing for the national regulation of unfair contract terms as well as enhancements to the consumer enforcement, investigation and redress provisions.

The Government will:

- > harmonise and coordinate fair trading laws, introduce new and enhanced remedies, and improve protections for all consumers, including air travellers, through the finalisation with states and territories of the Australian Consumer Law; and
- > work with the airline industry to renew its efforts to resolve customer complaints without the need for recourse to the legal system by:
 - developing 'Corporate Charters' to set benchmark standards for the handling of complaints;
 - establishing a mechanism for consumers to have unresolved complaints examined by a third party, such as an industry ombudsman; and
 - review the industry's progress in this regard in late 2010.

Liability and Insurance Framework

The availability of fair compensation following an air accident is a critical protection for air travellers and their families. The Government's modernisation of the carriers' liability and insurance system will implement changes and updates that are necessary to ensure that the interests of victims and the interests of operators are appropriately balanced.

The Government will:

- > increase the cap on liability for domestic passenger travel from \$500,000 to \$725,000 per passenger;
- > increase the associated compulsory insurance for airlines from \$500,000 to \$725,000 per passenger; and
- > consult with industry on a suitable scheme to make insurance for third party (surface) liabilities compulsory.

Passengers with disabilities

The Australian Government's focus on communication, collaboration and cooperation between Government, disability advocacy groups and the aviation industry is already yielding significant practical outcomes.

The Government's Aviation Access Working Group (AAWG) is focussed on practical, functional improvements to disability access in the aviation industry and will:

- > facilitate the development of Disability Access Facilitation Plans by airlines and airports to communicate in detail their approach to meeting the needs of travellers with disabilities; and
- > in consultation with the AAWG membership, contribute to the ICAO working group established to review guidelines relating to passengers with disabilities.