

ISSUES PAPER: AIRLINE TWO WHEELCHAIR POLICY

1. Introduction

Some Australian domestic airlines (Virgin Australia, Tiger Airways and Jetstar Airways) have adopted policies, the effect of which is to not allow more than two passengers requiring the use of wheelchairs, on a single flight. While those policies may be expressed in different terms by the airlines¹, for ease of reference they are referred to as a 'two wheelchair policy'. For the purpose of this paper, wheelchairs are taken to include manual or electric wheelchairs, and electric scooters.

The object of this paper is to outline what is known about the basis for the airline two wheelchair policy and its impacts on passengers with a disability and importantly, to draw out information from industry and the disability sector that will help inform the development of final advice to the Government in its consideration of this matter.

The paper acknowledges that the aviation industry has set out a number of economic, operational and safety reasons underpinning the adoption of the policy, particularly in relation to low cost domestic carriers. The paper notes overseas practice while recognising that direct comparisons are affected by the size of the comparable markets and the availability of aerobridge and other equipment at certain destinations.

The paper also acknowledges that disability groups have for some time indicated that they would like to see the policy and its practice ended.

Unlimited wheelchair access is however generally acknowledged as challenging to the operations of low cost, quick turnaround aircraft services and in relation to operations by smaller regional airlines there may simply be size and safety limitations associated with the carriage of multiple wheelchairs.

The Department of Infrastructure and Transport would appreciate input on current two wheelchair practices and any proposals for the future from those airlines and airports involved with the movement of passengers who use wheelchairs and from the passengers themselves.

Stakeholders are invited to address the questions set out at the back of the paper (Attachment A – Airlines and Attachment B – Disability Groups).

Submissions may also include other information related to the airline two wheelchair policy which is not drawn out by the questions.

Submissions and responses to questions should be provided electronically by close of business on Friday 28 June 2013 to aawg_secretariat@infrastructure.gov.au. If you are having difficulty meeting this deadline, please contact the Department on 02 6274 6737 or at aawg_secretariat@infrastructure.gov.au.

¹ See *Table 1* for information about the specific policy of each airline.

2. Background

Disability Access Facilitation Plans

In the 2009 Aviation Policy White Paper, the Government encouraged airlines and airports to develop and publish Disability Access Facilitation Plans with the aim of providing detailed information on their approach to meeting the needs of travelers with a disability.

The plans are intended as a communication tool between airline and airport operators and the travelling public on the availability and accessing of services for passengers with disability. Ideally, they cover the total travel experience from making a reservation through to arriving at the intended destination.

Operators are encouraged to include a section on the carriage of wheelchairs, mobility aids and other medical equipment. It is in this section that some airlines refer to the adoption of a two wheelchair policy.

This approach has seen the development and publication of 41 Disability Access Facilitation Plans (DAFPs) covering all major Australian airlines and airports (i.e. covering over 90% of the passengers transiting through Australian airports).

Airline DAFPs outline the approach the airline will take in facilitating the use of the airlines' services by people using wheelchairs. Where there is a restriction on the number of people with wheelchairs able to travel on a single flight, this should be set out in the relevant airline's plan.

DAFPs are available on airline and airport individual websites and a link to these plans is provided on the Department of Infrastructure and Transport's website (www.infrastructure.gov.au).

Federal Court determination

The two wheelchair policy was the subject of a legal case last year.

In *King v Jetstar Airways Pty Ltd (No2)* [2012] FCA 8 (*King v Jetstar 2012*), the applicant contended that Jetstar had infringed section 24 of the *Disability Discrimination Act 1992 (Cth)* ('the Act') by unlawfully discriminating against her on the grounds of her disability.

The applicant, who relied on a wheelchair for mobility, had attempted to secure a booking on one of the respondent's scheduled services from Adelaide to Brisbane. The applicant was told that she could not take the flight she preferred as there were already two other passengers requiring wheelchair assistance booked on the flight. The limit for passengers travelling with wheelchairs had been reached.

The respondent argued that it was entitled to the benefit of an exception to section 24 which arose if making the service available would impose 'unjustifiable hardship'.

In summary, the trial judge concluded that the applicant had suffered the discrimination she alleged, but that the respondent was entitled to succeed on its unjustifiable hardship argument.² This decision was upheld on appeal to the Full Court.³

Some of the arguments publicly put by the respondent (Jetstar) in support of its defence of unjustifiable hardship are outlined below in Section 3 of this paper entitled: "Airline Operations".

² <http://www.judgments.fedcourt.gov.au/judgments/Judgments/fca/single/2012/2012fca0008>

³ <http://www.judgments.fedcourt.gov.au/judgments/Judgments/fca/full/2012/2012fcafc0115>

Overview of current domestic practices

Currently, three Australian airlines (Virgin, Tiger and Jetstar) have a two wheelchair policy, or the like. The following extracts are taken directly from airline Disability Access Facilitation Plans.

Table 1

Virgin	<p>If you want to carry a wheelchair or other mobility aid on our flights, please ensure that you let our Guest Contact Centre agents know about that when you book. We need to make sure appropriate arrangements are made for your flight. In addition, we need to know about the carriage of wheelchairs and mobility aids in advance because we can only carry a maximum of 2 wheelchairs or mobility aids per flight due to restrictions in our aircraft hold space.⁴</p> <p>(Page 15)</p>
Tiger	<p><i>Section 1</i></p> <p>We are not able to provide supervision for those passengers who cannot travel alone, but we are able to provide limited ‘direct assistance’ (refer to Section 7, Direct Assistance). Tiger Airways accepts bookings for up to two (2) passengers per flight who require limited ‘direct assistance’ from our crew. (Page 6)</p> <p><i>Section 7</i></p> <p>Tiger Airways Australia will provide limited direct assistance, as far as is reasonably possible and in accordance with the Airline’s Special Assistance / Needs Policy and as set out in this Facilitation Plan, to our customers who need help in order to travel with us. We will do so in as dignified and non-discriminatory a manner as possible, within the constraints of our operation and available resources. This includes:</p> <ul style="list-style-type: none"> • Assistance with check-in; • Assistance in boarding and disembarking; • Assistance with transferring between a passenger’s own wheelchair and/or mobility aid to an airport supplied manual wheelchair; • Assistance with transferring a passenger from the airport supplied manual wheelchair to/from the aircraft seat; • Providing individual safety briefings on-board the aircraft; • Assisting with identifying and opening meal packaging on-board the aircraft.⁵ (Page 12)
Jetstar	<p>Wheelchairs – Maximum limits of wheelchairs able to be carried per flight on A320 and A321 aircraft.</p> <p>We accept bookings for up to two (2) customers requiring wheelchair assistance on each flight.</p> <p>Where the limits for wheelchair assistance have already been reached on a flight and a customer wishes to make a booking on that flight, we will contact the customer to make alternative arrangements which may include:</p> <ul style="list-style-type: none"> • moving the customer to an earlier or later flight where the limit has not been exceeded, without any additional cost to the customer; • re-routing the customer to their intended destination; or • providing the customer with a full refund. <p>Wheelchairs – Maximum Limits on Wheelchairs – A330*</p> <p>For flights operated by A330 aircraft we are only able to carry up to four (4) electronic/motorised wheelchairs per flight.</p> <p>*Please Note: Jetstar may need to impose a lower limit in the case of unexpected circumstances or events, due to operational necessity or for reasons of aircraft or customer safety.⁶ (Page 22)</p>

⁴ <http://www.virginaustralia.com/au/en/plan/special-needs-assistance/DisabilityAccessFacilitationPlan/>

⁵ <http://www.tigerairways.com/au/en/>

Overview of overseas practices

The United States, Canada and European Union all have regulations regarding an air carrier's ability to limit the number of passengers with disability that can travel per flight, which are summarised in [Attachment C](#).

Although overall the policy settings are based on not restricting the carriage of wheelchairs, these jurisdictions include provisions that recognise safety and operational factors may limit access to wheelchairs on some flights and at some destinations.

However, caution should be observed in relation to direct comparisons between Australia and overseas jurisdictions. Notably, there are differences between the volume and nature of air traffic on Australian air routes compared with overseas jurisdictions, there is a reduced or lack of availability of aerobridges and other equipment at some Australian airports, and a different approach to consumer protection regulation overseas.

It is also noted that even with the regulation in place in those countries, service levels by the industry do not always meet expected or legislated requirements.

3. Examining the 'airline two wheelchair policy'

This section outlines the key areas in which further information is sought from stakeholders in order to properly inform the examination of the two wheelchair policy. It is intended to act as a prompt for stakeholders.

Airline operations

The following provides an overview of factors that may be relevant as to why an airline may currently impose a restriction on the number of passengers with a wheelchair it will carry on a single flight.

Safety requirements

The overarching consideration in relation to aviation operations is safety.

Proper calculations of weight are an important consideration for the safety of any aircraft operation. Regional airlines in particular apply weight limitations which can impact on the number of passengers requiring assistance that an operator believes they can safely carry on a single flight. Occupational health and safety issues also apply to the handling of wheelchairs where manually lifting is required.

Operational circumstances

The Australian domestic aviation market has undergone a major transformation over the past two decades since domestic aviation economic deregulation.

Record numbers of people are travelling, in part with increased competition and lower air fares, and the emergence of the operation of low cost carriers servicing capital city and major regional airports across Australia. The low cost carrier operating model has made travel more accessible to the wider public.

However as was highlighted by Jetstar in the matter of *King v Jetstar 2012*, the operational circumstances of a low cost carrier can be very different to other 'full service' airlines. In order to provide a low cost fare, these airlines operate on a tighter time and cost margin and cannot provide the same level of service.

⁶ <http://www.jetstar.com/au/en/planning-and-booking/at-the-airport/specific-assistance#Disability>

The low cost model involves high utilisation of assets, including quick turnaround times for aircraft and the use of lower cost terminals, less amenable to a broader range of service provision. Operations to regional areas may mean there is limited infrastructure available at an airport, including infrastructure to assist with boarding and disembarking. Additional service provision may also be restricted by staffing levels - some airlines use a “self-service” model, for example in airline ticketing.

Capacity restrictions

Depending on the nature of operations, the size of an aircraft and the physical constraints of a smaller aircraft, such as the number of aisles and the size of the cargo hold, can have a significant impact on the carriage of wheelchairs (particularly larger and heavier equipment) and the nature of the service provision that is possible. Larger mobility equipment, such as electric scooters, can be more difficult to manage with the size and weight of these items being a key operational issue for many flights.

As noted above, limited infrastructure and staffing at some airports particularly regional airports may also limit the nature of the service that can be provided to passengers with a disability.

Effect on passengers with a disability

A key part of examining the airline two wheelchair policy is having an understanding of the effect of the policy on disabled travellers. Its discriminatory nature has been identified by the Federal Court judgement along with recognition that the circumstances involved made it justifiable on hardship grounds.

In this regard, both quantitative and qualitative data about the extent to which the policy has created difficulties for disabled travellers, forms an important part of the analysis. While it is acknowledged that not all passengers affected by the two wheelchair policy are likely to make a complaint, information about the number of, and how, passengers are affected is important.

In the preparation of this paper, the Department sought initial advice from the Australian Human Rights Commission (AHRC) and the Airline Consumer Advocate about complaints regarding restrictions for passengers requiring wheelchair assistance.

The AHRC has confirmed it will review what information it can provide about complaints or representations it has received regarding the two wheelchair policy. The Airline Consumer Advocate has advised that it has not yet received any complaints associated with the two wheelchair policy since it began its operations in July 2012.

4. Summary

The Department supports wider access for passengers with a disability to air travel in Australia including passengers using a wheelchair.

However the Department also recognises the challenges for airline operators in being able to service passengers using a wheelchair due to safety, operational and capacity requirements. The challenges are particularly great for low cost carriers, regional airlines and at regional airports particularly in terms of larger mobility equipment, such as electric scooters which may not be compatible with available aircraft types, handling procedures, or airport accessibility equipment.

The Department would like to see an improvement on the current arrangements and looks forward to receiving key stakeholders views on how this might be practically and effectively achieved.

Questions for Airlines

The following questions seek to gather information on the rationale for the two wheelchair policy, how it works, and the possibilities and consequences of an alternate approach.

- 1) If you have a two wheelchair policy, what are the reasons behind the policy?
- 2) In what circumstances is your two wheelchair policy implemented?
- 3) How often is the policy triggered? Do you have information on the number of times a passenger has been refused travel on a flight due to the policy?
- 4) What do you consider to be the impact on passengers affected by the application of the policy? How could that impact be reduced? For example, what assistance is offered to passengers by your airline when the policy is triggered?
- 5) What would be the impact on your airline of not having the two wheelchair policy? Are there ways in which you could reduce that impact, for example by indicating in the Airline's Disability Access Facilitation Plan that there may be occasions where more than two wheelchairs could be carried subject to meeting safety and operational requirements but not say larger, heavier electric scooters?
- 6) Do you have any suggestions for an alternative approach that would meet airline requirements and assist the access to air travel for people with wheelchairs? For example, what constraints or opportunities exist in adopting a policy or approach without a set limit of two wheelchairs?
- 7) Do you have any other comments or information about this issue?

Questions for Disability Groups

The following questions are for the disability sector. They seek a better understanding of the effects of the two wheelchair policy on passengers with disability and to identify ways that adverse effects could be mitigated and possible alternatives to the current arrangements.

- 1) Is your organisation aware of any research or other data about the number of people that have been affected by the two wheelchair policy?
- 2) Is there anyone within your organisation, or known to your organisation, that has been affected by the two wheelchair policy and who can give an account of their experience? (personal information not required) If yes, please include or attach the information about that person's experience.
- 3) What do you consider the impacts of the application of the two wheelchair policy have been on passengers with a disability?
- 4) Do you have any suggestions for limiting the potential impact of the two wheelchair policy on passengers with disability? That is, what could airlines do to mitigate the effects of the policy which may be experienced from time to time by disabled travellers?
- 5) What measures do you believe might be necessary, and would be acceptable, to put in place should an airline decide not to apply a two wheelchair policy? For example, changes to earlier pre-notification requirements to enable better planning of flight operations.
- 6) Do you believe airlines have sufficiently explained the basis for the two wheelchair policy? If not, could a clear explanation of reasons help reduce your concerns about this policy?
- 7) Do you have any other comments or information about this issue?

WHEELCHAIR CARRIAGE - OVERSEAS PRACTICE

United States

Under 14 CFR Part 382.17, air carriers must not limit the number of passengers with a disability who travel on a flight.

Under Part 382.25, air carriers must not require a passenger with a disability to provide advance notice of the fact he or she is travelling on a flight. However, under Part 382.27 (c), air carriers may require passengers to provide up to 48 hours advanced notice and check in one hour before the check in time for the general public if the passenger is travelling with an electric wheelchair on an aircraft with fewer than 60 seats, or if a booking is made for a group of 10 or more individuals with a disability.

Under Part 382.7 (a), these provisions apply to all U.S carriers with respect to all operations and aircraft, regardless of where the operations take place. Under Part 382.7 (b), these provisions also apply to foreign carriers, but only with respect to flights that begin or end with a U.S airport and to aircraft used for these flights. For the purpose of this Part ‘flight’ means a continuous journey in the same aircraft or with one flight that begins or ends at a U.S airport.⁷

European Union

European Regulations

European Regulation (EC) No 1107/2006 Article 3 says that an air carrier or its agent or a tour operator shall not refuse, on the grounds of disability or reduced mobility:

- (a) To accept a reservation for a flight departing from or arriving at an airport to which this Regulation applies;
- (b) To embark a disabled person or person with reduced mobility at such an airport, provided that the person concerned has a valid ticket and reservation.

However, there are exemptions to the above. Article 4, Paragraph 1 says an air carrier or its agent or a tour operator may refuse, on the grounds of disability or reduced mobility, to accept a reservation from or embark a person with disability or reduced mobility:

- (a) In order to meet applicable safety requirements established by international, community or national law or in order to meet safety requirements by the authority that issued the air operator’s certificate to the air carrier concerned;
- (b) If the size of the aircraft or its doors makes the embarkation or carriage of that disabled person or persons with reduced mobility physically impossible.

In the event of refusal to accept a reservation on the grounds referred to under points (a) and (b), the air carrier, its agent or the tour operator shall make reasonable efforts to propose an acceptable alternative to the person in question. Article 4 (3) also says that an air carrier or its agent shall make publicly available, in accessible formats and in at least the same languages as the information made available to other passengers, the safety rules that it

⁷ <http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&SID=b63a73f14936c010aa9534b6b27abe1b&rgn=div5&view=text&node=14.4.0.1.4.64&idno=14>

applies to the carriage of disabled persons and persons with reduced mobility, as well as any restrictions on their carriage or on that of mobility equipment due to the size of aircraft.

Article 1 (2) states the provisions of this Regulation shall apply to disabled persons and persons with reduced mobility, using or intending to use commercial passenger air services to depart from, on transit through, or on arrival at an airport, when the airport is situated in the territory of a Member state to which the Treaty applies.

Article 1 (3) states that Articles 2, 4 and 10 shall also apply to passengers departing from an airport situated in a third country to an airport situated in the territory of a Member State to which the Treaty applies, if the operating carrier is a Community air carrier.⁸

Review of European Regulations

A 2010 report from the European Commission to the European Parliament and Council on the function and effects of Regulation (EC) 1107/2006 found that overall, the implementation of the Regulation was positive and a legislative review was not necessary. The Commission claimed the successes of the Regulations were in bringing advantages to disabled persons and persons with reduced mobility; in particular a single framework of protection, a clear division of tasks between airports and air carriers, and the establishment of a network of National Enforcement Bodies in all EU countries.

However, the Commission found there were difficulties, for both airports and airlines, in implementing the Regulation. In relation to airlines, one of the key problem areas was a lack of clarity around managing restrictions or derogations from the core obligations on the grounds of safety.⁹ One example used which is relevant in the present context was the management of persons with reduced mobility in the context of emergency situations, such as aircraft evacuation.¹⁰

European operator practice

Despite the European regulatory settings, some low cost carries in Europe do limit the number or type of wheelchairs with can be carried on board a flight.

German Wings clearly states on its website that as a rule it can carry a maximum of five passengers with wheelchairs per flight. The airline will only carry larger groups of passengers with wheelchairs where specific arrangements have been made.

Easyjet (U.K) states on its website that wheelchairs and mobility aids that cannot be lifted manually into the aircraft hold will only be accepted for travel if both airports can provide the facilities to load /unload the device. It adds that some airports may not have sufficient equipment for lifting heavy wheelchairs and mobility aids. However, notifying the airline 48 hours prior to departure would enable the airline to establish this and use reasonable efforts to accommodate the passenger's needs.

Wizz Air (Hungary) states on its website that wheelchairs weighing more than 60 kgs (excluding battery) or wheelchairs powered by wet cell, spillable battery cannot be accepted for travel.

Canada

Under section 148 (1) of the Air Transportation Regulations an air carrier shall accept for carriage as priority baggage without charge and in addition to the free baggage allowance permitted to passengers, the following aids, where they are required for mobility or well-being of a person:

⁸ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2006:204:0001:01:EN:HTML>

⁹ http://europa.eu/legislation_summaries/transport/mobility_and_passenger_rights/l24132_en.htm

¹⁰ http://ec.europa.eu/cyprus/news/20120614_passengers_en.htm

- (a) An electronic wheelchair, a scooter or a manually operated rigid-frame wheelchair;
- (b) A manually operated folding wheelchair;
- (c) A walker, cane crutches or braces;
- (d) Any device which assists the person to communicate better; and
- (e) Any prosthesis or medical device.

“Air carrier” is defined in section 2 as “any person who operates a domestic service or an international service.”

Section 148 (2) says that where an air carrier operates an aircraft that has fewer than 60 seats and the design of the aircraft does not permit the carriage of a person’s aid, the carrier is not required to carry the aid and shall advise the person about transportation arrangements that are available for the aid.

Section 151 says “where a passenger requests a service set out in this Part at least 48 hours before the scheduled time of departure of the person’s flight, the air carrier shall provide the person with the service.”

Canadian operator practice

Low cost carries in Canada do not appear to place a limit on the number of wheelchairs that can be carried per flight.

However, some do restrict the types of wheelchairs that can be carried on board.

For example under Sunwing Airlines’ policy, in order to ensure the proper handling and transport of all mobility aids/equipment, the maximum size accepted for travel cannot exceed 46 inches (width) x 31 inches (height). Passengers are asked to identify at the time of booking the type of mobility aid or equipment the passenger will be traveling with. The airline also highly recommends that passengers arrive three hours prior to their departure time to ensure that their device is properly attended to.¹¹

¹¹ <http://laws-lois.justice.gc.ca/eng/regulations/SOR-88-58/>