

## Copy

19 December, 2003

Mr W. R. Ellis  
First Assistant Secretary  
Surface Transport Regulation  
Department of Transport and Regional Services  
GPO Box 594  
CANSERRA ACT 2601

Dear Mr Ellis

### **DISABILITY STANDARDS FOR ACCESSIBLE PUBLIC TRANSPORT 2002**

Thank you for your letter of 18 November 2003 in response to my letter to the Secretary of 20 June 2003 in relation to conflict between the Disability Standards for Accessible Public Transport 2002 and aviation safety requirements imposed by the Civil Aviation Safety Authority (CASA).

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

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

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

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

in such a case, we believe that the necessary solution is to allow the CASA requirement to override the Standards requirement. Section 47(2) of the Disability Discrimination Act 1992 allows Regulations to be made to resolve conflict of this nature. We believe this avenue should be used rather than leaving airports in a state of doubt and uncertainty as to their legal obligations. We note that the Productivity Commission, in its October 2003 Issues paper, appears to be of the same view.

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

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

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

We appreciate DoTaRS' offer to assist the Association in these matters, especially as some of our member airports are imminently confronting the need to make investment decisions of future infrastructure. Accordingly, as a first step, we would welcome your response, and that of other relevant agencies, to the suggestions set out above. In particular, we would welcome assurances:

- that Regulations would be made under section 47(2) as and when any irreconcilable difference was identified that could not be resolved through the provision of equivalent access; and
- that the Standards will be amended to allow airport operators to contractually pass on equivalent access obligations where equivalent access is both feasible and necessary to ensure compliance with the Standards.

Should these assurances be given, the Association would be keen to work closely with the Department and other relevant agencies in further developing the necessary solutions.

I look forward to your early response.

Yours sincerely

John McArdle JP  
Chairman

**Australian Government**  
**Department of Transport and Regional Services**

Mr John McArdle JP  
Chairman  
Australian Airports Association  
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Subject:           ***Disability Standards for Accessible Public Transport 2002***

Dear Mr McArdle

I refer to your letter of 20 June 2003 to Mr Ken Matthews, the Secretary of the Department of Transport and Regional Services (DOTARS) concerning issues relating to conflict between the *Disability Standards for Accessible Public Transport 2002* (Transport Standards) and aviation safety requirements imposed by the Civil Aviation Safety Authority (CASA). Mr Matthews has asked me to reply and I regret the delay in doing so.

As you know, a group of Australian Government agencies including DOTARS, the Attorney-General's Department, CASA and the Human Rights and Equal Opportunity Commission (HREOC) has been considering the issues raised in your previous correspondence. In particular you sought clarification of the obligations that would apply to airport owners and operators. After considering the particular matters raised, agencies have collectively agreed that in order to address any potential conflicts that may arise between the Transport Standards and CASA safety requirements the Australian Airports Association (AAA) should seek to provide equivalent access for people with disabilities at airports. Proposals for equivalent access would need to be developed in consultation with people with disabilities and the airlines.

It was noted that the AAA legal advice of 12 March 2003 did not examine the use of equivalent access in complying with the requirements of the Transport Standards. Compliance with the Transport Standards may be achieved by meeting the relevant specifications or by providing equivalent access. If equivalent access is provided in a way identified in consultation with peak disability bodies, a complaint of discrimination made against an operator could not be successful.

Preliminary discussions with the airline industry reveal that equivalent access procedures are currently being employed to ensure that people with disabilities can access aircraft. Our initial examination of this issue, in consultation with other relevant Australian Government agencies, indicates that a cue m be made for achieving compliance by providing equivalent access.

Part 33 of the Transport Standards explains how compliance can be achieved. Section 33.3 provides that compliance may be achieved by either applying relevant specifications in the Transport Standards before the target dates or through equivalent access by 'using methods, equipment and facilities' that provide alternative means of access to the public transport service concerned. Section 1.16 states that equivalent access is a process, often involving direct assistance, by which an operator or provider may vary the equipment or facilities that give access as long as there is equivalence of amenity, availability, comfort, convenience, dignity, price and safety.

Section 33.6 provides that if the Transport Standards have not been fully met, direct assistance may be a means of providing equivalent access. Nothing in the Transport Standards prevents operators or providers from offering assistance directly to passengers.

Section 33.4 specifies that an operator or provider of a public transport service must consult with passengers with disabilities who use the service, or with organisations representing people with disabilities, about any proposal for equivalent access. Section 33.5 sets out that operators and providers must be able to demonstrate that equivalent access provides public transport without discrimination 'as far as possible'.

DOTARS is willing to assist AAA in its development of equivalent access procedures and participate in any associated processes. Mr David Mason, of HREOC has advised that he can provide AAA with a list of peak disability organisations or facilitate the consultation process to develop equivalent access procedures. Mr Mason can be contacted at HREOC, 133 Castlereagh Street, Sydney 2000 or on (02) 9284 9724.

Ms Ruth Charles of DOTARS will assist AAA with this issue. Her phone number is (02) 6274 6790.

Yours sincerely

W R Ellis  
First Assistant Secretary  
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18 November 2003