

SUBMISSION BY

**QANTAS AIRWAYS LIMITED
(ABN 16 009 661 901)**

REGARDING THE REVIEW OF

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

SUBMISSION BY QANTAS AIRWAYS LIMITED REGARDING THE REVIEW OF THE DISABILITY STANDARDS FOR ACCESSIBLE PUBLIC TRANSPORT 2002

I refer to the Terms of Reference dated 24 April 2007 regarding the Review of the *Disability Standards for Accessible Public Transport 2002* ("**Disability Standards**"). I also refer to the Issues Paper prepared by The Allen Consulting Group in relation to the Review dated May 2007 ("**Issues Paper**").

Qantas Airways Limited ("**Qantas**") and its subsidiary airlines (together the "**Qantas Group**") share the sentiment of disability discrimination legislation aimed at the protection of the rights of people with disabilities and the Qantas Group is committed to the carriage of passengers with disabilities in a safe non-discriminatory manner with dignity whilst ensuring the health and safety of Qantas staff.

The Qantas Group has been actively involved in making submissions at relevant opportunities in relation to the operation of the *Disability Discrimination Act 1992* ("**DDA**") and the Disability Standards, particularly as they affect the operation of airlines. The Qantas Group considers that there are particular challenges facing airlines in relation to meeting the needs of passengers with disabilities due to various factors particular to air travel, which include the constraints of operational requirements, airport infrastructure, and the necessary safety requirements of its operations.

The challenges and the areas in respect of which the Qantas Group wishes to make submissions for the purposes of the Review are:

1. the interaction of the Disability Standards (and the DDA) with other legislation – in particular, civil aviation safety legislation and occupational health and safety legislation;
2. lack of requirements regarding the training of assistance animals; and
3. requirements regarding disability aids.

I will deal with each of these challenges in turn.

1. Interaction of Disability Standards and the DDA with Other Legislation

- 1.1 In relation to the first challenge referred to above, Qantas wrote a letter to the Department of Transport and Regional Services ("**DoTARs**") dated 8 November 2006 ("**DoTARs letter**") in response to a request from DoTARs to provide information about the conflicts airlines and airports encounter between the requirements of Australian anti-discrimination legislation (in particular, the DDA and the Disability Standards), and other competing legislation, such as the civil aviation safety requirements and occupational health and safety legislation. Qantas would like to refer to and repeat the contents of that letter as part of its submissions and attaches a copy of the same for review and consideration.
- 1.2 I specifically note the impact of civil aviation safety legislation and regulations on the ability of airlines to comply with Clause 28.4 of Part 28 (Booked Services) of the Disability Standards given the restrictions placed on exit row seating.
- 1.3 The impact of civil aviation safety legislation on the carriage of assistance animals needs to be addressed with some urgency. I deal with this issue in more detail below.
- 1.4 There is a significant impact from the occupational health and safety legislation in relation to the ability of airlines to carry all mobility aids (in particular on certain narrow bodied aircraft) and on transferring passengers between mobility aids and aircraft seats. I refer again to the DoTARs letter in which this issue is addressed in some detail.

- 1.5 Finally, the *Aviation Transport Security Regulations 2005* have affected the ability of airlines to allow passengers to carry scissors and hypodermic needles on board and introduced requirements in relation to the screening of mobility aids. Examples of the conflicts encountered by airlines between these legislative regimes are provided in the DoTARs letter.
- 1.6 Based on the information set out in the DoTARs letter, it is the Qantas Group's submission that the Disability Standards ought to contain a clear exemption in relation to compliance with civil aviation safety legislation and regulations, occupational health and safety legislation and aviation transport security regulations.
- 1.7 In response to complaints that Qantas is failing to comply with the Disability Standards, the Qantas Group considers that it can rely on the unjustifiable hardship defence where it is required to comply with competing legislation, in circumstances where it is not possible to comply with both pieces of legislation simultaneously. However, the Qantas Group considers that it is appropriate, reasonable and resource efficient that this issue be clearly addressed in the Disability Standards so as to clarify the position for airlines and people with disabilities alike. This would result in the complaint process being avoided by all parties where the airline is merely complying with its obligations under conflicting legislation as best it can. This is particularly the case in relation to the civil aviation safety regulations and aviation transport security regulations, where the Government is able to resolve the conflicting issues through amending its own legislation, regulations and standards.

2. Requirements regarding Training of Assistance Animals

- 2.1 The Disability Standards (and the DDA) deal with the carriage of assistance animals, including assistance dogs. Section 9 of the DDA makes unlawful less favourable treatment because a person possesses or is accompanied by a guide dog, a hearing or "*any other animal trained to assist the aggrieved person to alleviate the effect of the disability*".
- 2.2 The Qantas Group has, in the past, provided a submission to the Human Rights and Equal Opportunity Commission dated 26 September 2003 in response to its Discussion Paper "*Assistance Animals under the Disability Discrimination Act 1992*". Qantas would like to refer to and repeat the contents of that document as part of these submissions and a copy is attached for review and consideration.
- 2.3 As you will see from the submission to DoTARS and the submission to HREOC, the principal and interrelated issues in relation to the carriage of assistance animals are:
- (a) interaction with civil aviation safety legislation; and
 - (b) lack of clarity about the appropriate level of training required for assistance animals.
- 2.4 Since the two submissions referred to in paragraph 2.3 above were provided, there have been a number of developments in relation to this issue.
- 2.5 In relation to the issue of training, as noted in the DoTARS submission, the Qantas Group has taken the approach that the animal must be trained:
- (a) to show a high standard of appropriate behaviour;
 - (b) in real life situations to travel and function appropriately on public transport;
 - (c) not to bark or make any similar animal noise;
 - (d) to toilet on demand and only under instructions from the person that they are accompanying;

- (e) to remain calm when in confined spaces; and
 - (f) not to react to noises, crowds or stressful environments.
- 2.6 The Qantas Group considers that it is essential that the assistance dog have at least the above level of training before the animal can be safely carried in the aircraft cabin.
- 2.7 A recent judgment of the Federal Court of Australia (see *Forest v Queensland Health [2007] FCA 936* (22 June 2007)) held that there is nothing in the DDA, in particular section 9, which justifies an interpretation of the word “trained” beyond its ordinary meaning – that is, there is no requirement under the DDA (either explicitly or by implication) that an animal:
- (a) be trained by a particular type of trainer or organisation;
 - (b) undertake a particular amount of training; or
 - (c) be accredited by or registered with a particular agency or organisation.
- 2.8 As noted above, it is the Qantas Group's submission that it would impose an unjustifiable hardship on the Qantas Group if it were required to carry an animal in the cabin of an aircraft that did not meet the training requirements set out at paragraph 2.5 above. This position is not unreasonable in the circumstances of air travel. Air travel, unlike any other form of “public transport”, involves carriage in a confined space, often for extended periods of time, where there are no simple solutions to an adverse reaction from an assistance animal in-flight. There are also safety considerations for airlines in relation to how the assistance dog will react in the event of an emergency and whether it will impede the egress of passengers in an evacuation.
- 2.9 However, the Qantas Group is faced with complaints from a variety of passengers with “home trained” assistance dogs or assistance dogs trained by organisations with limited credentials and/or credentials that cannot be verified by any recognised training association. The Qantas Group is then placed in the difficult position of having to assess the appropriateness of the training received by those animals, often with limited written information provided by the owner or trainer of the assistance dog. As airlines are in the business of air transportation, rather than the assessment of assistance dogs, they do not have the necessary expertise to determine whether an assistance dog has been appropriately trained to travel in the aircraft cabin.
- 2.10 Until recently, this assessment has also been made with the guidance of the Civil Aviation Safety Authority (“CASA”) in the context of the civil aviation regulations which regulate the carriage of animals in the aircraft cabin.
- 2.11 As noted in the submission to HREOC and to DoTARS, the Qantas Group is subject to civil aviation safety regulations in relation to the carriage of assistance animals in the cabin of an aircraft. The carriage of any animal, including an assistance animal, in the cabin of an aircraft is regulated by the *Civil Aviation Regulations 1988* (see CAR 256A). CAR 256A provides that the carrier may not carry any animal in the aircraft cabin, other than a dog accompanying a visually impaired or hearing impaired person as a guide or assistant, without written approval from CASA.
- 2.12 In addition to the exemption for dogs accompanying a visually impaired or hearing impaired person as a guide or assistant, CASA Instrument 253/06 outlines a permission to carry assistance dogs trained by organisations listed in Schedule 1 in the cabin of the aircraft subject to the following conditions:
- (a) an assistance dog must accompany its owner, being a person who suffers from a disability other than sight or hearing; and

- (b) the owner of an assistance animal must produce to the operator a proof of identity card, issued by an organisation listed in Schedule 1.

2.13 Schedule 1 lists the following organisations:

- (a) Animal Assisted Therapy Australia, Inc;¹
- (b) Assistance Dogs Australia;
- (c) Association of Australian Service Dogs (NQ), Inc; and
- (d) Australian Support Dogs.

2.14 The assessment of the appropriateness of the training by these organisations has been undertaken by CASA. The Qantas Group understands from CASA that its acceptance of these assistance dog associations is based on these organisations having full membership of Assistance Dogs International.² CASA also reviews requests for permissions for individual assistance dogs.

2.15 The Qantas Group considers that it would be more appropriate for the Disability Standards to provide that the rights contained in the DDA and the Disability Standards in relation to assistance dogs only apply if they have:

- (a) been trained by a recognised trainer or organisation; or
- (b) been accredited by or registered with a particular agency or organisation; or
- (c) undergone particular training which can be verified by a recognised trainer or organisation – where the training required in relation to such assistance animals includes:
 - (i) training the animal to alleviate the relevant disability;
 - (ii) training the animal to behave properly and safety in public; and
 - (iii) training the owner/handler in appropriate animal management.

2.16 The Qantas Group submits that the Disability Standards should be amended to provide certainty in relation to the level of training required and how to determine which organisations are recognised as providing an appropriate level of training. This would provide a more structured arrangement in relation to the carriage of assistance animals on aircraft and provide certainty for both passengers and airlines.

3. Disability Aids

3.1 The Qantas Group recognises that the ability to access transport is crucial to the ability of people with disabilities, and their families and carers, to participate fully in community life.

3.2 The Disability Standards impose a number of obligations on airlines in relation to (amongst other things) disability aids. These obligations include, but are not limited to:

¹ Assisted Therapy Australia, Inc has changed its name to Canine Helpers for the Disabled, Inc.

² Assistance Dogs International is a coalition of not-for-profit organisations that train and place assistance dogs – see www.adionline.org.

- (a) an obligation that disability aids are to be in addition to normal baggage allowances (see Part 30.1); and
 - (b) an obligation that disability aids are treated in the same way as cabin or accompanied baggage (see Part 30.1).
- 3.3 For the purposes of the Disability Standards, disability aids are considered to include equipment and apparatus including mobility, technical and medical aids.
- 3.4 The Qantas Group considers that the Disability Standards, as currently drafted, do not take sufficient account of the special circumstances of airlines who, for obvious reasons, have constraints imposed in relation to the amount of baggage which can be carried including:
- (a) the technical limitations of an aircraft – including significant restrictions on the weight an aircraft can carry – together with safety, design and construction limits; and
 - (b) the costs involved in providing the additional allowance.
- 3.5 While the Qantas Group notes that it can rely on the “unjustifiable hardship” defence in relation to non-compliance with the Disability Standards, the Qantas Group considers that a more appropriate approach would be to provide:
- (a) a maximum weight, and/or number of disability aids (eg: in the European Union, new regulations introduced from July 2007 require that up to two pieces of mobility equipment must be carried free of charge per passenger with a disability or passenger with reduced mobility, including electric wheelchairs, subject to some conditions)³; and
 - (b) a proviso that the disability aid must be necessary for the flight or intended travel or unable to be reasonably purchased or provided at the passenger's destination.
- 3.6 The Qantas Group's current approach is that, for the safety and comfort of Qantas Group passengers, and to ensure compliance with civil aviation safety legislation, it is necessary for the Qantas Group to limit the weight, and number, of each passenger's baggage.
- 3.7 In relation to disability aids:
- (a) where a passenger is travelling with a mobility aid, being a mobility aid such as a manual or electric wheelchair or electric scooter, the weight of that mobility aid is not included in the calculation of the total baggage weight, provided it is for the passenger's own use. Where a passenger has two or more mobility aids, the passenger will be charged excess baggage for these additional mobility aids if the general luggage allowance is exceeded⁴;

³ See Regulation (EC) No 1107/2006 of the European Parliament and of the Council of 5 July 2006 concerning the rights of disabled persons and persons with reduced mobility when travelling by air. Annex 2, Assistance by air carriers, provides *inter alia* “In addition to medical equipment, transport of up to two pieces of mobility equipment per disabled person or person with reduced mobility, including electric wheelchairs (subject to advance warning of 48 hours and to possible limitations of space on board the aircraft, and subject to the application of relevant legislation concerning dangerous goods).”

⁴ There is an exception for all Qantas Group flights into and out of the European Union in accordance with the requirements set out in footnote 2 above.

- (b) walking canes, crutches and collapsible walking frames may be carried in the aircraft cabin and are treated as cabin baggage in addition to the usual cabin baggage limits; and
 - (c) Qantas Group check-in staff also have discretion to waive up to 5-6kgs excess baggage for other disability aids.
- 3.8 The Qantas Group is comfortable that its policy is compliant with the DDA, on the basis that it would be entitled to rely on the unjustifiable hardship defence in relation to any complaint of unlawful discrimination.
- 3.9 However, the difficulty faced by the Qantas Group is that it has, to date, had to deal with passengers who attempt to travel with extensive "disability aids" including incontinence pads, some of which could be purchased at the destination. Examples of the range of disability aids that passengers may seek to travel with include:
- (a) electric wheelchair or manual wheelchair or both;
 - (b) electric scooter;
 - (c) a commode;
 - (d) bladder testing equipment;
 - (e) incontinence products;
 - (f) sheepskin bedding;
 - (g) cushions;
 - (h) a sleep machine;
 - (i) Canadian crutches; and
 - (j) various forms of medication.

Some passengers may wish to travel with up to 4-6 or more of the above items each time they travel and request that all items be carried in addition to the maximum weight allowances applicable to all passengers.

Other passengers with food allergies or intolerances may seek to carry food products for an entire vacation period on the basis that the same food products are not available at the destination. Passengers with food allergies or intolerances seek the carriage of these food products free of charge in addition to the maximum weight allowances applicable to all passengers.

- 3.10 The lack of any qualification in the Disability Standards, being either a weight limit or the number of items per flight that a passenger with a disability can reasonably carry free of charge causes inconvenience and discontent for passengers and airline staff, which is usually first addressed at the airport. When passengers are charged excess baggage fees, in circumstances where they are carrying numerous disability aids or disability related equipment, they make complaints of disability discrimination which the Qantas Group is then required to spend significant time and resources to resolve. This time and the resources could be better directed at continuing to review and improve Qantas Group services and products for people with disabilities.
- 3.11 The Qantas Group considers that the operation of the Disability Standards and the DDA would be assisted by an acknowledgement of the special circumstances of air travel in relation to the carriage of disability aids. The Disability Standards should

make it clear that the right is not unlimited but rather subject to a maximum weight limit and/or number of items per flight that a passenger with a disability may carry in addition to the maximum weight allowances. Not only would it be easier for the Qantas Group to communicate these requirements to passengers, it would also provide the airlines and passengers alike with the clarity and certainty required for the smooth operation of air travel.

Conclusion

The carriage of people by air, including people with disabilities, is necessarily complex. The conflict between competing legislation, especially the legislative requirements addressed above and within the DoTARs letter, only add to that complexity. The Qantas Group submits that it is crucial that the conflicts between the requirements of the Disability Standards (and the DDA) and civil aviation safety legislation, occupational health and safety legislation and the aviation transport security legislation be addressed as a matter of urgency.

In addition, the lack of qualification or clarity in relation to particular issues, such as the level of training required for an assistance dog, or the amount of disability aids which can be carried on an aircraft, create practical difficulties in relation to the application and implementation of the Disability Standards.

The Qantas Group is willing to discuss any aspect of the above submissions with The Allen Consulting Group and would ask that any queries be directed to Ms Alison McKenzie, Senior Corporate Lawyer at Qantas on (02) 9691 5621.

COPY



08 November 2006

Private and Confidential

Mr Peter van Rens
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Dear Mr van Rens

Conflicting Government Regulation: the Australian Domestic Law Position

I refer to the aviation meeting held at the Human Rights and Equal Opportunity Commission ('HREOC') on 31 July 2006, and the e-mail received from the Department of Transport and Regional Services ('DoTARS') dated 7 September 2006 requesting airlines and airports to provide information to DoTARS about the conflicts they encounter between the requirements of Australian anti-discrimination legislation (in particular, the *Disability Standards for Accessible Public Transport 2002*), and other competing legislation, such as the civil aviation safety requirements and occupational health and safety legislation.

The Qantas Group shares the sentiment of disability discrimination legislation aimed at the protection of the rights of people with disabilities and the Qantas Group is committed to the carriage of passengers with disabilities in a manner which is safe and not unlawfully discriminatory.

Under Australian local law, the issue of passenger rights is a complex balancing process between conflicting applicable legislative requirements. In this context, airlines face competing issues around compliance with disability discrimination laws, protecting and ensuring the health and safety of airline staff, maintaining and enforcing civil aviation safety and compliance, whilst also guaranteeing aviation transport security.

The outline set out below is not intended to cover every conflict that has arisen, or may arise, between Australian anti-discrimination legislation and the varying legislative requirements applicable to the aviation industry. Rather, it addresses some of the issues which have been encountered by the Qantas Group. I have not covered the legislative requirements in any detail, other than to state the relevant requirements of the legislation to which I have referred. This outline does not contain any legal advice.

Accordingly, I have set out the competing legislation to which I am referring before providing some examples of the dilemmas that airlines face in attempting to comply with conflicting legislative requirements.



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Disability Discrimination legislation In relation to the provision of goods and services¹

Australian Disability Discrimination Legislation

Disability discrimination legislation in Australia exists at Federal, State and Territory level in the following statutes:

- *Disability Discrimination Act 1992 (Cth) ('DDA') and Disability Standards for Accessible Public Transport 2002 ('Transport Standards')*
- *Human Rights and Equal Opportunity Commission Act 1986 (Cth)*
- *Workplace Relations Act 1996 (Cth)*
- *Anti-Discrimination Act 1977 (NSW)*
- *Equal Opportunity Act 1995 (VIC)*
- *Anti-Discrimination Act 1991 (QLD)*
- *Equal Opportunity Act 1984 (WA)*
- *Equal Opportunity Act 1984 (SA)*
- *Anti-Discrimination Act 1992 (NT)*
- *Discrimination Act 1991 (ACT)*
- *Anti-Discrimination Act 1998 (TAS)*

(together, the 'Disability Discrimination Legislation').

The Disability Discrimination Legislation generally prohibits discrimination on the ground of disability or impairment in the provision of goods and services. Overall, the Disability Discrimination Legislation prohibits unlawful discrimination that occurs when:

- in the provision of goods and services;
- a person is treated less favourably;
- on the basis of a prohibited ground (eg: their disability);
- causing real detriment;
- where no exemption or defence applies (eg: reasonableness or unjustifiable hardship).

All five elements must be present to establish unlawful discrimination.

Occupational Health and Safety Legislation

Occupational Health and Safety legislation also exists at Federal, State and Territory levels as follows:

- *Occupational Health and Safety Act 1991 (Cth)*
- *Occupational Health and Safety Act 2000 (NSW)*
- *Occupational Health and Safety Act 2004 (VIC)*
- *Workplace Health and Safety Act 1995 (QLD)*
- *Occupational Health, Safety and Welfare Act 1986 (SA)*
- *Occupational Health and Safety Act 1984 (WA)*
- *Occupational Health and Safety Act 1989 (ACT)*
- *Work Health Act (NT)*
- *Workplace Health and Safety Act 1995 (TAS)*

(together, "OHS Legislation").

In general terms, an employer has an obligation to ensure the health, safety and welfare at work of all of its employees and other persons at its place of work. Generally, the principal defence to these very onerous obligations is that it was not reasonably practicable to comply with the obligations.

¹ This paper only reviews the Disability Discrimination Legislation in relation to the provision of goods and services. I have not addressed Disability Discrimination Legislation in relation to employment or accessibility to premises.

Examples of conflict between obligations under Disability Discrimination Legislation and OHS Legislation

Carriage of Mobility Aids/Wheelchairs

The carriage of passengers who use electric wheelchairs (and in some cases, electric scooters) raises some very real dilemmas for airlines, passengers and airline staff.

At the same time as the number of passengers with disabilities (in particular passengers who use wheelchairs) who undertake air travel, including regular air travel for business, has steadily increased, so has the sophistication, weight and dimensions of these wheelchairs.

Manufacturers of wheelchairs recommend that they must not be laid on their side but rather must be carried in the upright position. The average size of an electric wheelchair in the upright position is usually outside the dimensions of the aircraft hold of a narrow-bodied aircraft. Electric scooters can be the size of small golf buggies and some will simply not fit through the cargo doors of narrow body aircraft, regardless of the position in which they are stowed.

In Qantas' experience, the average weight of an electric wheelchair is anywhere between 80-180 kilograms. Once these wheelchairs are dismantled or placed on their side, they become a dead weight and become more difficult to transport within airport facilities and almost impossible to safely manoeuvre within the aircraft hold. As a mechanical solution to accommodate the lifting of such heavy, yet fragile, machinery has not been achieved to date, concerns regarding the safety of airline airport staff have meant that limitations have had to be placed on the size dimensions of electric wheelchairs that may be carried on narrow-bodied aircraft (eg: B737, B717, Bae146s and Dash 8s – see table below).

Aircraft Type	Maximum Dimensions (in adjusted state)		
B737	Width 100cm	Height 84cm	Length 125cm
Bae146	Width 125cm	Height 71cm	Length 125cm
Dash 8	Width 85cm	Height 130cm	Length 115cm
B717	Width 80cm	Height 73cm	Length 100cm

While Qantas has conducted Customer Forums to discuss these size restrictions with national disability groups, the process of disseminating the information accurately and efficiently is challenging. The need to explain the detail of the changes and, most importantly, the reasons for them to all affected groups causes the greatest difficulty. Consequently, the changes have been controversial and attracted negative media attention in Australia. Whilst Qantas is working with national disability groups with a view to finding solutions, the airline is placed in a difficult situation because its actions are necessary to ensure airline staff health and safety. Qantas' actions have exposed it to criticism and complaints by passengers. While Qantas is comfortable that it is able to defend any claims brought under Disability Discrimination Legislation based on the defences available under that legislation, it would clearly be preferable for it not to have to fund such a defence in order to establish that it is dealing appropriately with conflicting legislation.

Transferring Passengers with Mobility Limitations

Until recently in Australia, passengers who have severe to reduced mobility limitations or disabilities required manual lifting to be transported by air. Passengers who use wheelchairs and who are not mobile generally require assistance from airline staff in transferring from their own wheelchairs into airline wheelchairs or into airline aisle wheelchairs (which have been

specially designed to travel down the narrow aisle of an aircraft), or both, before being transferred again into their aircraft seat.

A potential conflict had arisen between an airline's obligations to its staff and to passengers with disabilities, respectively, in relation to the manual transfer of passengers into aircraft seats. Qantas has worked with a lifting manufacturer to find a mechanical solution in the form of an Eagle Lifter. The Eagle Lifter has the capability to transfer passengers out of their own wheelchairs and into aircraft seats and vice versa, both in wide and narrow-bodied aircraft, without significant manual handling risks. Obviously, this is an important break-through in addressing the manual handling issues faced by airline staff in assisting passengers with disabilities.

Nonetheless, there will always be instances where manual handling is unavoidable. Accordingly, the issue still remains (though to a reduced extent) as to where the balance should lie between competing legislative requirements (and good corporate social responsibility) in circumstances where employees are put at risk of serious injury in order to provide accessibility to air travel for passengers who use wheelchairs (eg: transferring a passenger weighing in excess of 100kgs with a Sling or Slideboard into an aircraft seat within the awkward and restricted space of an aircraft cabin).

Civil Aviation Legislation

The Qantas Group, in its roles as domestic and international airline operators, is bound to comply with the various aviation safety regulations and standards set out in:

- *Civil Aviation Act 1988*
- *Civil Aviation Regulations 1988*
- *Civil Aviation Safety Regulations 1998*
- *Civil Aviation Orders*

(together, the 'Civil Aviation Legislation').

Compliance with airline safety requirements under the Civil Aviation Legislation imposes requirements that at times conflict with the terms of the Disability Discrimination Legislation.

Examples of conflict between obligations under Disability Discrimination Legislation and Civil Aviation Legislation

In our experience, there are two main areas where the regulations appear to operate in a way that would not otherwise meet the objectives of the Disability Discrimination Legislation:

- Regulations restrict the presence of animals inside the aircraft cabin; and
- Regulations operate to ensure that exit rows are occupied by people who are capable of assisting in the release of the emergency exit door and whose presence would not impede the quick evacuation of the aircraft.

The requirements of the regulations in respect of these matters are necessary to ensure safety in civil aviation.

The Carriage of Service Animals in the Aircraft Cabin

The carriage of any animal, including a service animal, in the cabin of an aircraft is regulated by the *Civil Aviation Regulations 1988*. Civil Aviation Regulation 256A provides that the carrier may not carry any animal, other than a dog for the sight or hearing impaired, without the written consent of Civil Aviation Safety Authority ('CASA'). In providing its approval, CASA may impose conditions on the manner in which the service animal is carried in the cabin of the aircraft.

Sub-regulation 256A(8) of the Civil Aviation Regulations 1988 prohibits the carriage of animals "if carrying the animal is likely to affect a person in the aircraft in a way that may affect adversely the safety of the aircraft".

Even if regulatory approval is received, the airline may still need to decline the service animal's carriage due to safety considerations.

At the same time, to refuse carriage to a passenger with a disability wishing to travel with a service animal raises a potential breach of the Disability Discrimination Legislation, unless the carrier can show that the refusal was reasonable in all the circumstances or that to carry the passenger and its animal would cause the airline an unjustifiable hardship.

In obtaining CASA approval and assessing its own safety requirements, airlines have two main considerations when reviewing a service dog's suitability to be carried in the aircraft cabin.

The first issue is the level of training the animal has received. The animal must be trained:

- (a) to show a high standard of appropriate behaviour;
- (b) in real life situations to travel and function appropriately on public transport;
- (c) not to bark or make any similar animal noise;
- (d) to toilet on demand and only under instructions from the person that they are accompanying;
- (e) to remain calm when in confined spaces;
- (f) not to react to noises, crowds or stressful environments.

To carry the animal without confirmation of its training levels may place cabin safety at risk. If the service animal cannot behave itself during the flight and disrupts the flight by continuous barking, unrestrained movement in the cabin and/or toileting requirements, this raises concerns for safety in the cabin (including as a result of adverse reactions from fellow passengers in the cabin). The duration of many international flights make such behaviour in-flight particularly unacceptable and potentially unsafe. In addition, animals have the potential to hinder passengers and crew in emergency situations with potentially disastrous consequences.

The second issue is to establish that the passenger has a disability requiring him or her to travel in the aircraft cabin with a service animal that *alleviates the effect of his or her disability* (or terms to this effect set out in the Disability Discrimination Legislation referred to above). Establishing that the person has a disability that satisfies this test poses obvious difficulties for carriers. Whilst a person who has a sight or hearing impairment may have an easily identifiable disability, passengers with psychological disabilities cannot be recognised as such by airline staff without proof of that disability (in the form of supporting documentation) being provided. Passengers with disabilities say that it is discriminatory for the airline to request such information.

There are an increasing number of requests for passengers to travel with animals known as "*psychological assistance animals*" or "*comfort animals*". These animals are trained to assist a person with a psychological disability or impairment to cope in stressful situations. The animals receive some training, but the challenge for CASA and airlines alike, lies in establishing the assistance animals' true purpose and whether its level of training is appropriate for carriage within the cabin of an aircraft, especially on a long haul flight.

Other considerations that airlines must consider in the carriage of animals in the cabin is the comfort of other passengers (especially where passengers suffer from allergies to animals), as well as issues of general hygiene in the passenger cabin, which is a food service and consumption area.

Airlines are also sensitive to the fact that the duration of an international flight is an issue due to reasons of hygiene and humanity. An animal of any kind cannot be expected not to toilet for periods of between 14 to 20 hours, which is what would be the minimum required on some

international flights (such as Melbourne – Los Angeles) if one takes into account travel time to the airport, check-in, security, boarding, flight times and disembarkations/customs requirements.

The challenge, therefore, is that whilst the Disability Discrimination Legislation requires that access be provided to people with disabilities, those who travel with a service dog also need to comply with Civil Aviation Legislation and general safety requirements of airlines. On some occasions, the goal of accessibility in air transportation may not be consistent with aviation safety considerations. This conflict needs to be addressed with a view to reaching a reasonable and necessary compromise between these important, yet competing, goals.

Exit Row Seating Regulations

As Australian carriers, the Qantas Group operators must comply with Civil Aviation Legislation including the Civil Aviation Orders ('CAO').

Civil Aviation Order Part 20 Section 20.16.3, paragraph 15.2 provides that:

"The carriage of handicapped persons in regular public transport or charter operations shall be in accordance with the following requirements:

...

- (b) the operator shall ensure that handicapped persons are not seated in an aircraft where they could in any way obstruct or hinder access to any emergency exit by other persons on the aircraft".

The broad definition of "handicapped person" found in sub-section 2 of Section 20.16.3 provides as follows:

"**Handicapped person**" is a "person requiring special attention because of illness, injury, age, congenital malfunction, or other temporary or permanent incapacity or disability which makes that person unable without special facilities or assistance to utilise air transport facilities and services as effectively as persons who are not so affected."

It is Qantas' experience that a conflict will arise between the Disability Discrimination Legislation and the Civil Aviation Legislation where a passenger with a disability wishes to occupy an exit row seat to accommodate their disability due to the extra leg room such seats provide or personal preference. The airline, however, is prohibited from providing such a seat to a passenger with a disability by the Civil Aviation Legislation.

To illustrate, a passenger may have a back disability which causes him or her serious pain requiring regular access to relief by walking around the cabin of the aircraft which might best be gained by sitting in an exit row seat. However, the passenger's self-description places him or her within the definition of "handicapped person" set out above. Equally, a passenger's obesity (which may be caused by a medical condition) may reduce that person's ability to quickly respond to an emergency by the effective use of aircraft facilities in the same manner as an able-bodied person, which would also bring such a person within the broadly defined meaning of "handicapped person".

Emergency exit doors are heavy and difficult to lift. Someone with a back injury or someone who is severely overweight is therefore unable to operate these doors with the same efficiency as an able bodied passenger. For the same reason, elderly passengers come within the definition of "handicapped person" and are not able to travel in the emergency exit rows given their generally reduced strength.

In addition, the Commonwealth Department of Transport and Regional Development Bureau of Air Safety Investigation ('BASI') (as it then was, now the Australian Transport Safety Bureau) recommended in 1993 (Air Safety Recommendation Number R930258) that the Civil

Aviation Authority (as it then was, now CASA) regulate to ensure that passengers seated in exit rows are capable and willing to conduct the functions with which they may be faced in an emergency or evacuation. That recommendation is based on accident experience and research in Australia and overseas, and also on regulations in force in the United Kingdom, Canada and the United States. Qantas has adopted Air Safety Recommendation Number R930258, which is reflected in Qantas policies applicable to the seating of customers with disabilities.

In response to this BASI recommendation, CASA has proposed the following new provision to become part of the new CASA regulations, which Qantas anticipates will be introduced in the next 12 months:

"Part 121A.260 (3)

An operator must ensure that a person with reduced mobility is not allocated, nor occupies, a seat where his or her presence could:

- (a) impede the crew in their duties;
- (b) obstruct access to emergency equipment; or
- (c) impede the emergency evacuation of the aeroplane."

Clarity is needed to ensure that carriers can comply with their obligations under the Civil Aviation Legislation without concern that they will end up in courts and tribunals dealing with disability discrimination complaints to defend their position. It is an unnecessary drain on airline resources, especially when the Civil Aviation Legislation with which Australian carriers are complying is in the interests of the safety of all passengers, including passengers with disabilities. Although there have been attempts to resolve the conflict via proposed legislation to which I will refer further below, the amendment only takes the first step in what should be a two step process to appropriately address this conflict.

Civil Aviation Act 1988 as amended by section 98(6B)

An amendment to the *Civil Aviation Act 1988* has resulted in the introduction of section 98 (6B) which provides that "regulations may contain provisions that are inconsistent with the *Disability Discrimination Act 1992* if the inconsistency is necessary for the safety of air navigation".

While the amendment may make clear that civil aviation regulations may be inconsistent with the DDA, it does not then deal with how those inconsistencies will be resolved. Accordingly, this amendment has still not ensured that compliance with Civil Aviation Legislation is a clear defence for carriers in response to claims of disability discrimination.

In Qantas' view, this amendment is only the first step to appropriately addressing the conflict between the Civil Aviation Legislation and State and Federal Disability Discrimination Legislation. There is an exemption process under the DDA found in section 47(2) whereby "anything done by a person in direct compliance with a 'prescribed law'" is exempt from the operation of the general provisions prohibiting discrimination on the grounds of disability and sex. The Civil Aviation Legislation should be included as a 'prescribed law' for the purposes of section 47², enabling direct compliance with Civil Aviation Legislation to exempt compliance with the Disability Discrimination Legislation.

Qantas considers that such an exemption is reasonable in circumstances where it is simply complying with its obligations to ensure its paramount concern of passenger safety. It should be emphasised that even with this exemption, a complainant's right to make a complaint has not been revoked. Equally, compliance with a regulation is only a defence where, if there is a choice, the operator has chosen the non-discriminatory means of compliance.

² The process for becoming a 'prescribed law' under the Disability Discrimination Legislation is pursuant to Regulation 2A and Schedule 1 of the Disability Discrimination Regulations 1996 ('DDA Regulations').

Aviation Transport Security Legislation

In 2004-2005, the *Aviation Transport Security Act 2004* and the *Aviation Transport Security Regulations 2005* (together, the 'Aviation Transport Security Legislation') were introduced with the obvious aim of ensuring the highest level of security and safety of passengers, airlines and airport staff alike whilst moving through airports and travelling on aircraft. In Qantas' experience, even these regulations have introduced new conflicts with the requirements of the Disability Discrimination Legislation.

Examples of conflict between obligations under Disability Discrimination Legislation and Aviation Transport Security Legislation

Prohibited Items – sharp scissors

One of the regulations that most travellers have come to rue is the number of prohibited items that may no longer be carried in the aircraft cabin. Regulation 1.07 of the *Aviation Transport Security Regulations 2005* includes in its list of "prohibited items" in item 2 "pointed metal scissors". In addition, sub-regulation (12) of Regulation 1.07 prescribes that:

- "a pair of scissors with blades more than 6cm long, or a pair of manicure scissors, is a prohibited item; but
- a pair of blunt-ended or round-ended scissors with blades less than 6cm long is not a prohibited item".

People with certain physical disabilities often self-catheterise to toilet and therefore need to carry sharp scissors past the security screening area into what is known as the Sterile Area and/or on board the aircraft to enable them to be able to cut the catheter tube. As the tube needs to remain sterile, they cannot be cut in advance of the passenger's travel. Blunt-ended or round-ended scissors are not sharp enough to effectively cut these tubes. Given the aviation security aims of the Aviation Transport Security Legislation, exceptions to these rules to accommodate such requests are not possible. The regulations do not allow for Cabin Crew members to be entrusted to carry the passenger's scissors on board as the regulations are of course equally applicable to the crew.

Prohibited Items – hypodermic needles

Hypodermic needles (whether or not attached to syringes) are also listed in the "prohibited items" in item 2 of Regulation 1.07. People who have diabetes obviously need to travel with such needles. There is an exemption found at sub-regulation (6)(b) of Regulation 1.07 which provides that "a hypodermic needle is not taken to be a prohibited item if the person carrying it shows proof that it is medically necessary for the use of the person or another person who is in the person's care".

Whilst this exemption addresses the immediate conflict, the requirements raise additional issues as to how that exemption should be managed by airlines and their staff, which are not addressed in the regulations. In particular, airlines face complaints from passengers who wish to carry all their hypodermic needles with them in the cabin of the aircraft (which is understandable given their value to the passenger), whilst airlines are expected, in line with the aims of the Aviation Transport Security Legislation, to keep the number of hypodermic needles carried on board to the medically necessary minimum.

Security Screening of Mobility Aids

In addition, the Aviation Transport Security Legislation has also had an impact upon the airline's ability to return a passenger's mobility aid to them in a timely manner. The sophistication of electric wheelchairs means that they give people a greater level of independence. Understandably, therefore, the majority of people who travel with a mobility aid have insisted that they be allowed to stay in their mobility aid for as long as possible. Accordingly, Qantas amended its Mobility Aid Policy in late 2005 to provide passengers with the choice of surrendering their wheelchair at the departure gate or at check-in, along with the

choice of receiving their mobility aid at the arrival gate or the baggage carousel in the destination port. However, this revised policy has lead to passenger complaints that it takes too long for their mobility aid to be returned to them.

The delays in relation to bringing a passenger's mobility aid to the gate upon arrival occur because it can often reasonably take up to twenty-five to thirty minutes to achieve this, depending on the aircraft type and the airport. This is due to the logistics of unloading the wheelchair from the aircraft, taking it to the baggage reclaim area, passing it through the security screening point and then travelling the (often significant) distance to the arrival gate.

One of the contributing factors as to why the process takes so long relates to the requirement to re-screen the mobility aid upon arrival. Regulation 3.20 (3)(g) of the *Aviation Transport Security Regulations 2005* provides that the responsible screening authority must ensure that goods (which would include a mobility aid) "that enter the sterile area are screened and cleared". When the mobility aid is brought to the Arrivals Hall, it re-enters the security Sterile Area of the airport terminal, requiring it to be re-screened in compliance with Regulation 3.20 (3)(g). This is so even though the mobility aid was screened before it was placed into the aircraft's hold.

I understand that DoTARs has raised this issue with the Office of Transport Security ('OTS'), who have confirmed that wheelchairs and mobility aids do need to be re-screened in accordance with the Aviation Transport Security Legislation. OTS has also confirmed that there are no plans to amend the regulations to make an exception for the screening of mobility aids.

Whilst I note that OTS has recommended that airlines treat wheelchairs and mobility aids as priority baggage to make mobility aids available more quickly, tagging wheelchairs as priority baggage is already a part of Qantas' procedures.

As a result of the introduction of this new legislation that aims to maintain the safety and security of all participants in aviation transport, there are new dilemmas faced by people with disabilities and airlines alike in accommodating passenger's needs within legislative provisions whose requirements, at times, inherently conflict.

Conclusion

The carriage of people by air, including people with disabilities, is necessarily complex. The conflict between competing legislation, especially the legislative requirements addressed above, only adds to that complexity.

Whilst there has been some progress in clarifying the position of which legislative regime takes precedence in relation to conflicts with civil aviation safety requirements, even this welcome legislative amendment allows room for interpretation and therefore, an opportunity for debate as to its application.

We trust that the above outline will assist in the review by DoTARs and HREOC, in consultation with CASA, aircraft operators and airport operators, into the conflicts between the requirements of the Disability Discrimination Legislation and each of the OHS Legislation, the Civil Aviation Legislation and the Aviation Transport Security Legislation. The Qantas Group would gratefully receive any assistance or clarity that can be provided by HREOC and/or DoTARs in relation to the issues raised above, through this consultative process with all aviation industry participants, or otherwise.

Yours faithfully



Alison McKenzie
Senior Corporate Lawyer

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QANTAS
Legal Department

Qantas Airways Limited
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To: **The Proper Officer**
Disability Rights Unit
Human Rights and Equal Opportunity Commission
Fax No: (02) 9284 9611

From: **Wes Nobelius**
Deputy General Counsel
Fax No: + 61 2 9691 5415 Phone No: +61 2 9691 5716

Date: 26 September 2003

Subject: **Submission in response to the Commission's Discussion Paper:**
Assistance Animals under the *Disability Discrimination Act 1992* ('DDA')

Page 1 of 6

Submission enclosed; original to follow by Express Post.



COPY

26 September 2003

The Proper Officer
Disability Rights Unit
Human Rights and Equal Opportunity Commission
GPO Box 5218
SYDNEY NSW 2001

Via Facsimile Transmission: (02) 9284 9611

Dear Sir/Madam

Submission in response to the Commission's Discussion Paper: Assistance Animals under the *Disability Discrimination Act 1992* ('DDA')

Qantas writes in response to the Commission's Discussion Paper on the basis of its experiences and needs as a service provider under the DDA.

1. Background

- 1.1 Qantas has had considerable experience dealing with assistance animals. Qantas recognises that such animals can be invaluable to their owners/handlers. Qantas also considers it appropriate that the law should provide for appropriately trained and accredited assistance animals to have access to public transport as well as other public places and facilities.
- 1.2 Qantas agrees that the current wording of the DDA, without the support of Regulations or Standards, leaves some important issues uncertain. For Qantas, the issues of most relevance are those surrounding the identification of genuine assistance animals which have been appropriately trained and independently accredited and the ability to require information regarding both the role and function of the animal as well as the training it and its owner/handler have undergone.
- 1.3 For Qantas, when considering these issues, the safety of our passengers and staff (as well as people on the ground) must be our paramount concern. The airline operates subject to the provisions of the *Civil Aviation Act 1988* ('CAA'), Regulations made under that Act ('CAR') and decisions of the Civil Aviation Safety Authority Australia ('CASA'). Attached to this submission are relevant extracts from the CAR and a Draft Advisory Circular published by CASA (regarding further Regulations which are being considered but which have not yet been made). The major theme of these Acts and Regulations is safety, and the responsibility for assuring safety is placed squarely on the airline.
- 1.4 In summary, under the CAA Qantas is not permitted to carry live animals in an aircraft unless:
 - (a) the animal is carried in a container which is not in the passenger cabin;
 - (b) the animal is a dog which guides or assists a visually or hearing impaired person and is restrained and sits on a moisture-absorbent mat ('Guide Dog'); or

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- (c) CASA has given the operator written permission to carry the animal, which will usually be accompanied by specific conditions regarding the carriage of the animal.

Qantas must consider this regulatory regime when assessing what is required in order for it to comply with the DDA.

- 1.5 Factors relating to safety will include the animal's willingness and ability to stay immobile and silent in a confined space; to tolerate and not react in a hostile fashion to large numbers of unfamiliar people and to stressful environments; and to toilet on command. As well as safety, there are also issues relating to the comfort of other passengers who may be affected by the above factors. For example, Qantas recently had an incident where a passenger demanded to be accompanied by an assistance animal (a dog). The dog was not appropriately trained and barked throughout the flight (from Sydney to Perth) causing considerable discomfort to other passengers (this incident was covered by the media).
- 1.6 Finally, for Qantas there are significant cost issues involved in carrying assistance animals in the passenger cabin.

2. Information which may be Requested from Passengers

- 2.1 It is because of the safety, comfort and cost issues involved that it is important for Qantas to be able to ascertain:

- (a) whether the '*assistance animal*' is required to assist a passenger with a disability in order for that passenger to be able to fly; and
- (b) whether both the animal and its owner/handler have been appropriately trained and independently accredited.

- 2.2 In this context, the level of information that service providers and others may require from passengers or customers becomes a critical preliminary issue. In Qantas' view, it should be lawfully entitled to request such information which is relevant or necessary to determining whether the animal is an assistance animal for the purpose of section 9 and for the purpose of addressing the question of '*unjustifiable hardship*'.

- 2.3 We note that the test for unjustifiable hardship takes into consideration circumstances including the benefit accruing to or detriment suffered by any person, the effect of the disability on the passenger concerned and cost factors. In this context, Qantas considers that there should be an explicit statement in or under the DDA (ie in Regulations or Standards) that it is lawful to ask a potential passenger or customer to provide information which is relevant to making that determination. This may include information about the nature of their disability, its effect on the person's ability to access a service (eg to fly), the role played by the animal in alleviating the disability, the relevant training undergone by both the animal and the owner/handler and the independent accreditation of the animal.

3. Animals other than Dogs

- 3.1 Some of the submissions already lodged with the Commission recommend that section 9(1)(f) of the DDA be restricted to assistance dogs rather than '*any other animal*'.
- 3.2 We note that one of those submissions suggested that a horse might be an assistance animal. Further, the USA Department of Transportation's document '*Guidance Concerning Service Animals in Air Transportation*' (published 9 May 2003) suggests that service animals might also include animals such as cats, monkeys, snakes and rodents. In Qantas' view, given the diversity of potential

assistance animals that passengers may request to carry in the cabin of an aircraft, it would be advisable to amend section 9 to limit its application to dogs. This would mean that only assistance dogs would be recognised as having special 'rights.' In Qantas' view, this would be appropriate because of the historically established reliability of dogs as assistants and the systems established worldwide to ensure that they are adequately trained to support and assist people with disabilities.

3.3 Contrary to the apparent understanding of some of the submissions made to the Commission, this amendment would not prevent service providers from accommodating other types of assistance animals in appropriate cases. Those animals would simply not have the proposed special rights that are accorded to assistance dogs.

4. Training

4.1 As the CAR recognises (and as reflected in submissions to the Commission such as those made by the Royal Guide Dog Association of Tasmania, Blind Citizens Australia, Guide Dogs Victoria and Association for the Blind of WA) there are well-established systems for the training and accreditation of Guide Dogs. Qantas agrees with those organisations when they say that selection, training and accreditation standards for other types of assistance animals which are able to access the protection of section 9 of the DDA should be at a similar level to those which apply to Guide Dogs.

4.2 Qantas also supports the submission of the State Rail Authority of New South Wales, Blind Citizens Australia and Assistance Dogs Australia that any definition of the training required in relation to such assistance animals should include:

- (a) training the animal to alleviate the relevant disability;
- (b) training the animal to behave properly and safely in public; and
- (c) training the owner/handler in appropriate animal management.

Each of these elements is, in Qantas' view, essential to protect safety on board an aircraft.

4.3 We recognise the point made by the US Psychiatric Service Dogs Society and by D Fahey, that training by the animal's owner is sometimes critical in ensuring that a relevant disability is in fact appropriately alleviated by the animal (element (a) in the preceding paragraph). At the same time, however, we consider that training to cover elements (b) and (c) above must be conducted by an accredited organisation if there is to be any certainty on which a service provider, such as Qantas, can rely. We recognise that this may create cost issues for people with disabilities, but suggest that this should be addressed (perhaps by government funding) outside the context of the DDA.

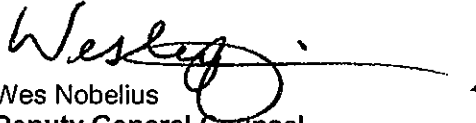
4.4 In terms of the options outlined in the Discussion Paper, we agree with State Rail that, for reasons of consistency and reliability, a nationally controlled system for accreditation of trainers is preferable to one controlled at a local government level.

4.5 Finally, Qantas agrees with a number of submissions that the issuing of a card (akin to a credit card) which could be carried by owners/handlers of assistance animals, and issued by the accredited training body, is critical. It would reduce the uncertainty surrounding the areas and questions about which Qantas is concerned. This would assist both in applying section 9 (however it may be amended) and in applying other relevant provisions of the DDA.

Thank you for the opportunity to make this submission. We hope that the Commission will keep Qantas informed about the progress of its investigations and any proposed amendment to the DDA or Regulations or Standards made under it.

Should the Commission have any specific questions, please contact Alison McKenzie (Senior Corporate Lawyer) on (02) 9691-5621.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'Wesley', with a long horizontal stroke extending to the right.

Wes Nobelius
Deputy General Counsel

ATTACHMENT:

EXTRACT FROM CIVIL AVIATION REGULATIONS AND CASA DRAFT ADVISORY CIRCULAR

Regulation 256A of the *Civil Aviation Regulations 1988* relates to the carriage of animals in an aircraft. It provides, in part:

'256A Carriage of animals

- (1) *Subject to subregulation (8), the operator of an aircraft must not permit a live animal to be in the aircraft unless:*
 - (a) *the animal is in a container and is carried in accordance with this regulation; or*
 - (b) *the animal is carried with the written permission of CASA and in accordance with any conditions specified in the permission...*
- (2) *Subregulation (1) does not apply to a dog accompanying a visually impaired or hearing impaired person as a guide or an assistant if the dog is:*
 - (a) *carried in the passenger cabin of the aircraft; and*
 - (b) *placed on a moisture-absorbent mat as near to the person as practicable; and*
 - (c) *restrained in a way that will prevent the dog from moving from the mat...*

(8) An animal must not be carried on an aircraft if carrying the animal would be likely to affect a person on the aircraft in a way that may affect adversely the safety of the aircraft.'

Draft Advisory Circular published by CASA in September 2001 states, in part:

'4. CARRIAGE OF ANIMALS

CASR 91.045 does not prohibit the carriage of animals in an aircraft and does not prescribe the manner in which animals may be carried. However, the CASR identifies the operator as being responsible for the safety of the aircraft and all persons on board the aircraft, while an animal is being carried. It is therefore the operator's responsibility to decide if an animal can be carried without affecting the safety of the aircraft or anyone on board the aircraft'.

Further:

'CARRIAGE OF 'ASSIST ANIMALS'

7.1.1 Carriage

Operators should consider the carriage of 'assist' animals as special cases and allow these animals to be carried in the passenger cabin when in company with their owner.'

Advisory Circulars are intended to provide recommendations and guidance to illustrate a means, but not necessarily the only means, of complying with Regulations.