



Australian Government

Department of Infrastructure, Transport,
Regional Development, Communications and the Arts

Inquiry into the Airline Passenger Protection (Pay on Delay) Bill 2024

SUBMISSION TO THE SENATE RURAL AND REGIONAL
AFFAIRS AND TRANSPORT LEGISLATION COMMITTEE

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Introduction

The *Airline Passenger Protection (Pay on Delay) Bill 2024* proposes that the Transport Minister be required to make carriers' obligation rules and make an aviation industry code of conduct. The proposals in the Bill primarily relate to consumer protections for airline customers.

The Department of Infrastructure, Transport, Regional Development, Communications and the Arts (the department) is not the primary Australian Government agency responsible for aviation consumer protection policy. Most aspects of relevant policy are the responsibility of the Treasury portfolio and the Australian Competition and Consumer Commission (ACCC). However, the department and the Civil Aviation Safety Authority (CASA) within the portfolio do have responsibility for some regulations and guidance documents relevant to a subset of matters addressed in the Bill.

The Australian Government is currently developing an Aviation White Paper, which will set out the government's policies in relation to aviation consumer protections in Australia. The Aviation Green Paper, released in September 2023, sought stakeholder views on policy options to enhance aviation consumer protections. Submissions received in response to the Green Paper are informing development of the government's policies, to be announced in the White Paper.

The department notes any obligations imposed on international airlines would need to be consistent with applicable international aviation law and our bilateral air services agreements, including examining the extra-territorial effect of such provisions on tickets or services purchased or commencing in a foreign country.

1. Aviation White Paper process

1.1. Aviation White Paper terms of reference

The terms of reference for the White Paper were released in February 2023.¹ The terms of reference set out the objective for the White Paper – to “promote an efficient, safe, sustainable and competitive Australian aviation sector, that is critical to the economy and the standard of living of all Australians.”

The terms of reference identify matters to be considered through the White Paper process, which include “appropriate consumer protections and access to services.”

1.2. Aviation Green Paper

The Aviation Green Paper was released in September 2023.² The Green Paper includes analysis of issues affecting Australia's aviation sector, now and to 2050, and seeks stakeholder feedback on policy options to be considered through the Aviation White Paper process.

In relation to aviation consumer protection, the Green Paper:

- Summarises the existing legal framework for aviation consumer protection, primarily under the Australian Consumer Law.
- Describes issues faced by aviation consumers in the period following the COVID-19 pandemic, including high rates of flight delays and cancellations, and concerns about the terms offered by airlines for refunds and flight credits.

¹ Department of Infrastructure, Transport, Regional Development and Local Government, *Aviation White Paper Terms of Reference*, <https://www.infrastructure.gov.au/infrastructure-transport-vehicles/aviation/aviation-white-paper/terms-of-reference>

² Department of Infrastructure, Transport, Regional Development and Local Government, *Aviation Green Paper*, https://www.infrastructure.gov.au/sites/default/files/documents/aviation_green_paper.pdf

- Articulates the Government’s objective to “improve complaints handling processes and strengthen consumer protections in the airline sector.”
- Seeks stakeholder feedback on consultation question, including:
 - Should the Australian Government look to revise current consumer protection arrangements and, if so, through existing or new mechanisms?
 - Would policies pursued in other jurisdictions – such as a Passenger Bill of Rights or a stronger ombudsman model – deliver benefits in Australia’s aviation sector?

1.3. Stakeholder consultation

The department conducted stakeholder consultation on the Aviation Green Paper between 7 September and 30 November 2023, including 19 roundtable meetings and a public submission process.

Issues related to aviation consumer protection raised through Green Paper consultation included:

- Some airlines and industry bodies argued that current economy-wide consumer protection arrangements are sufficient and that the aviation-specific arrangements are not necessary.
- Some industry representatives cautioned that the adoption of a compensation scheme for delayed or cancelled flights, as exists in some overseas markets, could result in higher airfares and could affect the viability of some low margin airlines or air routes.
- Some consumer representative groups argued that additional aviation-specific consumer protections are required because aviation customers can find it more difficult than customers in other sectors to make complaints and access remedies when services are not delivered as expected.
- The submission from the ACCC noted that airline customers can find it difficult to enforce their consumer rights and argued that an aviation-specific ombuds scheme and consumer legislation may be warranted.
- Submissions from individuals described personal experiences with interrupted travel and difficulties seeking remedies from airlines, with many calling for stronger government intervention to require the industry to meet its consumer obligations to customers.

1.4. Aviation White Paper

The White Paper will set out the Government’s policies in relation to aviation consumer protection, which are being developed with regard to feedback and submissions received in response to the Aviation Green Paper.

2. Existing aviation consumer protections

The department is not the primary Australian Government agency responsible for consumer protection for aviation customers. The Treasury portfolio has responsibility for consumer law, which is enforced by the ACCC at the Commonwealth level. However, the department and CASA do have responsibility for some regulations and guidance documents related to a subset of matters addressed in the Bill.

For international air travel, Australia’s bilateral air service agreements set out the overarching legal framework for flights between Australia and over 100 countries. These agreements are negotiated between governments and changes cannot be made unilaterally by one bilateral partner.

2.1. Australian Consumer Law

Part 4 of the Bill proposes the Minister for Transport be required to make rules in relation to a range of matters related to standards of service provided by air carriers to their customers.

The Australian Consumer Law (ACL) imposes existing obligations on carriers in relation to some of the matters proposed in the Bill.

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The ACL is enacted through the *Competition and Consumer Act 2010*, which is administered by the Treasury. The ACL sets out consumer rights and business obligations that apply to all Australian businesses, including airlines. The conduct of airlines, including terms and conditions of contracts between airlines and consumers, is subject to the ACL.

The Treasury is best placed to inform the committee about the ACL and its application to the aviation sector.

2.2. Civil Aviation (Carriers Liability) Act

Part 4(d) of the Bill proposes the Minister for Transport be required to make rules in relation to “the minimum compensation for lost or damaged baggage that a carrier is required to pay, separate to any insurance or obligations to pay compensation arising out of an international treaty.”

There is no minimum compensation for lost or damaged baggage specified under Australian law.

The *Civil Aviation (Carriers’ Liability) Act 1959* (CACL Act) provides the legislative framework for air carriers’ liability in Australia, which can be enforced by a court of law. This includes aviation carriers’ liability in respect of matters including passenger injury, passenger death, and loss or damage to baggage.

Section 31(2) and (2A) of the CACL Act specify a maximum amount that domestic carriers are liable to pay to compensate for destruction, loss or injury to registered baggage – set at \$3,000. Registered baggage includes baggage that has been checked in for carriage by the airline.

Section 31(3) and (4) of the CACL Act specify a maximum amount that domestic carriers are liable to pay to compensate for destruction, loss or injury to baggage other than registered baggage – set at \$300. This includes baggage that is carried on board an aircraft by the passenger and not checked in for carriage by the airline.

The Minister for Transport is responsible for the CACL Act. The department administers the CACL Act.

2.3. CASA advisory circular ‘Carriage of special categories of passenger’

Part 4(e) of the Bill proposes the Minister for Transport be required to make rules in relation to “a carrier’s obligations to facilitate the assignment of seats to children under the age of 14 years in close proximity to a parent, guardian or tutor, at no additional cost and to make the carrier’s terms and conditions and practices in this respect readily available to passengers.”

While the department is aware of no requirement under Australian law to seat children near a responsible adult, aviation safety legislation contains provisions requiring aircraft operators to effectively manage the aviation safety implications which arise from the carriage of certain kinds of passengers, including children.

CASA’s multi-part advisory circular ‘Carriage of special categories of passengers’ provides guidance regarding the requirements for the carriage of special categories of passengers for operations that fall under Parts 91, 133, 135 and 121 of *Civil Aviation Safety Regulations 1998*.³

The advisory circular describes the different types of special categories of passenger and what considerations should be made by operators for each category. The purpose of the advisory circular is to:

- Assist operators with the development of policy and procedures for the carriage of special categories of passengers.
- Provide guidance on the information that should be provided to special categories of passengers

³ Civil Aviation Safety Authority, *Multi-part advisory circular AC 121-09, AC 133-06 and AC 135-10 ‘Carriage of special categories of passengers’*, <https://www.casa.gov.au/sites/default/files/2021-08/multi-part-advisory-circular-121-09-ac-133-06-ac-135-10-carriage-special-category-passenger.pdf>

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- Provide guidance on the seating allocation of special categories of passengers.

In relation to “Passenger travelling with infants or children” the advisory circular states that “If a child travels with an accompanying responsible person, the child is seated in the same seat row segment as the accompanying person. Where this is not possible, the child is seated no more than one seat row or aisle away.”

“Where the passenger is travelling with a lap-held infant or two children in one seat, they are seated where there is additional emergency equipment available e.g. oxygen masks, lifejackets.”

“If the infant or child is restrained in a child restraint system (CRS), the accompanying responsible person is seated in the seat closest to the seat on which the CRS is installed.”

The advisory circular also provides guidance in relation to the seating of unaccompanied minors. It states that “The seating allocation of an unaccompanied child allows for cabin crew to monitor and communicate with them during all phases of the flight; and assist them as required e.g. close to crew stations and working areas.

“Groups of unaccompanied children are seated in a mix of ages, with the tallest child seated to allow assistance with fitting drop-down oxygen masks to smaller children in the case of a decompression. Where possible, an adult occupies the seat across the aisle next to each row of unaccompanied children.”

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