

Submission to Inquiry into Airline Passenger Protections (Pay on Delay) Bill 2024

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About the Justice and Equity Centre

The Justice and Equity Centre is a leading, independent law and policy centre. Established in 1982 as the Public Interest Advocacy Centre (PIAC), we work with people and communities who are experiencing marginalisation or disadvantage.

The Centre tackles injustice and inequality through:

- legal advice and representation, specialising in test cases and strategic casework;
- research, analysis and policy development; and
- advocacy for systems change to deliver social justice.

We actively collaborate and partner in our work and focus on finding practical solutions. We work across five focus areas:

Disability rights: challenging discrimination and making the NDIS fairer to ensure people with disability can participate equally in economic, social, cultural and political life.

Justice for First Nations people: challenging the systems that are causing ongoing harm to First Nations people, including through reforming the child protection system, tackling discriminatory policing and supporting truth-telling.

Homelessness: reducing homelessness and defending the rights of people experiencing homelessness through the Homeless Persons' Legal Service and StreetCare's lived experience advocacy.

Civil rights: defending the rights of people in prisons and detention, including asylum seekers, modernising legal protection against discrimination, raising the age of criminal responsibility to 14, advancing LGBTIQ+ equality and advocating for open and accountable government.

Energy and water justice: working for affordable and sustainable energy and water and promoting a just transition to a zero-carbon energy system.

The Justice and Equity Centre office is located on the land of the Gadigal of the Eora Nation

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Recommendations

Recommendation 1 – Any aviation consumer protection scheme be compatible with systemic responses to disability discrimination in air travel

Any aviation consumer protection scheme, whether implemented via this Bill or otherwise, should be designed to be compatible with the systemic measures needed to ensure people with disability have equal access to air travel, including particularly the aviation-specific disability standards announced in the recent 'Towards 2050' Aviation White Paper.

Recommendation 2 – The Bill be amended to require consultation with people with disability

Subsections 4(2) and 5(2) of the Bill should be amended to specifically include 'people with disability and their representative organisations' among stakeholders that must be consulted in the development of the Bill's proposed carriers obligation rules and aviation industry code of conduct.

Recommendation 3 – Disability organisations be resourced to engage with government on the design and implementation of any aviation consumer protection measures

Disability organisations should be funded to engage with government consultation and co-design processes on any aviation consumer protection measures that are proposed.

1. Introduction

The Justice and Equity Centre ('JEC') is a leading social justice law and policy centre. Our work focuses on tackling barriers to justice and fairness experienced by marginalised communities. We have a long history of involvement in public policy development and advocacy promoting the rights and equal participation of people with disability.

The JEC has extensive experience in disability discrimination litigation and public policy development related to public transport. Equal access to air travel is a current priority for our work. We have represented clients in disability discrimination matters against airlines and airports in the Australian Human Rights Commission ('AHRC') and in the Federal Court of Australia. We also work on related law reform in consultation with disability advocates and Disability Representative Organisations ('DROs').

We make this submission to raise issues relevant to equal access to air travel for people with disability, and the importance of considering them in the context of developing consumer protections such as those proposed in this Bill.

2. The scope of the problem

In November 2022, the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability ('Disability Royal Commission') held two online workshops to engage with the community about experiences of violence, abuse, neglect, and exploitation in air travel.¹ The workshops exposed discrimination, humiliation, violations of privacy and dignity, and physical and emotional neglect. People with disability also described being deprived of their independence, mobility, and access to services and facilities, due to acts and decisions of airlines and airports. These experiences prevent people with disability from equally accessing air travel in Australia and commonly contribute to discrimination, exclusion, personal injury, and damage to mobility devices.

These accounts to the Disability Royal Commission's workshops accord with what the JEC has heard and seen in our own casework and engagement with the community, Disability Representative Organisations and other stakeholders. We regularly hear from people with disability about barriers they encounter at all stages of air travel, from booking a ticket, checking in, passing through security, moving through airports, boarding and exiting an aircraft. These problems are serious and extensive, and in some cases lead to injury or significant property damage for people with disability. We have heard from people with disability who simply elect not to take trips they would otherwise take for work or recreation, to avoid the difficulties of flying.

Some of the issues we have seen include:

- People who use manual or electric wheelchairs may be required to check in their customised wheelchair at the check-in counter and transfer to an airline chair which must

¹ *Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability* (Final Report, September 2023) vol 4, 340.

be pushed by someone else through the terminal to the boarding gate. This means people who use wheelchairs are denied independence and freedom of movement to access facilities within the airport including accessible toilets, shops, and food outlets.

Additionally, people are at risk of injury due to being pushed and required to sit in an unsafe and unsuitable airline chair for extended lengths of time. On disembarking a flight, passengers may be pushed in an airline chair to the oversize luggage collection area to collect their customised wheelchair rather than their customised chair being brought to the arrival gate.

- Limits on the number of customers requiring wheelchair assistance on flights and limits on the number of electric wheelchairs that can be carried per flight affects accessibility and inclusion by preventing people from taking their preferred flight or flying with family, friends or colleagues who also use wheelchairs.
- People who are required to travel with an assistant or carer may not be able to book low cost or discount airline tickets.
- Inadequate policies or staffing or equipment shortages mean assistance is not always provided to people who require assistance to transfer from their customised wheelchair to an airline chair. If assistance is not provided people may be denied service of the flight. Where assistance is provided, transfer methods may be unsafe and result in people experiencing discomfort or personal injury.
- People are required to give advance notice to airlines when travelling with a wheelchair despite already having a valid Dangerous Goods Certificate for the battery, which denies people who use wheelchairs the opportunity to fly at short notice.
- Wheelchairs are lost or broken by airlines leaving people stranded without access to an appropriate wheelchair for mobility and incurring financial expense to repair the damage.
- Assistance animals (for example psychiatric assistance dogs) may not be approved for travel in the aircraft cabin with their handler.
- Aircrafts without accessible toilets leave people who use wheelchairs feeling the need to deprive themselves of food and water for unsafe lengths of time.
- On board aircraft information and services may not be accessible to people who are blind or vision impaired (such as in-flight entertainment devices).
- People with disability may be subject to alternative airport screening measures involving the use of a handheld metal detector, an explosive trace detection test or a frisk search, despite preferring to use body scanners or walk-through metal detectors.

The severity and range of these problems show existing legal and regulatory systems are not working.

3. Consumer protections in air travel are of particular importance for people with disability

While discrimination law and related measures can address some of these issues, consumer protections are also important for people with disability.

Where airlines fail to deliver promised services, the consequences for passengers with disability are particularly serious. People with disability may need to make more extensive preparations than other travellers, to ensure their support needs will be met – for example, by hiring support persons or obtaining relevant advance permissions to carry health equipment. These will often be more challenging and/or costly to rearrange in the event of service failures; and the need to ensure adequate supports are available can mean people with disability have fewer alternative options than other travellers.

Additionally, where services fail, people with disability may be left unsupported and at risk of distress or harm. For example, a passenger who uses a catheter and an ostomy bag, which may require attention and changing every several hours, might plan their trip to allow support staff to assist them at their departure and arrival. However, where an airline's flights are delayed and/or a connection is missed, that passenger may be left without support to manage this need, placing them at serious risk.

These issues are particularly acute in relation to disability-specific assistance services. Where an airline fails to provide a promised support, people may be left in a manual wheelchair in which they cannot self-mobilise; without a meet-and-assist service they rely upon to navigate through the airport, and with no means of independently seeking help; or without the necessary equipment to safely de-plane upon arrival at their destination. The JEC has heard accounts of people with disability who have experienced each of these issues.

4. Systemic measures to promote consumer rights must take into account disability access

Given this context, the JEC considers systemic responses are required to provide people with disability equal access to air travel. These systemic responses may include greater consumer protections, in tandem with other disability-specific regulatory reforms.

We note the Government released the 'Towards 2050' Aviation White Paper on 26 August 2024. The JEC is pleased several White Paper initiatives address disability access, including particularly the co-design and implementation of aviation-specific disability standards with enforcement mechanisms that may involve proactive compliance actions by a new Aviation Industry Ombuds Scheme.² We further note the White Paper contains several consumer rights mechanisms, including through the design by the Ombuds Scheme of an Aviation Customer

² Australian Government, 'Towards 2050' Aviation White Paper (White Paper, 26 August 2024) 11-12, <<https://www.infrastructure.gov.au/sites/default/files/documents/awp-aviation-white-paper.pdf>>.

Rights Charter and the adoption of a 'show cause' arrangement for airlines in cases of delays and cancellations.³

The JEC urges the Committee take into account the need for any systems for upholding air travel passengers' consumer rights to integrate smoothly with other systemic responses to address disability access needs, including those announced in the White Paper.

Further, the only way governments can ensure any consumer protection scheme meets the needs of people with disability is by designing those systems *with* people with disability. This requires engagement in at least deep consultation processes with people with disability and their representative organisations. In some instances, consultation alone will not be sufficient, and full co-design of the relevant systems will be required.

The Bill currently requires the Transport Minister to consult with 'relevant stakeholders in the aviation industry, consumer groups and relevant agencies' when making the proposed carriers obligation rules and aviation industry code of conduct. Subsections 4(2) and 5(2) of the Bill should be amended to require government also engages with people with disability.

The Government should also ensure disability advocacy organisations are resourced appropriately to undertake this engagement, having regard to the serious resourcing concerns they face and their important role in responding to systemic advocacy needs including those associated with air travel.⁴

Recommendation 1 – Any aviation consumer protection scheme be compatible with systemic responses to disability discrimination in air travel

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Recommendation 2 – The Bill be amended to require consultation with people with disability

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³ Ibid.

⁴ Joint statement of disability advocacy organisations, 'Joint Statement: Our disability advocacy organisations are in crisis and need a funding lifeline now', *Disability Advocacy Network Australia*, (Joint Statement, 4 July 2024), <<https://www.dana.org.au/joint-statement-our-disability-advocacy-organisations-are-in-crisis-and-need-a-funding-lifeline-now/>>.

Claudia Long and Nas Campanella, 'Disability organisations 'on life support' say budget cuts will force them to wind back services', *ABC News* (online, 4 July 2024), <<https://www.abc.net.au/news/2024-07-04/disability-funding-cuts-royal-commission-ndis-change-politics/104047202>>.

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