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## Consumer Protection

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## ***Ensuring that all airline passengers are treated fairly***

### **Issues Paper Themes**

- > The adequacy of existing consumer protections and airline procedures
- > Ensuring airline passengers are appropriately informed about restrictions
- > The removal of discrimination in air travel through the Transport Standards
- > Implementation of recommendations in the Transport Standards Review to improve services for people with disability
- > The effectiveness of current complaint and compliance mechanisms
- > Ensuring domestic arrangements for passenger and baggage/cargo liability remain appropriate in the context of international developments, including the Montreal Convention
- > The adequacy of minimum insurance standards and appropriate levels of insurance to cover airline liabilities and third party surface damage
- > Airline compliance with the Family Assistance Code

### **What the submissions said**


Airlines strongly supported the current legal environment governing consumer protection and highlighted measures taken to ensure passengers are aware of their conditions of carriage.

Submissions commonly conveyed the view that people with disability have not experienced the benefits of microeconomic reforms in the aviation sector. There were claims that accessibility had deteriorated for some travellers, such as those who had formerly travelled independently but were now unable to travel with their own wheelchair or faced the additional cost of a carer's ticket.

Wider and ongoing consultation with the disability community was advocated, in tandem with acquiring a better understanding of disability prior to determining appropriate responses. A strategic response was proposed based on appropriate strengthening of the regulatory framework, with reference to international best practice, in particular in the European Union and North America. Expanded powers were proposed for the Human Rights and Equal Opportunity Commission (now the Australian Human Rights Commission) to enable it to refer investigations into suspected breaches of the Transport Standards made under the *Disability Discrimination Act 1992* to the Federal Court, thus removing the onus of making a complaint from the person with a disability.

Submissions from the aviation industry generally supported existing regulatory arrangements that limit or 'cap' the compensation an airline may have to pay to passengers in the event of a domestic accident. There was also a consistent view the domestic 'cap' should not be abolished and replaced by the compensation system created by the Montreal Convention, which will shortly come into effect for international travel and which does not 'cap' the amount of compensation that is available.

A number of submissions suggested changes to improve the way damages are assessed under the *Civil Aviation (Carriers' Liability) Act 1959* (the CACL Act) and the *Damage by Aircraft Act 1999* (the DBA Act). Concerns were raised about how Commonwealth legislation related to state government civil liability schemes, which impose restrictions and limits on various types of compensation claims.



Some submissions proposed amendments to the DBA Act to limit the potential liability of airlines (and therefore limit the amount of compensation potentially available to victims). However, there were mixed views about whether insurance against liability under this Act should be made compulsory for carriers.

There were also differing views on whether the Family Assistance Code should be made compulsory. Most submissions supported the existing voluntary arrangements, but, some in the regional aviation sector argued that the code should be abolished, on the grounds that Australia's welfare systems already provide adequate compensation in the circumstances intended to be covered by the Family Assistance Code.

## **Competition, fair trading and consumer protection laws**

Since the deregulation of interstate aviation services in 1990, the Australian Government has not involved itself in the setting of service standards or airline terms and conditions for domestic aviation services.

The aviation industry, like all industries, is subject to the *Trade Practices Act 1974* to ensure the market remains competitive while at the same time protecting consumers from unfair competition or misleading and deceptive conduct.

In addition to the Trade Practices Act, the aviation industry is subject to the fair trading requirements of state and territory fair trading or consumer affairs offices.

## **Low-cost carriers – managing consumer expectations**

The emergence of low-cost carriers has seen significant changes to airline passengers' experience. While most consumers have become familiar with 'buy on board' in-flight service, other elements of true low-cost models are still unfamiliar to many consumers, including reduced baggage allowances, requirements to book travel online, strictly enforced terms and conditions, and basic airport terminal facilities.

The gradual proliferation of the low-cost model is building awareness in consumers of what they will and will not get (or will be required to pay extra for) when choosing to travel on a low-cost carrier. However, it will take time for consumer expectations to fully adjust to the implications of the low-cost model.

This growth in low-cost carriers has increased the need for consumers to be aware of the terms and conditions applying to their travel, and to the detail of what is and is not included in their ticket price, to ensure they are purchasing a travel product that meets their requirements. The airlines have a responsibility to alert their customers to these detailed conditions.

## **Disability standards**


Whilst the deregulation of the airline industry has led to increased competition, more flights and cheaper fares, air travellers with disabilities continue to face a range of accessibility issues not experienced by other passengers.

The *Disability Standards for Accessible Public Transport 2002* (the Transport Standards) specify levels of service, measures and actions that public transport operators must undertake to meet their obligations under the *Disability Discrimination Act 1992*.

## **Key challenges**

### **Consumer standards**

While the mandating of particular terms and conditions of travel and service standards would maintain customers' expectations of standards, it would impose additional costs on airlines and



would also result in reduced flexibility and choice for consumers in the market, and may result in increased fares.

Greater understanding by consumers of the variable terms and conditions across airline travel products would assist in aligning consumer expectations and airline service standards. However, many consumers either do not read or do not fully comprehend the terms and conditions of their tickets. Airlines, for their part, sometimes do not make clear to consumers the restrictions or 'extras' that apply to the tickets they are selling.

One issue that has caused confusion in the market is the extent to which airlines include all charges and levies, such as airport charges and fuel levies in the advertised price of air fares.

To address this, the Government introduced into Parliament the *Trade Practices Amendment (Clarity in Pricing) Bill 2008* to tackle the problem of hidden fees and charges for consumer products. The Bill was passed by the Senate on 11 November 2008 and amends the Trade Practices Act to increase pricing transparency so consumers will know the total price they are required to pay for a good or service.

The Government believes it is not appropriate for a business to represent that a product costs a certain price and then use fine print disclaimers to reveal additional mandatory taxes, fees or other charges. While Australian domestic airlines have adopted all-inclusive pricing since May 2005, there have been some instances of international airlines not following this practice.

The Government is committed to ensuring that consumers are not given the impression that something is cheaper than it really is, and are empowered to make the best decisions about what they buy.

### **Disability access**

The Government recognises a better understanding of the needs of people with disability and their interaction with aviation service is required.

Industry participants need to apply that knowledge to determine improved regulatory, infrastructure, service and educational responses to improve access to air travel for people with disability.

Delivery of improved accessibility for travellers with disabilities within a deregulated and flexible aviation sector is the practical and overriding challenge.

### **Maintaining a market-based approach to service levels**


The current approach of deregulated, market-driven service levels has delivered flexibility and choice in the Australian airline market, allowing consumers to purchase air travel products appropriate to their needs. General regulation in the form of the Trade Practices Act and state and territory fair trading laws provide consumers with overarching protection without interfering with the ability of airlines to make commercial decisions about service levels.

### **Compensation arrangements**

The Government has moved quickly since its election to pass legislation to implement the 1999 Montreal Convention. The new scheme makes it easier for Australians to seek fair and timely compensation.

The Convention includes new, tougher liability arrangements for:

- The death or injury of a passenger;
- The loss or damage to a passenger's baggage;
- The loss or damage to a freight shipment; as well as
- delays to the scheduled arrival of a passenger, baggage or freight.



The most significant change is the abolition of the existing caps on airline liability for passenger injury. To aid more rapid settlement of claims, the Convention also allows passengers to claim up to the equivalent of around \$172,000 in damages without having to prove the airline was at fault.

By expanding jurisdiction for court cases, the new scheme will also make it easier for Australians to seek fair and timely compensation following an air incident overseas. This will mean that, in most cases, Australians will be able to bring their claim for compensation in Australia under Australian law, rather than having to deal with complicated overseas legal systems. The new Convention will allow claims to be progressed in the country where the passenger lives, as long as the airline flies to that country - even if they only code-share; and as long as the airline or its code-share partner has an office in that country. At the moment, claims can only be brought in the airlines' 'home country'; the country where the ticket was purchased; or the passenger's destination country.

Business will also benefit under the new system because it provides a standard legal framework that recognises the way modern business works. Under the old scheme, people sending air cargo needed to complete detailed 'air waybills' which had to be paper-based, and provided in triplicate. The Montreal Convention will support new initiatives such as e-ticketing. Industry will get legal certainty, as well as the benefits of a standardised system.

To cope with the inadequate liability limits under the previous international arrangements, many international airlines have already voluntarily begun operating under more generous liability arrangements. Qantas is a signatory to these voluntary agreements, which ensures that passengers on the recent flight that was diverted to Learmonth in Western Australia after a mid-air incident will be able to access compensation that is comparable to the Montreal Convention arrangements.

As a result of the existing voluntary arrangements, the new Montreal Convention is not expected to increase travel or insurance costs.

The Montreal Convention will be implemented by the *Civil Aviation Legislation Amendment (1999 Montreal Convention and Other Measures) Act 2008*, which was passed by the Parliament on 26 June 2008, and received Royal Assent on 12 July 2008.

Australia's formal instrument of accession has been lodged with the International Civil Aviation Organization (ICAO), and the Convention is due to come into operation for Australia from 24 January 2009.


The process of implementing the Montreal Convention highlighted a range of technical deficiencies in the CAACL Act and work to address these will be undertaken in consultation with industry. For example, the liability caps for domestic travel were set in 1995 and have not been updated for inflation. Although there are no plans to apply the Montreal Convention's system of unlimited liability to domestic travel, the existing liability caps for domestic travel are due for review.

Since the domestic liability caps were last updated, there have also been significant developments in relation to state government civil liability schemes and there may be some scope to clarify how these schemes relate to Commonwealth's air carriers' liability legislation. The Government proposes to address these issues as part of a broader review of carriers' liability and insurance arrangements. More detail on this review can be found later in this chapter.

## **Compensation for surface/land damage caused by aircraft**

There have been a range of international developments relating to third party surface damage since the DBA Act was introduced in 1999. In Europe, a system of compulsory insurance for surface damage was introduced in 2004.

ICAO has drafted new international conventions covering this issue which will be considered by an international diplomatic conference scheduled to take place in 2009. These draft Conventions (the 'Convention on Compensation for Damage to Third Parties Resulting from Acts of Unlawful



Interference involving Aircraft' and the 'Convention on Compensation for Damage Caused by Aircraft to Third Parties') are designed to replace the outdated 'Rome Convention'. The Rome Convention regulates the liability for damage caused by aircraft to parties on the ground, under a system of strict and capped liability. Australia is not a party to the Convention, having denounced it in 1999 because the levels of compensation were capped at inadequate levels. Most of Australia's aviation partners are not a party to the Convention for the same reason.

The Australian Government has identified a range of concerns in relation to the draft ICAO Conventions and will consult closely with industry prior to finalising its position in relation to the draft Conventions.

The issues relating to state government civil liability regimes are also applicable to claims brought under the DBA Act, with uncertainty as to how the state government legislation relates to the Commonwealth legislation. As with the passenger compensation issues identified earlier, the Australian Government's review of carriers' liability and insurance arrangements will address those concerns raised in submissions.

## **Delivering compensation: the Family Assistance Code**

The Australian Government's Family Assistance Code requires airlines to establish Family Assistance Plans which can be implemented following an air accident. These Plans recognise airlines' obligations in the immediate aftermath of an air accident, and set out requirements relating to issues such as the provision of financial, logistical and emotional support to victims' families following an air accident. The code also sets a level for the payment of up-front advance payments to victims' families.

The Family Assistance Code is currently voluntary. This recognises the airline industry's interest in effectively managing its response to an air accident. However, the Australian Government has previously indicated it would consider making the Code mandatory if the voluntary scheme prove ineffective.

The Government last sought written assurances from airlines that they were in compliance with the code in 2002, and has limited information relating to the current level of industry implementation. It is understood the majority of Australian and foreign international airlines and some of Australia's major domestic airlines have a family assistance plan in place.

The adequacy of the voluntary code in meeting consumer needs will be included in the upcoming review of carriers' liability arrangements.

## **Civil Aviation Carriers' Liability and Insurance review**


The Australia Government is currently developing a targeted industry discussion paper that will comprehensively examine Australia's carriers' liability framework. The paper will canvas a range of issues including the liability caps for domestic travel, third party insurance requirements and the relationship between state and Commonwealth legislation.

The discussion paper is due to be released shortly, with the review to be completed in 2009.

The Family Assistance Code will also be examined as part of the review. The Government will evaluate the extent to which the minimum and voluntary standards of the Code are reflected in the planning arrangements of airlines operating to, from and within Australia and assess whether consumers would be provided better protection if these standards were mandated.

## **A more effective framework for people with disability**

Recognising that people with disability are entitled to the same rights and the same opportunities as all other Australian citizens, the Australian Government introduced legislation in 1992 to make discrimination on the basis of disability unlawful in Australia.



Under the *Disability Discrimination Act 1992* (DDA), the Attorney-General may make Disability Standards to specify rights and responsibilities about equal access and opportunity for people with disability, in more detail and with more certainty than the DDA itself provides.

The Standards relating to air transport services for people with disability are the *Disability Standards for Accessible Public Transport 2002*.

Part 34 of the Transport Standards requires the Minister for Infrastructure, Transport, Regional Development and Local Government, in consultation with the Attorney-General, to review the efficiency and effectiveness of the Transport Standards within five years of their coming into effect. The first five year review of the Transport Standards is being undertaken by an independent consultant.

A draft report, including a number of recommendations relevant to air transport services, was released for stakeholder comment in January 2008.

A final report is expected to be submitted to the Government in late 2008 at which time the Government will consider its response.

What is clear, however, is that an ongoing means of effective communication is required between airline, airports, governments and people with disability in working through the complex operational issues that affect the quality of service offered to people with disability.

To address this, the Government proposes to establish an Aviation Disability Access Working Group to provide advice on disability access policy and the legislative framework and on practical measures that can be taken to improve the access to air services for people with disability.

It is envisaged that the Working Group will comprise representatives from industry, relevant government agencies and representatives of people with disability and will receive secretariat support from the Department of Infrastructure, Transport, Regional Development and Local Government.

## **Consumer protection – the way forward**

### **Consumer protection**

The Australian Government continues to support a deregulated domestic airline market and its ability to deliver greater flexibility, choice and competition to consumers. Re-regulating certain elements of the deregulated market would interfere with the flexibility and choice now available to consumers. However, airlines need to ensure that the terms and conditions applying to travel are made very clear to consumers prior to purchase, and consumers need to take responsibility for ensuring they are purchasing a product that meets their needs.

To ensure a balanced approach minimising unnecessary regulation while promoting consumer fairness the Australian Government proposes to:

- ensure the airline industry remains subject to the provisions of the *Trade Practices Act 1994* and state fair trading laws in the conduct of its business;
- with its state and territory counterparts, continue to monitor and evaluate the adequacy of the consumer protection framework to ensure consumers' rights are protected; and
- implement legislation to require airlines to advertise all-inclusive pricing, ending the potential for customers to be offered air fares without charges such as airport charges and fuel levies included in the advertised price.



## Compensation arrangements

The Australia Government is taking steps to ensure that compensation available to aviation passengers in the event of an accident reflects contemporary community standards. This includes proposals to:

- conduct a comprehensive review of Australia's carriers' liability framework, in close consultation with the travelling public, industry and relevant government agencies; and
- as a first step, a targeted discussion paper will be released for public comment. The results of the review and preferred next steps will be outlined in the White Paper.

## Disability access

The Government recognises the difficulties sometimes experienced by people with disability in accessing air travel. The Government proposes to:

- detail its future strategy on disability access issues in the transport context when it responds to the final report of the review of Transport Standards under the *Disability Discrimination Act 1992* in early 2009. This strategy will involve a range of measures underpinned by a commitment to more inclusive and ongoing consultation on disability issues, and
- establish an Aviation Disability Access Working Group to provide advice on disability access policy and the legislative framework and on practical measures that can be taken to improve the access to air services for people with disability.
  - The Working Group will comprise representatives from industry, relevant government agencies and representatives of people with disability and will receive secretariat support from the Department of Infrastructure, Transport, Regional Development and Local Government.