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OVERVIEW

Airlines for Australia and New Zealand (A4ANZ) welcomes the opportunity to respond to the *Aviation Consumer Protections Consultation Paper* released by the Department of Infrastructure, Transport, Regional Development, Communications, Sports and the Arts (DITRDCA).

A4ANZ is an industry group representing airlines based in Australia and New Zealand, including international, domestic, regional, full service, and low-cost carriers. A4ANZ's members include Air New Zealand, Qantas, Virgin Australia, Regional Express (Rex), and Jetstar.

A4ANZ notes that the Government is undertaking two concurrent consultations on the proposed Aviation Consumer Protections Framework (the framework); on the design of primary legislation to establish the framework and on subordinate legislation which includes the Aviation Consumer Protections Charter.

In this submission, A4ANZ aims to address the consultation questions relating to the primary legislation and provide additional high-level commentary on areas of concern, including; how previous industry feedback has been applied, a lack of firm commitment to quantify the impact of these reforms on the aviation industry, and the entirely new proposal to create a separate regulator to oversee the regulation and enforcement of the framework. A4ANZ member airlines will also be making individual submissions in response to this consultation.

A4ANZ and our members welcome the Government's decision to introduce an Ombuds Scheme rather than a mandatory delay-focused compensation scheme and agree that this approach is better suited to the Australian context.

However, A4ANZ, our member airlines, and industry more broadly are concerned that the framework as currently proposed may be overly prescriptive and burdensome. In reading through the consultation paper, it is apparent that the feedback provided by industry stakeholders in response to the two previous consultations – held over the last twelve months – has not been applied as we had hoped, and in some instances, has been mischaracterized or ignored completely.

It is likely that the framework, as currently drafted, will make Australia a less attractive destination for new international entrants or international airlines looking to grow routes or frequency – it also represents a major practical, operational, and financial challenge for domestic airlines, and increases the barrier for new entrants to enter the market. The result of these impacts being upward pressure on airfares, more limited consumer choice, and outcomes at odds with the Government's vision for a sustainable and competitive aviation market.

As such, it is concerning that there is no clear provision in the indicative timeline outlined in the consultation paper for a Regulatory Impact Analysis to be conducted on the proposed framework.

The proposed framework is a significant reform which will have far-reaching impacts on both the operations of, and costs for, the aviation sector – especially airlines. It is therefore essential that DITRDCA conduct a comprehensive regulatory impact analysis to fully assess and understand that impact of the framework on the aviation industry and the expected net benefits.

This analysis should also carefully evaluate how the framework would interact with existing Australian Consumer Law, and monitoring and reporting efforts, such as those undertaken by the ACCC, to ensure that any proposed legislative changes deliver genuine benefits without duplication, unnecessary regulatory burden, and unintended consequences.

By taking this comprehensive approach – in consultation with industry – the Government may better address the interests of both consumers and the regulated entities under the framework, enabling

fair and effective dispute resolution processes as part of a well-rounded, fit-for-purpose aviation consumer protection framework.

REGULATED ENTITIES AND REGULATED ACTIVITIES

Does the proposed regulation of airline services, airport services and airport accessibility services cover the core elements of the aviation consumer experience? Are there any missing elements?

A4ANZ notes that the Government is proposing that only airlines and airports are regulated entities under the aviation consumer protection framework – with travel agents, third parties (such as ground handling companies), and government agencies being classified as out-of-scope.

A4ANZ is supportive of the decision to include all airlines and airports operating or receiving RPT flights as regulated entities under the scheme, regardless of passenger volumes, as this will ensure that all consumers who access RPT flights have equal entitlement to the same baseline level of service, and access to the complaints handling and dispute resolution processes within the framework.

However, we believe that the decision to exclude travel agents from regulation under this framework is startling and should be immediately reconsidered by government.

As outlined in A4ANZ’s submission to a previous consultation on the design of the Ombuds Scheme, 90% of all corporate travel, and 70% of all international travel is booked via a travel agent.ⁱ Evidence provided to a senate inquiry in 2024, noted that travel agents sold 23 million air tickets worth \$18.5 billion in 2023, and that in a six-month period in 2024 had sold 13.8 million tickets worth \$10.7 billion.ⁱⁱ

As the framework proposes to include flight bookings as a key regulated activity, travel agents, as the self-proclaimed “number one seller of air tickets to Australians” should not be exempt. Travel agents play a key role in booking air travel and their exclusion from the proposed framework risks creating gaps in protection for consumers who use these services – undermining the overall objective of the framework.

Furthermore, as government considers the scope of regulated entities and activities, it is crucial to reflect on how the exclusion of travel agents may impact the effectiveness of the proposed framework, particularly as government moves toward co-designing aviation-specific disability standards.

During the recent co-design workshops on the development of aviation-specific disability standards, participants noted the important role of travel agents in the booking process for people with disability – including the provision of timely, accurate information on passengers’ travel and accessibility requirements.

While the draft Charter attempts to accommodate for the exclusion of travel agents by increasing the regulatory burden on airlines regarding the collection of contact details – and A4ANZ will be making specific commentary on the problematic and complex nature of these provisions in our subsequent submission – this does not solve for the key role and responsibilities of travel agents in bookings for people with disability.

Additionally, the exclusion of security screening from the key regulated activities under the framework is concerning, as it is widely recognised that security screening at airports is one of the key, and most complained about, pain points for travellers with disability.

A4ANZ urges the Government to revisit these proposed exclusions, ensuring that the framework comprehensively addresses the realities of the aviation consumer experience and upholds a consistent approach to complaints resolution for all parties involved in the travel process, to ensure that the framework supports equitable, accessible, and robust consumer protections for all travellers.

CONSIDERATIONS FOR INTERNATIONAL FLYING

Are there any operational or technical considerations regarding international flights that would affect their regulation under the framework?

A4ANZ notes that the Government is proposing that airlines operating domestic flights, Australian airlines flying internationally, and airlines flying internationally both to and from Australia are regulated entities under the aviation consumer protection framework.

While A4ANZ and our members understand that the Government is still considering how the legislation would be applied to international flights – and is working through the complexities of how such a framework may be applied to inbound international flights – we are concerned to read that government is considering “*whether subordinate legislation should adjust the scope of coverage of international flights to include only outbound (not inbound) international flights by all airlines and/or all international flights by Australian airlines*” [emphasis added].

If international inbound flights are excluded from the framework, A4ANZ and our member airlines would be concerned and alarmed if the Government still proposed to cover all international flights (ie. both inbound and outbound flights) operated by Australian airlines.

The consultation paper notes that EU261 covers flights within the EU, outbound international flights only, and all flights operated by an EU carrier. While the paper does note that airline market composition varies substantially between the EU and Australia, it fails to acknowledge that similar application of a consumer protection framework (ie. to all international flights operated by Australian airlines, in the absence of covering other inbound flights) would be completely inappropriate.

Such an approach would unfairly disadvantage Australian airlines and cause significant market distortion – undermining the competitive position of local carriers and negatively impacting the competitive international aviation market on which Australia relies.

As such, it is essential that the application of the framework is consistent across all airlines, regardless of the locality of the carrier, to prevent unintended consequences and ensure a robust, competitive aviation industry.

Furthermore, while A4ANZ and our members appreciate that the Draft Aviation Consumer Protections Charter is the subject of an ongoing consultation – and we will be making submissions on this issue accordingly – it is worth noting that the obligations and provisions in the Charter, as currently drafted, may be inconsistent with international obligations and conventions, for example, the Montreal Convention.

ACCESSIBILITY CONSIDERATIONS

Are there any operational or technical considerations regarding airport accessibility services that would affect their regulation under the framework?

A4ANZ and our members support the rights of passengers with disability and recognise the need for specific actions and commitments from government and industry to remove barriers to accessible air travel. We have welcomed the ongoing reforms to the Disability Standards for Accessible Public Transport, and have been working closely with DITRDCSA to provide input into the development of the aviation-specific Transport Standards.

A4ANZ is disappointed to note that travel agents and security screening have not been included as a regulated entity and a regulated activity, respectively, under the proposed framework.

As noted earlier in this submission, the participants at recent co-design workshops for the aviation-specific accessibility standards noted the key roles and responsibilities of travel agents in booking air travel for people with disability.

Airlines, and passengers with disability who book travel through a travel agent, rely on travel agents to provide accurate information on passengers' accessibility requirements in a timely manner, to allow for airlines to provide appropriate arrangements and resourcing to meet the needs of passengers with disability. Unfortunately, as airlines have advised DITRDCA, this information is not always provided in an accurate or timely manner, causing disruption and stress for passengers with disability.

Furthermore, in our previous submission to the consultation on the draft customer charter in late 2024, A4ANZ noted that organisations and advocates from the disability sector have consistently called out the poor experience of passengers with accessibility requirements during security screening – and urged the Government to either include security screening providers as parties to the relevant sections of the Charter or work directly with security screening providers and Home Affairs to ensure that all screening staff are appropriately trained, in both acceptable methods of screening and necessary soft skills, to screen passengers with special circumstances with dignity and free from bias.

A4ANZ would urge government to consider how to include travel agents as regulated entities, and security screening as a regulated activity, under the framework, so that the proposed consumer protections framework appropriately recognises the importance of security screening on the customer experience, and the essential role travel agents play in booking and ticketing – providing appropriate avenues for recourse for passengers with disability.

We are also concerned that the concurrent development of this proposed framework and the yet-to-be-drafted aviation-specific disability standards may result in a piecemeal approach to legislation and regulation – with significant opportunities for the duplication of scope and effort between existing accessibility standards and complaint pathways (ie. the Australian Human Rights Commission). We would encourage DITRDCA to carefully consider how this proposed framework is drafted, in the absence of any confirmed aviation-specific disability standards, to avoid duplication, confusion, and unnecessary regulatory burden.

ENSURING A FIT-FOR-PURPOSE FRAMEWORK

Is the role of the ACPA as proposed sufficient to protect aviation consumers and lift consumer standards, while not imposing undue regulatory burden and costs on the sector?

Assessing Regulatory Burden

A4ANZ welcomes the Government's consideration of the regulatory burden and costs on the aviation sector resulting from the proposed framework. However, we are concerned by the lack of detail in the consultation paper on when, or even whether, DITRDCA will undertake a Regulatory Impact Analysis (RIA) on the proposed framework (including a cost-benefit analysis).

Additionally, there has been no clear commitment to this from DITRDCA in response to industry's many queries during the consultation period.

The *Australian Government Guide to Policy Impact Analysis*, which came into effect in March 2023 notes that a regulatory impact analysis is to be applied to, "Any policy proposal or action of government, with an expectation of compliance, that would result in a more than minor change in behaviour or impact for people, businesses, or community organisations."ⁱⁱⁱ

The proposed framework is a significant reform which will have far-reaching impacts on both the operations of, and costs for, the aviation sector – especially airlines. It is therefore essential that DITRDCA conduct a comprehensive impact analysis to fully assess and understand the impact of the framework on the aviation industry and the expected net benefits.

A4ANZ would strongly caution DITRDCA against any moves to prepare a Regulatory Impact Analysis without industry consultation.

A4ANZ understands that the Regulatory Impact Analysis Guide prepared by the Office of Impact Analysis^{iv} states that a consultation RIA is not required in circumstances where the function of the

consultation RIA has been achieved by an appropriate alternative mechanism, for example that *“ongoing consultation has been undertaken over a prolonged period and the responsible agency is able to demonstrate that the policy options under consideration have been tested with relevant stakeholders, representative stakeholder views are known, and sufficient evidence has been elicited to meaningfully inform the analysis in the decision RIS.”*

For the avoidance of doubt, while the two separate consultations on aviation consumer protections may have been spread over a prolonged period, A4ANZ and our members would strongly reject any assertion that the policy options under consideration have been appropriately tested with industry or that sufficient evidence has been elicited to inform any meaningful analysis.

Industry must be involved in the development of any cost-benefit analysis and Regulatory Impact Analysis, with the opportunity to provide input and expertise via appropriate industry engagement and consultation.

Fit-For-Purpose Regulation & Governance

A4ANZ and our members are surprised and concerned by the Government’s proposal to establish the Aviation Consumer Protection Authority (ACPA), as this proposal has not previously been socialised or tested with the aviation industry.

As such we welcome the advice in the consultation paper which notes that the government has not made a final decision on governance arrangements for the aviation consumer protection framework. A4ANZ has three principal concerns regarding the proposed ACPA; governance issues, the potential for duplication, and cost.

Airlines operating in Australia currently have experience with two in-sector regulators; the Civil Aviation Safety Authority (CASA) and the Cyber and Infrastructure Security Centre (CISC), for aviation safety and security respectively.

The proposal to embed ACPA within DITRDCA is concerning given the industry’s experience with CISC, and the impact on culture that has resulted from the co-location of regulatory and policy functions within Home Affairs. The Hartland Review into Australia’s aviation and maritime security settings found that since the aviation safety regulator was embedded within CISC in Home Affairs, the focus of interactions between the regulator and industry have moved from collaboration to compliance, with a seemingly punitive, rather than outcomes-focused agenda. Accordingly, the Hartland Review noted that there is an “us vs them” mentality in the relationship between industry and the regulator, leading to poor policy outcomes and widespread dissatisfaction within industry. Given this experience, A4ANZ contends that the regulator should not be co-located with the policy functions of DITRDCA.

A4ANZ and our members are also concerned that there is significant potential for duplication between ACPA, the Aviation Consumer Ombudsperson (ACO), and the ACCC.

The consultation paper proposes that ACPA would refer matters to other regulators or bodies where appropriate, have an education and advocacy function, and report regularly on the operation of, and compliance with, the framework. It is of note that these were functions ascribed to an Ombudsperson in the original consultation on the design of the Ombuds Scheme. Hence, the functions of ACPA appear to duplicate the proposed powers and function of the ACO.

Additionally, the as ACCC has existing powers and authority in regulation and compliance with Australian Consumer Law, the creation of APCA may result in unnecessary duplication and regulatory burden. As such, A4ANZ would urge DITRDCA to consult with the ACCC in order to fully understand what role the ACCC could play in the regulation of the proposed framework.

Furthermore, given the Government’s intention to recover the costs associated with the administration of the framework, creating a new – and potentially duplicative or unnecessary – regulator will simply add more cost to industry and add to the upward pressure on airfares.

If the Government proceeds with the creation of ACPA – in the face of industry concerns – we would object to government recovering the entirety of the costs associated with ACPA from industry and would instead encourage government to consider alternative funding mechanisms. For example, CISC is funded wholly from within Home Affairs, and CASA is funded from three major sources: Government annual appropriations, a fuel excise, and regulatory service fees.

Given these concerns, A4ANZ urges government to reconsider the current proposal for the ACPA and instead consult with the ACCC to explore alternative regulatory models that may better serve the interests of the aviation industry and its passengers.

Funding Model Considerations

As noted in our submission to the original consultation on the design of the Ombuds Scheme, A4ANZ, in principle, broadly supports an incentive-based funding arrangement which combines annual membership fees, and charges based on complaints volume and complaint escalation rates – similar to other industry ombuds schemes in Australia such as the Australian Financial Complaints Authority (AFCA) and the Telecommunications Industry Ombudsman (TIO).

A4ANZ notes the importance of establishing a fair and equitable funding model for the proposed regulatory framework. It is essential that all regulated entities, regardless of their size, contribute equally through annual membership levies, with an incentive-based element promoting accountability across the sector.

Regardless of the design of the funding mechanism, A4ANZ would again emphasise that the framework – including the operating budget of the proposed Aviation Ombuds Office (AOO) – must be right sized for the problem the Government is trying to solve.

A4ANZ understands that DITRDSCSA has yet to make a decision on the sizing of the AOO and scheme more broadly, and that there has yet to be a determination regarding the expected number of complaints that would be received under the proposed framework – noting that DITRDSCSA has confirmed that the 25,000 complaints referenced in the consultation paper is a flat extrapolation of the data from the Canadian Transportation Agency, and that the complaints review being conducted by the Interim Aviation Industry Ombudsperson is still ongoing, with no confirmed results.

We would strongly caution DITRDSCSA against simply extrapolating from other jurisdictions (noting the different parameters of schemes) or relying on any data – either international or Australian – which reflects the period in which industry was impacted by, or recovering from, COVID-19.

In estimating likely complaint numbers – which inform the sizing, resourcing, and overall cost of the proposed framework – it is critically important for government to work with industry to test assumptions, so as not to unduly burden industry with a scheme which is gold-plated or out-sized for the problem trying to be solved.

A4ANZ appreciates that the consultation paper raises the issue of cost recovery for ineligible complaints, referrals and general inquiries. As noted in the consultation paper it is likely that these may be significant – particularly in the first years of the framework's operation. As such, we contend that it is not appropriate for government to recover the costs associated with ineligible complaints, referrals, general inquiries, or complaints where a reasonable remedy has been initially offered by an airline and rejected by a consumer (more on this below).

In A4ANZ's submission to the initial consultation on the design on the Ombuds Scheme we noted the cost-recovery framework being progressed by the Canadian Transportation Agency (CTA), which seeks to recover 60% of the costs associated with processing *eligible* complaints, from industry participants.^v This approach from the CTA reflects the higher than anticipated costs of the complaint resolution scheme and aims to address the financial burden borne by industry participants for the processing complaints.

We would again encourage the Government to consider a model similar to that proposed by the CTA.

Aircraft Noise Ombudsman Arrangements

A4ANZ notes that the Government has proposed to create an Aviation Ombuds Office (AOO) to house both the Aviation Consumer Ombudsperson (ACO) and the Aircraft Noise Ombudsperson (ANO).

As A4ANZ advised in our submission to the initial consultation on the Ombuds Scheme, we support the ANO becoming independent of Airservices Australia, however, we strongly object to the proposal that industry fund the civil aviation related work of the ANO and the justification for this proposal.

The consultation paper notes that industry funding of the ANO “*could be appropriate as airline and airport actions (flying aircraft and designing and operating airports) generate the need for ANO activities.*” A4ANZ contends that as flight paths are developed by Airservices Australia – and therefore outside airlines’ and airports’ control – the cost of the ANO should continue to be borne, in total, by the Federal Government.

AN EFFECTIVE AND EFFICIENT AVIATION CONSUMER OMBUDSPERSON

Do the proposed functions and powers of the ACO provide sufficient capability to efficiently resolve consumer complaints and improve consumer standards? If not, what should change and why?

A4ANZ believes that the functions and powers of the Aviation Consumer Ombudsperson (ACO) seem sufficient, appropriate, and accord with best-practice guidance for modern ombuds schemes – although we would reiterate our concerns, noted earlier in this submission, about potential overlap and duplication with ACPA.

In A4ANZ’s submission to the initial consultation on the design of the Aviation Industry Ombuds Scheme, we suggested that the Ombuds Scheme should also focus on expectation management to address gaps between consumer expectations and what is possible within the bounds of Australian Consumer Law, this proposed framework, and the ombuds scheme.

We contend that the ACO should be empowered to intervene earlier in the complaint resolution process to assess both the reasonableness of a complaint and the initial response or remedy proposed by an airline. As currently drafted the complaint resolution process places emphasis on the complaint being resolved to a consumer’s satisfaction – and while this is the objective of airlines’ internal complaint handling processes, on occasion there may be a gap between a reasonable remedy or solution and a remedy which would satisfy the consumer.

In the event that the airline offers a reasonable remedy to a consumer during either Stage 1 (through direct contact with the consumer) or Stage 3 (during the referral process) but the consumer is not satisfied with the proposed remedy, there is currently no opportunity for the ACO to realistically intervene in this process until the late stages of the complaint resolution process. This not only places an undue regulatory burden on an airline but also comes with significant cost from the time and resources dedicated to participating in the complaint resolution process and the fee that will result from the referral and processing of the complaint by the ACO.

As such, we would urge DITRDCSA to consider how to reflect this nuance and reality in the complaint resolution process proposed under the framework.

Earlier in this submission A4ANZ noted concerns that industry feedback provided in response to previous consultations has been ignored by DITRDCSA – this is apparent in the timeframes proposed in the complaint resolution process, particularly in Stage 3. The consultation paper proposes that an airport or airline is given a maximum of 14 calendar days to resolve a complaint following a referral by the ACO.

In submissions to the consultation on the initial design of the Ombuds Scheme, airlines, airports, and industry bodies all made submissions which stated that eight weeks was the appropriate amount of time to allow for a complaint to be finalised at this stage.

While most complaints would be finalised well within this timeframe, industry participants argued that an eight-week period would allow for an airline or an airport to gather necessary information that may not be provided in the original complaint, and allows for the complaint to be escalated as required through internal customer service processes.

When looking internationally at complaint handling schemes used by the aviation industry in other jurisdictions – with the exception of Canada – a timeframe longer than 30 days is standard: the UK allows for eight weeks for the airline to finalise a complaint, and both the US and EU allow airlines 60 days to address and finalise complaints.

At the absolute minimum, A4ANZ proposes that airlines and airports – and any other regulated entities – are provided with a minimum of at least one month to finalise a complaint in Stage 3 of the complaint resolution process.

The consultation paper also notes that the Ombuds Scheme will also have a role in educating customers about their consumer rights and informing them about the conduct and performance of airlines and airports. A4ANZ supports this role and recognises that to acquit this function the ombudsperson may require specific powers relating to the collection, analysis, and publication of data.

However, as we have advised in previous submissions – in designing these powers the Department must have regard to existing processes for the collection, analysis, and reporting of data relating to the performance of airlines, such as through the Bureau of Infrastructure and Transport Research Economics (BITRE) and the ACCC, to avoid duplication and increasing the reporting burden on airlines.

ⁱ Australian Travel Industry Association. 2023. Submission to the Aviation Green Paper. At: <https://www.infrastructure.gov.au/sites/default/files/documents/agg2023-submission-c211-australian-travel-industry-association.pdf>

ⁱⁱ Australian Travel Industry Association. 2024. Submission to the RRAT Inquiry into the Airline Passenger Protections (Pay on Delay) Bill 2024. At: <https://www.aph.gov.au/DocumentStore.ashx?id=fd518b30-08ab-4016-835e-0cf05b1d5413&subId=763174>

ⁱⁱⁱ Australian Government. 2023. Office of Impact Analysis – Key changes to the Australian Government Policy Impact Analysis framework. At: <https://oia.pmc.gov.au/resources/guidance-impact-analysis/australian-government-guide-policy-impact-analysis>

^{iv} Australian Government. 2023. Office of Impact Analysis – Regulatory Impact Analysis Guide for Ministers’ Meetings and National Standard Setting Bodies. At: <https://oia.pmc.gov.au/sites/default/files/2024-09/regulatory-impact-analysis-guide-for-ministers-meetings-and-national-standard-setting-bodies.pdf>

^v Canadian Transportation Agency. 2024. Consultation: Air Travel Complaints Fee Proposal. At: <https://otc-cta.gc.ca/eng/publication/consultation-air-travel-complaints-fee-proposal>