

**From:** [Department of Infrastructure, Transport, Regional Development, Communications, Sport and the Arts](#) on behalf of [infrastructure.noreply@govcms.gov.au](mailto:infrastructure.noreply@govcms.gov.au)  
**To:** [aviationconsumer](#)  
**Subject:** submission to: Aviation Consumer Protections – subordinate legislation (including the Aviation Consumer Protections Charter) [SEC=OFFICIAL]  
**Date:** Sunday, 5 October 2025 10:22:35 AM  
**Attachments:** [aviation-consumer-protections-aspa-submission-20251004.pdf](#)

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OFFICIAL

Submitted on 5 October 2025

Submitted by: Anonymous

Submitted values are:

## Step 1: Your submission

### Remain Anonymous

No

### Private Submission

No

### Published name

ASPA - Association of South Pacific Airlines

### Short comment

Dear Sir/Madam - Please find attached a submission from the Association of South Pacific Airlines (ASPA) in respect to the proposed Aviation Consumer Protection.

ASPA represents 15 member airlines throughout the pacific and is happy for our submission to be shared publicly with the following persons available as contacts should there be a need:

ASPA Secretary General

David [REDACTED]

e: [REDACTED]

T: [REDACTED]

Grateful if our submission could be included for consideration in your discussions and deliberations.

Kind regards

## Upload attachments

### File uploads

- [aviation-consumer-protections-aspa-submission-20251004.pdf](#) (247.41 KB)

## Step 2: Contact details

**First name**

David

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████

**Organisation (if applicable)**

ASPA - Association of South Pacific Airlines

**Email address**

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**Email notification**

aviationconsumer@infrastructure.gov.au

**Consultation name**

Aviation Consumer Protections – subordinate legislation (including the Aviation Consumer Protections Charter)

OFFICIAL



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

GPO Box 594

Canberra ACT 2601

By email: [aviationconsumer@infrastructure.gov.au](mailto:aviationconsumer@infrastructure.gov.au)

## **Association of South Pacific Airlines submission on the Australian Government's 2025 Aviation Consumer Protection Consultation Paper (Consultation Paper)**

### **Overview of ASPA's Submission**

The Association of South Pacific Airlines (ASPA) is a trade association of regional South Pacific airlines. Current members of ASPA include the following airlines:

- Air Caledonie
- Air Kiribati
- Air Marshall Islands
- Air Niugini
- Air Rarotonga
- Air Tahiti
- Air Tahiti Nui
- Air Vanuatu
- Aircalin
- Fiji Airways
- Lulutai Airlines
- Nauru Airlines
- PNG Air
- Samoa Airways
- Solomon Airlines

ASPA members operate into and out of Australia and will be impacted by changes to Australian aviation policy and regulations.

ASPA urges the Government to create an exemption within the Aviation Consumer Protections framework for regional carriers including the Pacific regional carriers and for low frequency operations. Regional Pacific airlines are small, often with only one or two aircraft for international operations on routes that at most are operated on daily frequencies and sometimes even less frequently, and as a result there are no same-day alternative flights. The small-scale infrequent flights to remote locations



inevitably leads to higher disruptions and longer recovery times. Whilst major international carriers may be able to provide alternative flights and make use of code sharing and alliance networks to rebook passengers quickly, Pacific routes are long, sparse networks, with very different market conditions, which makes many of the proposed charter standards disproportionate.

The ACPA would have power over Pacific Airlines to enforce charter conditions that Pacific Airlines would be unable to meet. Without a tailored carve-out, the framework risks service withdrawals and higher fares on lifeline routes connecting Pacific Island communities to Australia. ASPA proposes a carve out applying to: (a) operations between Australia and Pacific Island states, and (b) international operators having an average scheduled frequency  $\leq 1$  departure per direction per day over a rolling 90-day period.

Airline operations are very complex and the actual operation of a flight is only the final step in a long process of airline operations which includes route planning, scheduling, slot coordination, fuelling, pilot training, maintenance and operations coordination. There are many reasons for a flight delay or cancellation which are entirely outside the control of the carrier. A decision is made to delay or cancel the flight on the basis of safety, should not result in economic sanctions as against the carrier for having made that decision in the interest of the safety of passengers.

With specific reference to ASPA members, these airlines are providing essential services for the Pacific Island nations and their communities which are heavily reliant on imports via air freight and upon air travel for connection to the rest of the world and with families in Australia. These services are set up to ensure that the communities served by ASPA have ready access to air travel and to a similar level of supply of goods and services as those in countries such as Australia. Profit is not the motive. The affect of a delay or cancellation will already impact the community which is reliant upon these services for the delivery of goods and services, and it would be an extraordinary outcome if ASPA members, subject to claims from Australia for delays or cancellations outside their control, were then unable to maintain their service because of the economic impact of the levy and claims. This will intensify existing financial challenges for Pacific Airlines, putting business viability at risk and potentially causing a loss of essential connectivity and economic benefits for South Pacific communities.

The Consultation paper introduces a new regulator, the Aviation Consumer Protection Authority (ACPA), which is empowered to make, administer and enforce the Charter and enforce compliance of regulated entities with procedures and requirements of the Consumer Ombuds Scheme. We understand that this will apply to airlines flying international from Australia, and therefore capture flights by ASPA members departing Australia. The Paper also contains a very concerning suggestion that Australia may move to compromise the sovereignty and independence of other nations by imposing this regime extra-territorially for flights originating overseas and arriving in Australia. The legitimacy of such extra-territorial law aside, for ASPA members, this introduces regulation by Australia of services originating in small island states with very different infrastructure, particularly around airports, adding unreasonable compliance and legal costs.

In respect of the ACPA, there are procedural issues with the proposal in section 1.2.4 of the Consultation Paper, for a single organisation being empowered to both make the rules and investigate breaches and adjudicate and enforce the rules. Such a structure is contrary to principles of good governance and is a fundamental departure from the traditional separation of judicial and executive powers that underpins sound regulatory frameworks. A structure where one body is empowered in this way gives rise to the risk of denial of procedural fairness as well as limiting the checks and balances ordinarily in place to ensure due process and impartiality.



The proposed role of the ACPA, as both a rule-maker and an adjudicator, is fundamentally flawed and risks placing an undue burden on the aviation sector, particular ASPA members, who submit that the role of the ACPA should be limited to being a body designed to obtain conciliated outcomes between passengers and airlines/airports. The reference to civil penalties is also a matter of concern. The provision of aviation services to consumers does not require civil penalties, infringement notices, undertakings and infringement notices. These are measures connected with culpable and criminal conduct and have no place in a regime which is directed towards delays and cancellations to passengers which may be outside the control of the carrier. These provisions are particularly inappropriate in an industry whose focus is on safety.

The Consultation Paper envisages the ACPA would be industry-funded by levies, which would effectively be a tax on travelling passengers. For low-volume carriers, variable “per-matter” fees are volatile and disproportionate. Moreover, Australia has obligations with each member State of ASPA in respect of international air services. There is a strong argument that the proposed annual levy amounts to a tariff, as it is a standardized charge associated with international air travel imposed by one country on the carriers of another country. ASPA member airlines are strongly opposed to any regime that imposes charges inconsistent with the tariff provisions set out in the relevant Bilateral Air Services Agreements. There should be no annual levy or tariff for small foreign airlines, and most importantly, no charge on airlines for ineligible complaints. Exempting low-frequency and Pacific operators from such charges is consistent with the Consultation Paper’s own small-entity differentiation logic.

Further, the proposed powers of the ACPA are concerningly extensive, including an ‘own motion’ power to allow the ACPA to investigate and enquire into issues without the need for a referral from the ACO. Airline operations are complex operations and the paramount duty of airlines is to ensure the safety of passengers. To that end, Australian airlines are regulated by the Civil Aviation Safety Authority (**CASA**) and each international State has its own regulatory body with similar regulations, objectives and powers applicable to carriers operating in their airspace. Aviation safety worldwide depends on the uniformity of these safety regulators. This is recognised by the Chicago Convention, which sets out international standards and practices for the safety of civil aviation, to which Australia is of course a signatory.

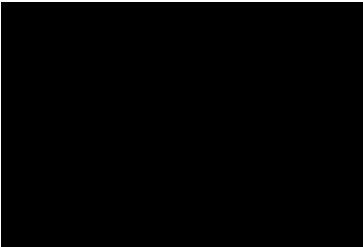
The importance of international uniformity in safety standards for civil aviation is recognised in the Commonwealth *Civil Aviation Act*, which by section 11 requires that CASA perform its functions in a manner consistent with the Chicago Convention. The proposed ACPA potentially undermines Australia’s obligations pursuant to the Chicago Convention and also uniformity of safety standards. The ACPA, unlike CASA, is not obliged by legislation to act in a manner consistent with the Chicago Convention. The suggestions that ACPA would be empowered to investigate an airline to enforce compliance with consumer regulations, without any reference to the civil aviation safety regime or the Chicago Convention and no apparent limit, is unprecedented. An exclusive civil aviation regime is necessary to achieve a uniform national safety regime and rules of the air. A second regulator for airlines introduces safety risks as operators will be in a situation where they are required to comply with different regimes and administration by different regulations and where delays and cancellations to be as important as safety. The primacy of the Civil Aviation Act regime should at least be enshrined in the legislation. Again, the international Conventions should prevail over the new regime.

Further in addition, there are already liability regimes that provide exclusive remedies for passengers in Australia for air transport services, as outlined in the *Civil Aviation (Carrier’s Liability) Act 1959*, which relevantly extend to matters such as delay and baggage.



The proposed regime has brought together most of the rest of the worlds existing passenger rights regimes and seeks to enshrine the worst of all, notwithstanding that the Australian market is much different to these other jurisdictions, in which passenger rights regimes are a trade-off for the fact that there are alternative modes of transport to the same destinations and where a consumer is selecting aviation because it is the fastest mode of transport amongst many available options. That is not the case in Australia, and in particular in regional markets and the Pacific, because it is the only mode of transport available.

In our submission, the proposed ACPA imposes undue burden and costs on ASPA member airlines and ASPA members implore the Government to reconsider their proposal in light of the members' multiple concerns highlighted above.



David Tohi MBA BEng<sub>Aerospace</sub>

Association of South Pacific Airlines