


Email notification

aviationconsumer@infrastructure.gov.au

Consultation name

Aviation Consumer Protections – primary legislation

OFFICIAL

Aviation Consumer Protections (Primary Legislation)

Submission to the Department of Infrastructure,
Transport, Regional Development, Communications
and the Arts, Australian Government

3 October 2025

Contents

| | |
|--|----|
| Who we are | 4 |
| Introduction | 5 |
| QUESTION 1 - 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?..... | 6 |
| Direct consumer relationship versus passenger | 7 |
| Code-share implications | 10 |
| <i>Airport accessibility services</i> | 11 |
| QUESTION 2 - Are there any operational or technical considerations regarding international flights that would affect their regulation under the framework? | 11 |
| QUESTION 3 - Are there any operational or technical considerations regarding airport accessibility services that would affect their regulation under the framework? | 13 |
| QUESTION 4- 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? | 14 |
| QUESTION 5 - 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? | 17 |
| Conclusion..... | 20 |

Who we are

The **Australian Lawyers Alliance (ALA)** is a national association of lawyers, academics and other professionals dedicated to protecting and promoting access to justice and equality before the law for all individuals.

Our members and staff advocate for reforms to legislation, regulations and statutory schemes to achieve fair outcomes for those who have been injured, abused or discriminated against, as well as for those seeking to appeal administrative decisions.

The ALA is represented in every state and territory in Australia. We estimate that our 1,500 members represent up to 200,000 people each year across Australia.

Our head office is located on the land of the Gadigal people of the Eora Nation. As a national organisation, the ALA acknowledges the Traditional Owners and Custodians of the lands on which our members and staff work as the First Peoples of this country.

More information about the ALA is available on our website.¹

¹ www.lawyersalliance.com.au.

Introduction

1. The Australian Lawyers Alliance (ALA) welcomes the opportunity to have input to the Department of Infrastructure, Transport, Regional Development, Communications and the Arts ('Department') consultation on the proposed aviation consumer protections framework ('Framework') before it is finalised.
2. Since the COVID-19 pandemic, the ALA has been a vocal advocate of consumer protection reform in the aviation industry in order to incentivise airlines to respect passengers' consumer rights and to make airlines accountable to passengers when things go wrong.
3. The ALA has previously identified the lack of a single framework setting out passengers' rights to a refund or compensation as a weakness of Australian law. The result is that passengers' rights are found in a complex web of legislation which is hard for consumers to understand. When it comes to the Australian Consumer Law (ACL) in particular, the ALA has identified that there is a significant gap in the ACL when it comes to air passengers.
4. Therefore, in our submission on the Aviation Green Paper² last year, the ALA called for the Federal Government to create new aviation-specific consumer protection laws in the form of a Passenger Bill of Rights, rather than extend or amend existing legislation, which is already complex.
5. Given the gaps and complexities in the ACL, the ALA has advocated that new aviation-specific consumer protection laws in the form of a Passenger Bill of Rights would have been preferable to a scheme to enforce passenger rights under the ACL as previously proposed.³ Nevertheless, the ALA supported the improvement that a well-designed Aviation Industry Ombuds Scheme would bring to Australian air passengers.⁴
6. However, the ALA considered that it was imperative for a variety of legal issues to be considered and addressed when establishing the Aviation Industry Ombuds Scheme in order

² <https://www.infrastructure.gov.au/infrastructure-transport-vehicles/aviation/aviation-green-paper> Australian Lawyers Alliance, *Submission to the Department of Infrastructure, Transport, Regional Development, Communications and the Arts, Australian Government, Aviation Green Paper* (29 November 2023) <<https://www.lawyersalliance.com.au/resources/2023>>

³ Department of Infrastructure, Transport, Regional Development, Communications and the Arts, *The Aviation Industry Ombuds Scheme – Consultation Paper* (August 2024)

⁴ Australian Lawyers Alliance, *Submission to the Department of Infrastructure, Transport, Regional Development, Communications and the Arts, Australian Government, Aviation Industry Ombuds Scheme* (16 October 2024)

for it to be successful and ultimately provide airline accountability, and increased consumer protection which is currently lacking in Australia.⁵

7. The ALA has considered the government’s Aviation Consumer Protections Consultation Paper (‘Consultation Paper’) on the Framework. Whilst the ALA welcomes the improvements that the Framework makes from the status quo, such as creating enforceable standards as opposed to the current Airline Customer Advocate (ACA) regime, we are concerned that the Framework does not create new aviation-specific consumer protection laws and is ambiguous as to passengers’ recourse to enforce current legislative rights, particularly those found under the ACL. This is despite the stated objective of the Aviation Consumer Ombuds Scheme being “*to resolve individual consumer complaints in relation to the supply of airline, airport and airport accessibility services through the provision of a fair, accessible and independent ADR services.*”⁶
8. The ALA is also concerned that many cohorts of Australian air passengers will fall through gaps in the proposed Framework, particularly in respect of passenger eligibility requiring a “*direct consumer relationship*” and the potential exclusion of inbound international passengers.
9. The ALA’s submission responds to the primary legislation consultation questions in the above context.

QUESTION 1 - 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?

10. The ALA has three concerns regarding the proposed regulation of airline services, airport services and airport accessibility services:
 - a. The requirement of a “*direct consumer relationship*” will exclude some air passengers from the Framework;

⁵ Ibid, 5

⁶ Department of Infrastructure, Transport, Regional Development, Communications and the Arts, *Aviation Consumer Protections: Consultation Paper* (September 2025), s 4.1 (“*Consultation Paper 2025*”)

- b. It is unclear how airline services provided by a code share arrangement will be regulated; and
- c. The potential exclusion of inbound international flights, which we have expanded on in Question 2.

Direct consumer relationship versus passenger

11. The ALA notes that the proposed Framework is limited to matters involving a “*direct consumer relationship*” with an airline in the provision of an airline service, or with an airport in the provision of airport service.⁷ The ALA therefore notes that both the minimum service standards to be set out in the Charter **and** the right to seek redress from the Aviation Consumer Ombuds Scheme will only apply to individuals who have a direct consumer relationship with the airline or airport.
12. The proposed application of the Charter to only individuals with a direct consumer relationship is confirmed by the language throughout the Consultation Paper which refers to consumers in respect of both Charter rights and access to the Aviation Consumer Ombudsperson (ACO). For example, the Consultation Paper notes that the framework will “*also introduce minimum standards that aviation **consumers** can expect from airlines and airports in relation to a range of matters*” (our emphasis).⁸
13. We further note that ‘consumer’ is as defined in section 3 of the ACL.⁹
14. The ALA appreciates the need for a clear definition for which individuals are encompassed by the Framework to make the scheme workable. However, the ALA submits that the sole criteria and a simple definition for an individual to be covered by the Framework is that the consumer is a “passenger”.
15. The ALA considers that reform in the aviation industry is necessary to incentivise airlines to respect passengers’ consumer rights and to make airlines accountable to passengers when things go wrong. The ALA understands that the Government is mindful of balancing the coverage of the Framework with the cost which is expected to be passed on to

⁷ Ibid, s 1.2

⁸ Ibid, s 1.2.1

⁹ Ibid, s1.2.5

passengers. However, by requiring a direct consumer relationship, the Framework excludes the following cohorts of passengers:

- a. Air passengers whose ticket has been purchased by an individual on their behalf such as a family member;
- b. Air passengers whose ticket has been purchased by an employer;
- c. Air passengers who are travelling for work or business purposes rather than “personal, domestic or household” purposes¹⁰; and
- d. Air passengers whose flights exceeded \$40,000.¹¹

16. The ALA contends that when a Framework is required to incentivise airlines and hold them accountable, the above exclusions do not fit with the policy need for reform.

17. We submit that there should be no distinction between passengers travelling for business and passengers travelling for personal reasons. Similarly, there should be no distinction between passengers travelling on a ticket booked by their employer or family member and passengers travelling on a ticket purchased directly.

18. The ALA also submits in particular that the minimum levels of assistance such as but not limited to access to amenities, access to communication, food and drink vouchers, transport and accommodation should be provided to all passengers without excluding those who do not have a direct consumer relationship.

Case study 1

It is Friday night and the last flight of the day has been cancelled from Melbourne to Hobart for operational reasons. Alan lives in Hobart and was in Melbourne for the day for work meetings. His ticket was paid by his employer. When he is notified that the flight is cancelled, his employer’s office is closed for the weekend. Bella lives in Hobart and had paid for her and her three-year old’s ticket to attend a specialist paediatric oncology appointment in Melbourne, flying out and returning the same day. Both passengers incur the cost of overnight accommodation in Melbourne, incidental expenses and inconvenience. The ALA contends that

¹⁰ Thus excluded from the definition in section 3 ACL

¹¹ Which is possible in the context of first class international tickets and thus exceeds the definition in section 3 of the ACL.

both passengers should be afforded the same minimum levels of assistance under the Framework.

Case study 2

Jahnavi is at university in Sydney and her parents had bought her a ticket home to Orange for the weekend for a family occasion. Her luggage is damaged. The ALA contends that whilst Jahnavi does not have a direct consumer relationship with the airline, she should be covered by the Framework.

19. The ALA notes that the EU261 scheme gives passengers delay compensation regardless of the reason for travel.¹² If a passenger is travelling for work and had the ticket paid for by their employer, it is the individual who is inconvenienced and receives compensation not the person or entity that purchased the ticket.
20. We also note that neither the Montreal Convention (MC99)¹³ nor *Civil Aviation (Carriers' Liability) Act 1959* (Cth) (CACL Act) distinguish between passenger types in respect of liability of the carrier in respect of baggage and flight delay.¹⁴ However, by restricting the Framework to air passengers who have a direct consumer relationship with the airline, the cohorts of passengers identified at paragraph 15 above would not be able to complain to the ACO for breach of their MC99 nor CACL Act rights. This raises a significant inconsistency in the Framework.
21. We note that *"the government understands that regulating activities based on the presence of a direct consumer relationship between an individual and an airline or airport may in some instances exclude coverage of certain accessibility services available at airports."*¹⁵ We further note that *"to ensure these matters could be covered by the framework, the government proposes that the framework would cover accessibility services available at an airport without the requirement of a consumer relationship (including matters under the proposed aviation-specific disability standards)."*¹⁶ The ALA submits that a simpler solution would be to apply

¹² Regulation (EC) No 261/2004 of the European Parliament and of the Council (11 February 2004).

¹³ Convention for the Unification of Certain Rules for International Carriage by Air, opened for signature 28 May 1999, 2242 UNTS 309 (entered into force 4 November 2003) (*'Montreal Convention'*)

¹⁴ Delay is addressed only under the Montreal Convention, art 19

¹⁵ Consultation Paper 2025, s2.3

¹⁶ *Ibid*, s 2.3

the entirety of the Framework to regulated activities between an airline or airport and a 'passenger'.

22. The ALA contends that the situations where a consumer who is not a passenger has a consumer protection issue against an airport would be rare. Indeed, in Case Study 6 in the Consultation Paper, Kwame is a passenger.
23. The ALA therefore submits that the Framework should apply to 'passengers' rather than require a 'direct consumer relationship.'

Code-share implications

24. The ALA submits that the requirement of a 'direct consumer relationship' will cause uncertainty in respect of code share flights.
25. The ALA submits that the Department must give full and proper consideration to the application of the Framework to code share flights. There will be confusion as to which airline is responsible for providing minimum levels of assistance and baggage requirements if that passenger purchased a ticket with Airline A (with whom they have the direct consumer relationship), but the service is supplied by Airline B under a code share arrangement.
26. We note that the EU and UK schemes address this by placing the responsibility on the carrier which we submit is simple for consumers to understand, since they can easily identify which airline is transporting them.
27. Additionally, the Department must give full and proper consideration to how issues regarding connecting flights will be managed under the Framework. The ALA notes that many international destinations involve at least one transfer for Australian passengers. This can often be with a second carrier, although a passenger may have purchased a combined ticket which includes a code share leg. If one leg of the journey is cancelled or delayed or results in lost luggage, it is important for the Framework to be clear as to which airline owes obligations to the traveller.
28. Whilst the ALA acknowledges that in many instances it would be appropriate for a passenger to complain to the ACO about how the contracting airline handled a refund or rebooking situation or managed its relationship with its code share partner, the airline who owes minimum levels of assistance such as but not limited to access to amenities, access to communication, and food and drink vouchers would most appropriately be the carrier.

Airport accessibility services

29. In respect of airport accessibility services, the ALA endorses the Justice and Equity Centre's submission to this consultation and echoes the need for further clarification of the scope of regulated activities under this category.¹⁷ We support their recommendation for the ACO to work cooperatively with other complaints bodies, including federal, state, and territory anti-discrimination bodies, to ensure consumers can access both consumer law remedies and discrimination law remedies seamlessly. This collaborative approach will help address systemic issues and ensure equitable outcomes for all consumers, especially those with disabilities.

QUESTION 2 - Are there any operational or technical considerations regarding international flights that would affect their regulation under the framework?

30. The ALA considers the Framework should include international inbound flights. Regulation must include all domestic flights, all flights to and from Australia (regardless of airline nationality), and all Australian airlines worldwide, without carve-outs. Excluding inbound international flights would create significant gaps in coverage, undermine fairness, and contradict the principle identified in the consultation that *“all consumers should enjoy a baseline level of service regardless of airline or origin.”*¹⁸ This gap was identified in our February 2025 submission and remains unresolved.¹⁹

31. Furthermore, excluding inbound international services would leave significant numbers of passengers without any or adequate protection and would be inconsistent with Australia's obligations under MC99 as well as section 5 of the *Competition and Consumer Act 2010* (Cth) (CCA) which extends the application of the ACL to conduct outside of Australia to businesses who carry on business in Australia.

¹⁷ Justice and Equity Centre, Submission to Aviation Consumer Protections Consultation - Primary Legislation (3 October 2025).

¹⁸ Consultation paper 2025, s2.2

¹⁹ Australian Lawyers Alliance, Submission to the Department of Infrastructure, Transport, Regional Development, Communications and the Arts, Australian Government, Aviation Customer Rights Charter (27 February 2025), 8

32. The ALA therefore strongly opposes excluding **inbound international flights** on the following grounds:

- a. The ACL applies to all businesses carrying on business in Australia and extends to their conduct outside Australia. It, therefore, applies to all domestic airlines and airports, and to international airlines who carry on business in Australia – i.e. airlines flying to Australia, not just flying out of Australia. The ALA’s interpretation of the ACL is that if an Australian buys a ticket to or from Australia with an international carrier, all legs of that ticket are covered by the ACL. It would therefore be inconsistent with the ACL if the Framework did not include inbound international flights.
- b. The ALA further notes that MC99 already applies to all international flights between Australia and other signatory states. Thus, inclusion of international inbound flights from signatory states under the Framework is required for consistency.
- c. Whilst some international passengers may be covered by foreign schemes, there are already substantial protection gaps affecting inbound travellers. The Consultation Paper notes that in 2021–22, 86 per cent of passenger movements were to or from ten countries, and of those only two (India and Thailand) maintain aviation-specific protections.²⁰ The overwhelming majority of inbound travellers therefore lack effective recourse. Furthermore, no analysis was made in the Consultation Paper about the level of consumer protection afforded by these jurisdictions’ schemes in comparison to the proposed minimum standards in the Charter and Australians’ ACL rights. Requiring passengers to navigate foreign schemes is onerous for passengers and inconsistent with the stated objective of *“provision of a fair, accessible and independent ADR services.”*²¹
- d. International practice demonstrates that broad coverage is both workable and desirable. Canada’s Air Passenger Protection Regulations apply to all domestic, inbound, outbound and connecting flights, ensuring that all consumers are protected regardless of their direction of travel. This gives Canadian passengers certainty. The ALA recognises the government’s concern that overlapping regulatory schemes may lead to duplication or conflict. However, such concerns can be addressed by legislative

²⁰ Consultation Paper 2025, s2.2.1

²¹ Ibid, s4.1

drafting that prevents double recovery, as demonstrated by EU261's offset provisions.²² This is simply a drafting issue, and not a reason to exclude a vast cohort of passengers.

QUESTION 3 - Are there any operational or technical considerations regarding airport accessibility services that would affect their regulation under the framework?

33. The ALA welcomes the inclusion of accessibility services in the Framework, thereby recognising that accessibility is a core element of the passenger experience. In particular, coverage of services provided without a direct contractual relationship, such as assistance at kerbside or baggage collection, is an important feature.
34. However, implementation will involve operational and technical considerations including staff training, infrastructure upgrades, and coordination between airlines and airports. Recent reporting highlights the real-world consequences when accessibility measures are inconsistently applied. For example, it was recently reported that Qantas refused to transport a passenger's certified mobility scooter due to lithium battery restrictions, despite it meeting international safety standards, demonstrating that operational rules can inadvertently undermine accessibility.²³
35. The ALA submits that detailed regulatory design in this area should be informed by people with lived experience of disability and the organisations that represent them to ensure meaningful, enforceable improvements in accessibility outcomes.
36. Further, the ALA fully endorses the Justice and Equity Centre's submission to this consultation and its recommendations aimed at ensuring accessibility, equity, and systemic improvements in aviation consumer protections, particularly for marginalised communities and people with disabilities.²⁴

²² EU261, art 12.

²³ <https://www.theguardian.com/world/2025/sep/28/qantas-refused-fly-woman-mobility-scooter-due-lithium-battery-accessibility-standards-needed>

²⁴ Justice and Equity Centre, *Submission to Aviation Consumer Protections Consultation - Primary Legislation* (3 October 2025).

QUESTION 4- 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?

37. The ALA supports the establishment of a dedicated regulator, the Aviation Consumer Protection Authority (ACPA), to enforce Framework standards. A specialist body focused on aviation has the potential to improve compliance and enforcement in a sector where consumer complaints have historically been fragmented and difficult to resolve.²⁵
38. Further, the ALA welcomes the proposed enforcement powers for the ACPA. Unlike the existing ACA, which notably lacks power to make binding determinations, the ALA notes that the ACPA would be empowered to pursue civil penalties through the courts, issue infringement notices, accept and enforce undertakings, and apply for injunctions, including to enforce ACO decisions. Such powers represent a significant and overdue improvement.
39. When it comes to cost, the ALA understands that the cost of the Framework including the ACPA is expected to flow to ticket prices. However, the ALA emphasises that airlines and airports should bear the costs of the scheme, consistent with the government's stated intent to recover costs from regulated entities.²⁶ Under no circumstances should these costs be passed on to consumers through ticket prices, surcharges or other indirect mechanisms.
40. Whilst we acknowledge that any enforcement regime will incur administrative costs, we consider that it would be unfair for consumers if such costs be passed through to passengers when the Australian domestic market already lacks competitive ticket pricing. The ALA therefore submits that the cost of the Framework should be directly borne by airlines. This is particularly relevant when components of the Framework, such as information provision by customer service teams and a right to refund under the ACL should not be regarded as new obligations by airlines and should already be accounted for accordingly.
41. It is well reported that Australia's main domestic carriers regularly report strong profits: Qantas posted a statutory net profit of A\$1.61 billion FY25, up 28 percent over the previous year, with underlying profit before tax of A\$2.39 billion.²⁷ Meanwhile, Virgin Australia's

²⁵ Consultation Paper, s 2.1

²⁶ Ibid, s 7.4

²⁷ Qantas Airways Limited.(2025). *Qantas Group FY25 Appendix 4E and Preliminary Final Report*. Retrieved from the Australian Securities Exchange (ASX) platform. Document dated 28 August 2025

underlying profit rose 28 percent to A\$331 million in FY25.²⁸ Considering the financial results outlined, it is difficult to justify customers bearing the burden of costs with increased fares.

42. While the technical mechanics of funding fall outside the ALA's expertise, the ALA considers that funding must ensure the ACO and ACPA's independence. However, this should not be at the expense of the passenger's pockets.
43. As cost to the sector is considered in Question 4, the ALA takes this opportunity to express our disappointment that the government has declined to include clear statutory compensation for delays and cancellations within an airline's control, primarily due to concerns about the funding burden.²⁹ We repeat our submissions in the ALA's Green Paper and Charter submissions, where we called for clear statutory rights to compensation for controllable delays and cancellations.
44. The ALA will make repeated submissions on this point in our secondary legislative submissions. However, as this question addresses funding, we note that compensation has been declined on funding grounds. However, the Rural and Regional Affairs and Transport Legislation Committee Inquiry to the *Airline Passenger Protections (Pay on Delay) Bill 2024* heard evidence on 17 March 2025 that Eurocontrol data from 2022 showed that the estimated cost of compensation per passenger across the EU and UK was only between 60c and US\$1.20.³⁰ The ALA also notes that CHOICE research published in 2020 found that 76% of people would be willing to pay extra for tickets to cover a scheme similar to that in the EU, with most willing to pay A\$2-10 extra.³¹
45. Therefore, by excluding a clear, straightforward compensation scheme on funding grounds is a missed opportunity. Such a statutory scheme would not be expected to impose blanket compensatory obligations on airlines. Rather, compensation would only be payable where the delay or cancellation is specifically within the airline's control.

²⁸ Virgin Australia Holdings Limited, *Appendix 4E and Preliminary Final Report for the financial year ended 30 June 2025*, released on 29 August 2025

²⁹ Consultation Paper 2025, s 9.4

³⁰ Senate, Rural and Regional Affairs and Transport Legislation Committee, *Official Hansard, Public Hearing, 17 March 2025* (Canberra, 17 March 2025)
<https://parlinfo.aph.gov.au/parlInfo/download/committees/commsen/28755/toc_pdf/Rural%20and%20Regional%20Affairs%20and%20Transport%20Legislation%20Committee_2025_03_17_Official>

³¹ <https://www.choice.com.au/travel/on-holidays/airlines/articles/flight-delays-and-cancellations-compensation>

46. Further, compensation for delay and inconvenience is not novel. Airlines are already subject to liability for losses occasioned by delay under article 19 of MC99. Moreover, the Consultation Paper acknowledges that consumers are entitled to compensation for consequential loss that is reasonably foreseeable and caused by the failure to meet an ACL consumer guarantee such as provision of a service within a reasonable time.³² The ALA understands that the ACO will be able to determine complaints made by passengers who are dissatisfied with an airline’s decision about compensating such losses.³³ A clear statutory flight delay compensation scheme would have made rights transparent for passengers and airlines to reduce the scope of disputes and made the process simpler for all parties involved including the ACO, rather than leaving the ACO to make determinations on a case-by-case basis with no guidelines.
47. As the ALA submitted in response to the consultation on the proposed Aviation Industry Ombuds Scheme³⁴, a clear statutory flight delay compensation scheme is required to remove any ambiguity over whether and how emotional loss for inconvenience, disappointment and distress should be recovered. This is because disappointment and distress are only currently recognised as a recoverable head of loss in Australia when the purpose of the contract is enjoyment and relaxation, and the purpose of a flight ticket is arguably to get from A to B without an enjoyment or relaxation component.³⁵ However Australian law also recognises the need to passengers to be compensated for breach of consumer rights, such as the Qantas “ghost flights” settlement with the ACCC which compensated \$225 to domestic ticketholders and \$450 to international ticketholders.³⁶
48. Again, cost to the sector is considered, and the ALA takes the opportunity to address the role of travel insurance. We submit travel insurance is not the solution to protect passengers from inconvenience and consequential losses that flow from cancellations and delays that are within an airline’s control. Travel insurance represents an additional out-of-pocket cost for consumers, effectively shifting responsibility from airlines onto passengers. Travel insurance is usually subject to an excess of up to \$200, which for domestic travel disruption, may be a

³² Consultation Paper 2025, s 3.5

³³ Ibid, s4.2

³⁴ Australian Lawyers Alliance, *Aviation Industry Ombuds Scheme Submission 2024*, 8

³⁵ *Jarvis v Swans Tours Ltd* [1972] EWCA 8; *Baltic Shipping Co v Dillon* [1993] HCA 4, *Moore v Scenic Tours Pty Ltd* [2020] HCA 17

³⁶ Compensation was awarded of \$225 for domestic and \$450 for international passengers

significant proportion of the losses incurred. Furthermore, travel insurance policies rarely if at all compensate for the inconvenience and distress of missing critical medical appointments, once-in-a-lifetime events, or important family milestones such as weddings and funerals. Therefore, the ALA maintains that where a passenger incurs financial or emotional loss for a breach of ACL guarantee that is within the airline's control, the cost of compensation should be borne by airlines' operating budgets and profits, not from consumers.

QUESTION 5 - 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?

49. The ALA welcomes the creation of the ACO empowered to resolve consumer complaints in relation to the supply of airline, airport and airport accessibility services, with ACO decisions enforceable by the ACPA.
50. The recent media report of a Qantas passenger reliant on a mobility device who received no resolution to her complaint to the ACA after being denied boarding on a connecting flight due to inconsistent airline policies around lithium-battery demonstrates both the urgent need for clear accessibility standards and the failure of non-binding industry dispute schemes to deliver meaningful outcomes.³⁷
51. The ALA notes that the *“ACO would be able to consider individual complaints in relation to the minimum standards outlined in the Charter, as well as other complaints regarding matters not outlined in the Charter that relate to airline or airport services as defined in the legislation”* (“other eligible complaints”) (our emphasis).³⁸ The ALA considers that the minimum standards outlined in the Charter are incomplete, which will be the subject of our submission on subordinate legislation consultation questions.
52. For the purposes of this submission, the ALA points out that it is imperative that it is clear and unambiguous that the “other eligible complaints” over which the ACO has jurisdiction referred

³⁷ <https://www.theguardian.com/world/2025/sep/28/qantas-refused-fly-woman-mobility-scooter-due-lithium-battery-accessibility-standards-needed>

³⁸ Consultation Paper 2025, s4.2

to above includes complaints regarding breaches of statutory guarantees under the ACL, baggage and flight delay claims under MC99 and baggage claims under the CACL Act.

53. In respect of the ACL, the ACO must have unambiguous jurisdiction to make decisions over complaints regarding airline breaches of sections 60, 61 and 62 of the ACL, complaints regarding claims for 'loss or damage' caused by such breaches under section 236 of the ACL, and complaints regarding sought recovery of damages for reasonably foreseeable "loss or damage" caused by such breaches under section 267 of the ACL.
54. In respect of MC99, the ACO must have unambiguous jurisdiction to decide complaints regarding 'damage' sought by passengers occasioned by delay in their carriage under Article 19, as well as baggage related claims.
55. The ALA takes this further opportunity to reiterate that a clear statutory flight delay compensation scheme would have made the above "loss" and "damage" rights transparent for passengers and airlines. This would have reduced the scope of disputes and made the process simpler for all parties involved including the ACO, rather than, as mentioned before, leaving the ACO to make determinations on a case-by-case basis with no guidelines.
56. We note that if passengers currently wish to enforce their above ACL, MC99 or CACL Act rights, they must take court action. This is costly, complex and time consuming. This is highlighted by the July 2024 media coverage of Michael Pascale, who spent 18 months chasing compensation for lost luggage under MC99. Mr Pascale commenced legal proceedings against the airline, taking his claim to the Queensland Civil and Administrative Tribunal. However, Mr Pascale had to get the judgment transferred to Victoria where the airline in question was headquartered and hire a process server to serve court papers on the airline. The ALA submits that most consumers would not have the tenacity of Mr Pascale. It is therefore imperative that the ACO be able to determine such complaints, with such decisions consequently being enforceable by the ACPA. As Case Study 8 in the Consultation Paper illustrates, passengers should be able to choose between the ACO or the courts for such claims, in the same way that it is proposed that passengers should be able to choose between the ACO and the AHRC for disability discrimination matters.
57. The ALA submits that if the complaints outlined in paragraph 51 to 53 above were ineligible for determination by the ACO, the consumer ombuds scheme would fail to meet its aim of resolving individual consumer complaints in relation to the supply of airline, airport and

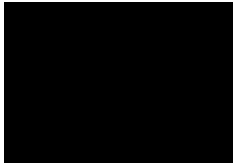
airport accessibility services through the provision of a fair, accessible and independent ADR services.

58. The ALA also repeats that for MC99 complaints to be within the jurisdiction of the ACO, the Framework needs to encompass inbound international flights as submitted earlier in this submission.
59. Regarding baggage complaints, the ALA notes that MC99 provides a higher baggage cap for international flights than the CACL Act for domestic flights. The ALA recommends harmonising the Framework and associated legislation so that the ACO will have the power to compensate lost and damaged baggage up to AU\$8,000, regardless of domestic or international travel. This will ensure fairness, consistency and clarity for consumers regardless of domestic or international travel. The ALA however submits that compensation for loss and damage to mobility devices should not be limited to a “baggage” cap.
60. The ALA agrees that the ACO should have jurisdiction over complaints from all passengers about services provided by airlines and airports regardless of whether the passenger purchased the service directly or through an intermediary travel agent/third party. For the reasons set out in paragraph 35 of our submission on the Aviation Industry Ombuds Scheme, we submit that travel agents should be educated by the ACO / ACPA about their power and responsibility when facilitating contracts for consumers.
61. The ALA also agrees with the proposed 12-month time limit for making a complaint with the ACO. However, for complaints nearing this deadline, the ALA submits that there should be a process whereby a complainant can lodge a complaint to the ACO within one year without first complaining to the airline or airport directly and the ACO should have the power to stay the complaint pending the parties going through their usual first pre-action steps in the process.
62. Finally, the ALA strongly supports excluding personal injury complaints from the scope of the ACO’s powers. In brief, our members’ experience of representing injured air passengers is that such claims require detailed legal knowledge in respect of both the applicable liability regimes and quantification of damages, making such complaints unsuitable for the ACO. Should the Government propose to include resolution of personal injury complaints within the ACO’s powers, the ALA respectfully seeks permission to provide further detailed submissions on this point.

Conclusion

63. The Australian Lawyers Alliance (ALA) welcomes the opportunity to have input to the Department of Infrastructure, Transport, Regional Development, Communications and the Arts ('Department') on the Aviation Consumer Protections Framework ('Framework')

64. The ALA is available to provide further assistance to the Department on the issues raised in this submission.



Ian Murray

President

Australian Lawyers Alliance



Victoria Roy

Chair, Travel Law SIG

Australian Lawyers Alliance