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Ms Samatha Palmer
Department of Infrastructure, Transport, Regional Development, Communications and the Arts
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By email: AviationConsumer@infrastructure.gov.au

Re: Aviation Consumer Protections – Consultation Paper (Primary Legislation questions)

BARA (the Board of Airline Representatives of Australia) is an industry association representing the majority of international carriers that serve Australia. Current member airlines collectively provide approximately 60% of all international aviation capacity operated to Australia (source: BITRE). A list of BARA members is attached to this submission as Appendix 1.

BARA has consulted with member airlines to provide this feedback to the Aviation Consumer Protections - Consultation paper. BARA members represent many of the most globally respected and established airlines and take great pride in managing their customers' needs and expectations, including when inevitable disruptions occur. BARA members already operate to and are subject to various customer protection regimes as they exist in different jurisdictions. As such, they are acutely aware of how government regulations seeking to protect the interests of aviation customers really work in practice, and what type of requirements may lead to poorer customer outcomes if regulation creates unintended consequences.

BARA has provided some direct airline member comments (paraphrased) in the body of this submission, highlighting where members have observed technical or operational challenges in responding to the proposed standards or remedies. BARA will collate more specific responses in the same vein to the subordinate legislation questions in due course.

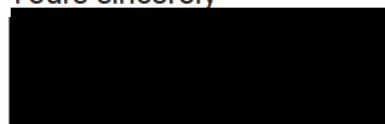
BARA observes that the Consultation paper overall (apart from the section exploring which international flights may be covered or not) appears to view the customer standards and remedies that might apply to be those most related to situations which the domestic or shorter-haul simple 'out-and-back' international passengers of the large Australian-based carriers may experience. The additional operational complexities of long-haul international air travel do not appear to have been considered in detail for the definition of either the proposed remedies or standards.



BARA continues to advocate that to provide a holistic improvement for aviation customers that all entities involved in the passenger journey should be both included and accountable under the proposed scheme. Without this broader coverage, there will continue to be numerous areas where the efforts of airlines alone to adequately respond to the myriad of factors that influence international travel schedules, and to manage their customers to the highest levels cannot be adequately delivered when they do not have either all the relevant information provided, or are working without an environment of shared accountability.

BARA appreciates the opportunity to provide this input and will continue to engage with the Department in further consultations. Please contact BARA should you wish for any further clarification on any point.

Yours sincerely



Stephen Pearse
Executive Director

Attached: Appendix 1 - Current BARA member airline list

Question One

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?

Proposed Governance structure

BARA notes that the proposed governance arrangements appear complex, with the formation of a new regulator (ACPA); BARA would support more streamlined governance arrangements as suggested. The ultimate cost of the proposed scheme first to airlines and ultimately by extension to consumers through airfares is a very significant issue, so BARA urges for efficiency and proportionality in all aspects of the scheme to be fully considered.

Regulated entities.

If the intention of the Government's Aviation Consumer Protection scheme is to set minimum standards that should apply to both enable customer protections across the entire passenger journey and improve customer standards, then there are numerous missing elements and entities which should properly be covered by the scheme.

BARA remains of the firm view that travel agents and other booking intermediaries, Airservices Australia, airport security providers and other Government agencies who interact at the airport with passengers, all of whom are responsible for elements of service delivery that can significantly impact a passengers' air journey and experience, should all be covered under the scheme.

With only airlines and airport operators included, the scheme as drafted is making particularly airlines financially accountable (by mandating the provision of prescribed remedies for delays or disruptions 'within and outside of the airlines control') for the service failures of other entities over whom they have no control. As such, there should therefore be a wide range of exceptional circumstances where airlines should not be required to bear the regulatory and financial burden of the scheme when the primary cause of the passenger disruption or delay is due to service failures of those other entities. To achieve this aim would require both unnecessary system complexity as well as consumer confusion, which is the opposite of what the scheme seeks to provide. BARA suggests it would be far simpler and more in line with the proposed aim of the scheme to include from the outset all entities who have an impact on the passenger journey. This would more fairly share accountability (both service-oriented and financial) and be far more likely to lead to the desired lift in consumer standards.

Regulated flights

BARA understands that the intent of the proposed legislation is to provide standards and protections for Australian consumers. The consultation paper is confusing in seeking to explain how the scheme might work in relation to passengers who intersect with potentially multiple other jurisdictional consumer schemes, which is a not uncommon occurrence for international aviation customers.

BARA suggests that if international flights are to be included in the initial phase of the scheme, that eligibility be clarified in simple terms. The preparedness of BARA members to participate as international carriers in the proposed scheme has always been predicated upon the expectation that the protections being proposed are to cover passengers on their services ex-Australia in two main ways: -

- 1) To provide appropriately defined common standards for delay & disruption handling and remedies to all passengers who experience a delay or disruption for services departing Australia (on all carriers), and
- 2) For the ACO to be a complaint resolution resource for Australian-based passengers, or passengers who have booked and paid for their travel in Australia, on international & domestic airlines, for post-travel complaints or concerns.

For delay or disruption handling there is currently and always has been no distinction made by airlines when dealing with passengers onboard, regardless of nationality, place of residence, through what channel they booked their travel, or from where to or from they are traveling.

In relation to the extension of the scheme for post-travel concerns however, BARA does not consider it reasonable that the ACO should be 'open' or invite contact from any passenger from wherever they reside globally or purchased their travel, to seek further remedies in relation to a perceived mishandling of their disrupt or delay experienced in the course of their journey in Australia. This has the potential to significantly increase the number of contacts the ACO may receive, which would then require processing and result in an additional cost burden on the already costly operations for international carriers to service Australia.

BARA members consider that such passengers would and should approach either the airline in question within their country of residence or booking, and/or pursue remedies (if they consider it required) under the auspices of that locations' consumer and/or aviation-specific consumer protection scheme.

In practice therefore, BARA suggests that the inclusion of passengers on international airlines and international flights to be covered under the proposed standards are those passengers that: -

- a) Are all passengers booked on a flight in the case of disrupts and cancellations for departures ex Australia, and
- b) Australian-based passengers (booked and paid for their travel ex-Australia, in Australia either directly with the airline or via Australian-based intermediaries) only

This more closely aligns with the EU/UK standard which is based on departing flights on all carriers and all flights of EU/UK carriers. Passengers who do not meet these criteria should, if they subsequently do contact the ACO, be directed to contact the airline in the first instance in the country where they made their booking.

Other Entities

Travel Agents

The provision of accurate passenger contact information for airlines to be able to fulfil their obligations under the scheme is critical, and is noted throughout the consultation paper.

BARA members have raised multiple practical concerns over the proposed requirement for airlines to verify passenger contact information – a process which is often and increasingly (as technology continues to progress) a physical impossibility when passengers self-check for their flight and/or have booked via an intermediary (whether Australian or overseas based).

Some airline comments provided to BARA are paraphrased below as direct examples highlighting some of these issues:

Airline 1: the collection of passenger details and confirmation is very problematic. The majority of our passengers self-check in or use kiosks and there is no interaction with a traditional "check-in agent". Only passengers who book directly with the airline are asked to input their contact details. Many travel agents have no affiliation [with our airline] but scrape fares and sell directly to passengers, inserting their own contact details to mask the actual fare cost (which the passengers could view if the booking confirmation is sent to passengers directly). As an airline we will always use the registered contact details (phone and email) when communicating with our passengers.

Airline 2: Travel Agents still don't update this [contact] information, despite it being an IATA requirement.

Airline 3: the issue of agents or 'source of booking' is fundamental to this consumer protection. We have to deal with overseas OTAs who may set up a local AU IATA number, and sell via social media marketing, but have little to no local presence, sometimes just a PO box number and no actual staff. Calls to their numbers go unanswered and emails get ignored. This is a huge consumer issue, and we get multiple calls daily from pax who have bought online (and not always from overseas OTAs) stating they can't get an answer or refund when we [airline] have already actioned the airfare refund.

Airline 4: there is already an IATA resolution (830d) that requires agents to input passenger contact info in the PNR, but many do not. An automatic warning is sent in the PNR when contact info is not supplied, but they just ignore it. Offshore OTAs are a big problem area as they generally input 'SSR CTCR' (contact refused) by default.

If the objective of the proposed scheme is to improve the ability of airlines to better manage customers in the event of delays or disruptions, then BARA considers that requiring the 'source of

booking' (whether agent or other intermediary who is taking payment from the customer) to provide contact details should not be omitted from the scheme design, else as highlighted this will inevitably lead to gaps and poorer customer outcomes.

Regulated Activities

BARA considers that to better deliver against the stated objectives of the scheme that all entities with impact upon the customer journey be included.

Question Two

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

BARA members are all also IATA members, and BARA understands that IATA will provide a submission detailing some of the further broader operational and technical issues that may arise under the regulations has proposed. BARA will provide a more granular level of feedback based on some of the operational & technical elements of the proposed remedies in our response to the subordinate legislation questions.

Child seating

A specific issue which whilst potentially more relevant to the subordinate legislation, but which BARA considers is prudent to raise now, relates to the definition and identification of children within international airline bookings. This is relevant to the proposal that airlines are required to seat children under 14 with a responsible adult.

Some airline comments provided to BARA are paraphrased below to highlight some of these issues:

Airline 1: Concerns with the proposal that “children under 14 should be seated with parents free of charge and if not available the airline must communicate this with the passenger BEFORE the reservation is completed”. This is not possible physically or via existing IT systems. Firstly, [we] don't know if someone is 12 to 14, as they are booked as an adult, so it is not possible to identify a booking that has (for example) a 13yo passenger. Secondly, [airlines] are not able to restrict the booking if seats are not available, prior to a booking being completed – reservation systems simply do not make this physically possible [when seat inventory is dynamic and live].

Airline 2: there are a few scenarios that may interfere with the ability to arrange the seat for the parent and child under 14 years old together at check-in counter: -

- Parent had different booking reference to the child, which was not advised to airline in advance for seating issue, and [often] the passenger(s) show up at the check-in counter at the last minute when the flight is full.

- Passenger may have been re-booked across from another airline (customer protection) at late notice, and preferred/contiguous seating is not available.

[The] above example shows that we [airline] won't be able to solve the issue at check-in counter straight away, although we can try to negotiate with another passenger at gate to assist for the seating issue – but this cannot be guaranteed.

Airline 3: regarding the reservation part, there are seat selection fees involved while passenger make the reservation with some airlines. Currently, the reservation system is not supporting to identify passenger booking with child under 14 years old and waive the seat selection fee. And if the seat was not selected during the reservation, airlines won't be aware that there are family with child under 14 years old who are not seated together. In addition, if the passenger has self-checked in online before arrival at the airport and they are not seated together, then the options for airlines to meet the criteria are not available.

BARA proposes that the customer standard requirement be restricted to designated child [CHD] tickets only, which may vary by carrier, so that airlines can identify children in the PNR, with the additional passenger (responsible adult) having the obligation and responsibility to contact the airline to make the seat request within 24 hours of booking. Such a process would facilitate the airlines responsibility to assign seating for at least 1 adult to be seated next to CHD. If the passenger fails to make a request within 24hours of making the reservation, then the airline should no longer be 'required' but instead would be 'requested' to assist. For last-minute bookings or where all seating has already been allocated to other paying passengers, airlines should not be 'required to' but can do 'all possible' to assist at the airport.

Free of charge 'reasonable' name changes

This proposed standard also raises technical and operational issues for international carriers. The requirement would need a very careful and potentially limited definition – as the very word "reasonable" can be interpreted by different stakeholders in very different ways (in extreme cases a single letter variation could in fact be a different person). The major technical and operational issue however is that many airline journeys contain interline and/or codeshare partner carriers to passengers' final destinations, and these carriers (not subject to Australian jurisdiction) may not permit such name amendments.

Airlines operating from Australia will not be able to require their international commercial partner carriers to change their own commercial policies based on Australian legislation, and in turn airlines operating globally including with services to/from Australia are not able to compel those partners to allow a new/replacement booking at the same original fare or booking class – and certainly not at the same cost (to the consumer). The 'name change' proposal appears to BARA to be a domestic Australian orientated proposal which if applicable will need to be further clarified for international travel, along with caveats around the specific requirements of government and other agencies to have exact name and spelling matches for APP data. Even if all such criteria are met, a

"reasonable" name amendment may still only be possible for international carries when all flights are on the one carrier operating from Australia and covered by the proposed legislation.

Question Three

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

BARA has provided the Department with access to airline and ground handlers related to international operations, and has assisted with improving familiarity of airport and airline processes for passengers with accessibility needs.

Security screening & accessibility issues

In terms of the inclusion under the scheme of other entities and the gaps highlighted, BARA observes that issues at security screening points are one of the major issues regularly experienced and reported upon by persons with disabilities. For both passengers with or without accessibility issues, passing through security is stressful and is a fundamental and significant part of the anticipated air passenger journey. As such the scheme will have a substantive gap in terms of addressing customer experience issues and in providing customer protection if these services continue to be excluded.

BARA notes that the government is considering specific legislation to potentially include designated accessibility services under the scheme. BARA does not consider that this further regulatory step should be required. The provision of security services for international travel is a service that is competitively bid for and contracted by the airport operators, with the cost of provision passed on to airlines as a direct charge for recovery from passengers. As such, there is a direct contractual relationship and obligation by airport operators to manage the delivery of security services to the required standards.

BARA suggests therefore that a) the provision of security screening be included under the scheme and b) that any issues arising in relation to the passenger journey as a result of security concerns therefore be included and be accountable to airports. This is no different to the obligation and accountability being placed on airlines to provide appropriate services, communication and handling for passengers (including those with accessibility challenges) at check-in or at the departure gate and to their onboard seat, where those services delivered are in the vast majority of cases for international airlines provided by 3rd party ground handling companies contracted to the airlines.

Question Six

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?

BARA has grave concerns that the scheme as proposed has the potential to add considerable cost and complexity to international airlines operations and costs for their Australian services. This may include the development of new systems, processes, staff training and significant additional passenger data-collection obligations for maintaining an ongoing log of passenger requests and issues - mostly for the purpose of either being able to prove or subsequently determine whether a passenger may or may not be eligible for a specific proposed remedy or not. Such activities and costs do not necessarily of themselves contribute to improved customer outcomes.

One such example is the requirement to provide contact staff at airports (somewhat irrespective of the time of a potential delay or disruption) when a carrier may operate only once a day or even only a few times per week from the airport in question. Following on is the proposed requirement to provide a call-centre 'call back' option for Australian-based consumers – when the carrier is both based overseas and/or may be operating a low-cost operational model (providing benefits to consumers who are more price-sensitive) and not therefore even offer a 'traditional' contact centre facility. BARA feedback to the subordinate legislation questions will provide some additional information in regards to such issues, however overall considers that a more nuanced and flexible requirement with an outcome-orientated rather than prescriptive solution approach will deliver higher customer standards.

For airlines operating low-cost models (LCCs) some of these cost challenges are particularly heightened – the whole premise of LCCs is to reduce costs and pass those savings on to customers through lower fares. Offering a 'no-frills' service to achieve those lower fares and stimulate demand from passengers who might otherwise not have travelled internationally is a legitimate competitive position – which is designed to appeal to a specific segment of the air travel market (not all air travel customers). Such challenges are heightened further in the context of applying fixed standards around accessible travel.

Much of the high forecast growth in international aviation over the next 10-20years within the Asia Pacific region is expected to be driven by such carriers, with long-haul narrow-body aircraft increasing destination options for millions of potential aviation travellers to & from Australia. The imposition of a uniform costly aviation consumer standards scheme has the potential to subdue such airlines' growth of services to Australia and potentially challenge their commercial fare structure propositions, particularly if they do not consider the standards contribute to or improve the majority of their customers experience. This could ultimately lead to a suspension or reduction of services by such airlines to Australia, adversely impacting air connectivity, if they seek to instead expand their operations into markets where there are less prescriptive and costly operational requirements.

Rolling delays & Safety concerns

As highlighted within this submission (and many others) the aviation ecosystem is much broader than just airlines and airports. Rolling delays due to a myriad of reasons beyond an airlines direct control (including the actions of government agencies, weather and other meteorological phenomena etc) are very common.

BARA considers that there needs to be a more nuanced understanding of what are acceptable arrangements for 'rolling delays' where in practice both the airline and airports are more incentivised to operate safely and efficiently than virtually all other stakeholders. The risks to overall passenger safety and well-being due to potential 'clock watching' by some customers who may then 'demand' prescribed remedies such as refreshments or the option to 'voluntarily' de-plane when an aircraft is progressing in a queue and nearly ready to depart are not unrealistic. With respect to tarmac delays, the US allows 4 hours and China permits 3 hours tarmac delay – in this context the proposed 2-hour limit for Australia (when considering the operation of some of the longest air sectors globally) is a potential conflict and for international carriers flight crew could result in additional restrictions on hours and the ability to operate their services in adverse circumstances.

Question Seven

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?

BARA considers that one of the most important roles of the ACO will be for it to become a known, trusted and centralised location for providing education and guidance to aviation consumers (primarily) in Australia to enable them to better understand both their rights and obligations, and how to go about raising concerns or issues in the most effective manner.

As has been previously highlighted in BARA submissions, the UK's air passenger travel guide (<https://www.gov.uk/government/publications/air-passenger-travel-guide/air-passenger-travel-guide>) provides an excellent template and BARA hopes that the Government will be able to follow such global best-practice examples.

BARA notes the proposed delineation of eligible and non-eligible complaint categories and will look to provide additional feedback on these as they are further refined and developed. BARA does however wish to comment on the proposed Stage 1 complaint handling process of the operation of the ACO, whereby it is suggested that: *'In limited circumstances, it is proposed that the ACO would have discretion to accept a consumer complaint directly (ie: where the consumer has not attempted to directly resolve with the airline/airport).'*

BARA does not agree that ANY such exemption be allowable – airlines (and airports) cannot resolve or respond to issues of which they are unaware. For the ACO to assess a contact or complaint, it must have first been presented as an issue to the airline/airport in question, without exception.

BARA considers that the 'limited circumstances' that are envisaged would be impossible to define and instead become a back-door opening encouraging more contact direct to the ACO, driving up contact numbers inappropriately and in turn requiring additional ACO resources – ultimately further increasing compliance costs for scheme members, and creating additional costs that will flow through to all customers through airfares. For a market as competitive as international aviation, it is imperative that the ACO be operated as leanly and efficiently as possible and not become a regulatory cost burden. BARA will respond in more detail to the proposed funding models in response to the subordinate legislation questions.

Appendix 1: Current BARA member airline list



AIRASIA Aviation Group representing: -

- AIRASIA X
- AIR ASIA Berhad
- INDONESIA AIR ASIA
- PHILIPPINES AIR ASIA
- THAI AIR ASIA
- THAI AIR ASIA X

AIR CANADA

AIR NIUGINI

AIR NEW ZEALAND

AIRCALIN

ALL NIPPON AIRWAYS

AMERICAN AIRLINES

ASIANA AIRLINES

BATIK AIR LINES

CATHAY PACIFIC AIRWAYS

CHINA AIRLINES

CHINA EASTERN

CHINA SOUTHERN AIRLINES

DELTA AIR LINES

ETIHAD AIRWAYS

EVA AIRWAYS

FIJI AIRWAYS

GARUDA INDONESIAN AIRWAYS

HAWAIIAN AIRLINES

JAPAN AIRLINES

LATAM AIRLINES GROUP

KOREAN AIR LINES

MALAYSIA AIRLINES

NAURU AIRLINES

PHILIPPINE AIRLINES

QATAR AIRWAYS

ROYAL BRUNEI AIRLINES

SCOOT

SINGAPORE AIRLINES

SOLOMON AIRLINES

SOUTH AFRICAN AIRWAYS

SRILANKAN AIRLINES

THAI AIRWAYS INTERNATIONAL

TURKISH AIRLINES

T'WAY AIR

UNITED AIRLINES

VIETNAM AIRLINES

VIRGIN AUSTRALIA

XIAMEN AIRLINES