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Consultation name

Aviation Consumer Protections – primary legislation

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Aviation Consumer Protections Consultation Paper—Comments

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Primary legislation consultation questions

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?

The exclusion of travel agents, and government regulatory agencies, such as the Australian Border Force, and associated regulatory services, such as security and biosecurity screening, from the regulations will leave a significant gap in consumer protection.

Many people with disability experience poor to negligent service by regulatory agencies. These experiences are well documented in the press and the agencies and their staff seem beyond responsibility for occasional egregious treatment of people with disabilities.

Further, travel agents at times fail in their duty of care and are difficult to hold to account when this occurs.

Both travel agents and government regulatory agencies should be subject to the regulations. The Disability Discrimination Act covers their activities in addition to other regulations and legislation. This must not be diminished.

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

The Canadian model would suggest that there were no operational or technical considerations regarding international flights that would affect their regulation. All international flights—inbound and outbound—should be regulated under the framework.

The European Union approach of providing that EU air passenger rights apply only if the passenger has not already received the applicable remedies under the relevant law of a non-EU country should circumvent Jurisdictional overlap.

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

Accessibility services are currently covered by the Disability Discrimination Act (DDA) and two of its Disability Standards—the Premises Standards and the Transport Standards (DSAPT). These must under no circumstances be diminished in scope or effect.

The DDA and DSAPT are currently under review and reform processes, with both expected to be made more contemporary. An Aviation specific

Disability Standard is mooted. Therefore the proposal that the the government is considering specifying airport accessibility services as a distinct regulated activity under the framework, that would not require a direct consumer relationship, is supported.

Subordinate legislation consultation questions

4. Do the proposed Charter standards cover the core elements of the aviation consumer experience relating to the delivery of airline services, airport services and airport accessibility services? Are there any missing elements?

Most the core elements of the aviation consumer experience relating to the delivery of airline services, airport services and airport accessibility services are covered. Flight disruption that requires overnight or longer accommodation should include a requirement for accessible accommodation.

Missing are the issues associated with security screening and arrival / departure from the airport. Many instances of very poor treatment occur during security screening. These particularly impact people with a disability. People are separated from guide dogs, unreasonable demands are made of people with mobility impairments and communication impasses are experienced by people who are deaf. These should have remedies included in the Charter.

The infrastructure associated with boarding or alighting from either public or private transport at the airport seems to have been missed. In most instances these are the responsibility of the airport rather than airlines. Arguably they are already covered by DSAPT, but experience informs that they are often non-compliant or so minimally compliant as to be non-functional. The Charter standards must include transport infrastructure directly associated with each airport.

5. Do the proposed Charter standards reflect reasonable standards? Are there any operational or technical considerations that would affect the ability of airlines or airports to meet the proposed standards?

It would seem that Canada and the European Union have already implemented similar Charters and standards. As such it appears that nothing would prevent Australia from following their example.

The reasonableness of the proposed Charter will only become apparent when airlines and airport begin placing their own interpretations on the Charter and standards. This will test the resolve and powers of the Ombudsman and Aviation Consumer Protection Authority (ACPA). If the regulator is captured by industry—as all too frequently occurs—the ‘reasonableness’ will be business as usual rather than meaningful reform.

Primary legislation consultation question

6. 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?

The detailed ACPA powers seem appropriate.

The proposal that the ACPA would be responsible for making and enforcing the consumer standards in the Charter (with the initial Charter to be made by legislative instrument by the Minister prior to the ACPA's commencement), is supported. This would at initial assessment provide good protection of people with disabilities.

In particular, the ACPA may pursue enforcement measures, including to penalise non-compliance by regulated entities with Charter standards and pursue enforcement of ACO decisions through the courts.

The ACPA having an 'own motion' power, which would allow the ACPA to investigate and enquire into issues without the need for a referral from the ACO is supported. This proactive capability would empower the ACPA to identify and address systemic problems and emerging issues that might not yet have been brought forward by an individual complaint. This is strongly supported.

Primary legislation consultation questions

7. 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?

In that the ACO would ensure the scheme delivers an independent, fair and accessible complaint handling service for aviation consumers, the role of the ACO is mostly supported.

It is also commendable that in addition to the complaint handling function and relevant powers, it is proposed that the ACO would have the following functions and powers:

- providing education and guidance to consumers, airlines and airports to help parties understand their rights and obligations, access the ACO's complaints handling service, and reduce consumer complaints
- promoting best practice complaints resolution. This could include releasing reports and other factual materials, contributing to relevant legislative and policy inquiries, and advising the government on the framework's operation
- contributing to the ongoing improvement of the aviation consumer protection framework
- referring conduct to other bodies as appropriate.

The matter of ineligible complaints might be revisited. Particularly:

- IT offerings (including app functionality)
- marketing information
- government processes (e.g. Australian Border Force activities, biosecurity requirements, security screening and visa requirements)
- privacy
- pricing and setting of additional fees (complaints may be accepted regarding how fees are applied in specific situations)

Many of these issues are covered by the Disability Discrimination Act and should be under the purview of the ACO. The accessibility of IT products and information necessary for air travel, and the capacity to pass through security screening without, humiliation, distress or discrimination must be covered.

Subordinate legislation consultation question

8. If different cost recovery levies are applied to regulated entities based on the nature or size of their operations, what metrics should be used to differentiate them?

That the variable monthly levy could be set based on the number of complaints and referrals associated with an individual regulated entity, and the level of escalation of the complaints and referrals, is supported. Offenders should pay a greater proportion of regulatory fees.

The proposal for having a higher per matter levy for complaints that require further investigation and/or escalation is supported. The allocation of total costs between the annual levy and a monthly activity-driven levy in the design of levies for this framework is also supported.

Basing initial levies on the Canadian experience is sound and supported. Adjustments can be made as the scheme matures.

Subordinate legislation consultation question

9. For each of the duration/situation timeframes listed in Table 4 (1 to 3 hours, 3 to 6 hours, 6 to 12 hours and more than 12 hours) what are reasonable values for food and drink vouchers per meal, and how many food and drink vouchers should affected passengers receive?

The food and drink vouchers should reflect the prices for such at the airport where delays are not overnight. Overnight delays should reflect the cost of food and drink at the accommodation provided.

Table 4 lacks an obligation to find accessible accommodation for passengers with a disability where overnight stays away from home are required. People should be reimbursed for transport, accommodation, meals and any sundry required expenses. This may include provision of support workers at the accommodation.

Where people are able to return home they should be reimbursed for transport, and sundry required expenses.