

Domestic Aviation & Reform Division
Department of Infrastructure, Transport, Regional Development, Communications and the Arts
GPO Box 594
CANBERRA ACT 2601

9 March 2023

By email: aviationwhitepaper@infrastructure.gov.au

[Aviation White Paper: Submission on Terms of Reference]

I am writing to you as **Travel Law Spokesperson** for the Australian Lawyers Alliance (ALA). The ALA is a national association of lawyers, academics and other professionals dedicated to protecting and promoting justice, freedom and the rights of the individual.

We estimate that our 1,500 members represent up to 200,000 people each year in Australia. We promote access to justice and equality before the law for all individuals regardless of their wealth, position, gender, age, race or religious belief.

The ALA is represented in every state and territory in Australia. More information about us is available on our website.¹ The ALA office is located on the land of the Gadigal of the Eora Nation.

Australian air passengers have insufficient consumer protections

The ALA welcomes the scope of the proposed Terms of Reference to include:

- appropriate consumer protections and access to services

Australia is the only country in the world that covers a continent. This makes air travel essential for Australians for business, leisure and staying connected with family. Despite this, Australian air

¹ www.lawyersalliance.com.au.

passengers have far fewer consumer protections than air passengers in other jurisdictions such as Canada,² the United States,³ the European Union,⁴ and United Kingdom.⁵

The ALA intends to make substantive submissions during the Green Paper consultation process later this year on the need to increase consumer protections for Australian air passengers including:

1. The need for an Australian flight delay compensation scheme;
2. The inadequacy of the Australian Consumer Law, found in Schedule 2 of the *Competition and Consumer Law 2010* (Cth), in aviation (and wider travel) consumer matters and in particular the need for Australians to have the choice between a refund and travel credit; and
3. The injustice suffered by air passengers who suffer pure psychiatric harm in aircraft accidents as a result of the amendment to section 28 of the *Civil Aviation (Carriers Liability) Act 1959* (Cth) by the *Aviation Legislation Amendment (Liability and Insurance) Act 2012* (Cth).

In respect of flight delay compensation, the ALA urges the Federal Government to examine what the COVID-19 pandemic taught us all by taking the opportunity to consult stakeholders on improving the rights of delayed air passengers in the same way the Canadian government did in 2020.⁶

The ALA intends to make substantive submissions on the need for a bespoke Australian flight delay compensation scheme to include:

- a. monetary compensation to passengers in the event of delay within an airline's control;
- b. standards for airlines to inform passengers of delays in a timely manner; and
- c. a legal requirement for airlines to provide appropriate accommodation to passengers in the event of significant delay, and certain passenger groups in the event of moderate delay (such as passengers with disability, and pregnant and breastfeeding women).

The ALA considers the lack of a flight delay compensation scheme in Australia to be such a significant issue for Australian air passengers that it should be identified as a specific area for consideration in the Aviation White Paper's Terms of Reference in the following terms:

² Air Passenger Protection Regulations (SOR/2019-150) | Canada Transportation Act

³ Department of Transportation Involuntarily Denied Boarding Rules | Title 14 Chapter II Subchapter A Part 250

⁴ Regulation (EC) No 261 / 2004

⁵ Regulation (EC) No 261/2004 (as amended by The Air Passenger Rights and Air Travel Organisers' Licensing (Amendment) (EU Exit) Regulations 2019)

⁶ See Canadian Transport Agency [Consultation paper: Development of new airline refund requirements](#)

- Whether the current legislative and regulatory framework gives air passengers adequate rights in the event of delay within the airline’s control; and
- Whether a consultation process should be held on the introduction of a regulatory scheme to compensate and establish information and care standards to air passengers who are subject to delay within the airline’s control and control.

Uncrewed Aircraft Systems (UAS, RPAS, Drones) and Emerging Aviation Technologies

The ALA queries the treatment of Uncrewed Aircraft Systems (**UAS**) - better known as “drones” - and related “Emerging Aviation Technologies”, pursuant to the proposed Terms of Reference.

Whilst it may be implicit that references to “aviation” include UAS, the ALA considers this should be expressly clarified. This is particularly the case where definitional issues, and questions as to the place of UAS in the broader aviation safety system (including as to the appropriate legal and regulatory treatment) have traditionally arisen in relation to UAS, and may still persist.

A similar position pertains to the proposed treatment of “urban air mobility” (**UAM**) concepts, more recently coined “advanced air mobility” (**AAM**). In that case, whilst UAM/AAM concepts presumably fall within references to “aviation” (particularly in respect of references to “changing aviation technologies” and “new, more efficient transport technologies”), the intention should nonetheless be clarified.

The ALA acknowledges the ongoing policy work relating to these technologies following the National Emerging Aviation Technologies Policy Statement (2021) and the RPAS and AAM Strategic Regulatory Roadmap (2022). Given this prior work has already identified the importance of “Emerging Aviation Technologies” in the short- and long-term future for Australian aviation, we anticipate it was intended that the proposed Terms of Reference captured these topics.

Nonetheless, ALA considers the opportunity should be taken to clarify the scope of the Terms of Reference by addressing these “Emerging Aviation Technologies” directly such that interested parties can properly participate in consultation.

Issues faced by air passengers with disability

The ALA also takes this opportunity to express our concern over the issues faced by people with disability when travelling by air. In this respect, we endorse the submission made by the Public Interest Advocacy Centre (PIAC) dated 10 March 2023.

We look forward to the release of the finalised Terms of Reference and the opportunity to make substantive submissions on these important issues for Australian individuals and consumers.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'V Roy', written in a cursive style.

Victoria Roy

Chair, Travel Law Special Interest Group

Australian Lawyers Alliance