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Submission - Aviation Customer Rights Charter

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March 2025

# About Us

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## CHOICE

CHOICE is the leading consumer advocacy group in Australia. CHOICE is independent, not-for-profit and member-funded. Our mission is simple: we work for fair, just and safe markets that meet the needs of Australian consumers. We do that through our independent testing, advocacy and journalism.

To find out more about CHOICE's work visit [www.choice.com.au/campaigns](http://www.choice.com.au/campaigns)

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# Introduction

CHOICE welcomes the establishment of the new Aviation Ombuds Scheme and the development of the Aviation Customer Rights Charter (the Charter). This submission has also been endorsed by the Justice and Equity Centre.

The COVID-19 pandemic exposed significant flaws in Australia's aviation industry, leading to widespread chaos, uncertainty and unfair outcomes for consumers. When travel effectively ground to halt in early 2020, many people faced difficulties obtaining refunds, using travel credits, navigating inconsistent airline policies, accessing customer service and understanding their rights. Although these issues were amplified during the pandemic, they existed long before it – and continue to persist now. It is critical that the Charter effectively addresses these issues to protect consumers going forward.

While the Charter represents a step forward, it currently lacks the necessary clarity, comprehensiveness and strength to adequately protect consumers. In some cases, the Charter may be weaker than existing consumer protections under the Australian Consumer Law, such as consumer guarantees, or the airlines' own policies. Key challenges faced by consumers during the pandemic would not be addressed by the Charter in its current form.

The enforceability of the Charter also remains unclear. CHOICE recommends that the government clarify the legal basis for the Charter's implementation, how it will be used by the Aviation Ombuds Scheme to resolve disputes and how an appropriate regulator will ensure compliance. Without a strong enforcement mechanism, the Charter risks being ineffective in delivering real consumer protection. CHOICE has proceeded with this submission on the basis that the intention is for the Charter to become law.

CHOICE makes a number of recommendations to improve the Charter, such as consulting on disability and accessibility issues with people with lived experience, developing a standardised approach to terms and conditions, including rights to refunds and rebooks for cancellations or delays when it is both within and outside of the airline's control, establishing set levels of compensation for meals and accommodation and setting specific guidance for claim times and compensation for damaged, delayed or lost baggage. Consumers want, and need, stronger protections when travelling, so this is a crucial opportunity to get this Charter right.

# Recommendations

## Right 1

1. The Department should consult with disability advocacy groups, people with lived experience and people from different language groups to establish how the Charter could improve the accessibility of airlines and airports.
2. The Charter should set out minimum customer service standards.
3. The Government should incentivise airlines to compete to offer more than the minimum standards in their own charters or statements.

## Right 2

4. The Charter should require a standardised version of terms and conditions and conditions of carriage.
5. The Charter should clearly state what information the airline must provide to consumers at the point of purchase regarding their rights.
6. The Charter should make customer service expectations more explicit in the Charter, such as the number of representatives to be made available in the airport and on the phone.
7. The Charter should require airlines and airports to provide customer-friendly strategies, including offering call back services.
8. The Charter should include further details about the information that must be provided to the consumer by the airline in the event of a delay or cancellation.

## Right 3

9. The Charter should not provide for remedies and compensation that are less than what might be provided under Australian Consumer Law consumer guarantees. The distinction of 'inside the airline's control' should be reconsidered and compensation for 'other reasonably foreseeable losses' specifically included.
10. The Charter should include the right to rebook or to a refund for flights that are cancelled or delayed for reasons within and outside of the airline's control.
11. The Charter should include the right to a refund or to rebook regardless of the method in which the ticket was purchased, e.g. including third party websites and travel agents.
12. The Charter should inform consumers of their consumer guarantee rights.
13. The Charter should establish set levels of minimum compensation for different scenarios.
14. The Charter should include the right to further compensation when a flight is delayed or cancelled and a new flight must be booked with a new airline.
15. The Charter should clearly define 'delay', 'disruption' and 'cancellation'.
16. The Charter should clearly state what 'without fees' includes, to ensure access to refunds without extra fees or charges.
17. The Charter should set minimum standards for the terms and conditions of travel vouchers and credits.
18. The Charter should include the right to cancel or change a booking free of charge within 24 hours of a booking made seven days or more prior to the flight departure.

## Right 4

19. The Charter should set specific standards for claim times and compensation for damaged, delayed or lost baggage.
20. The Charter should define damaged, delayed or lost baggage to ensure consistency in

the approach to baggage across the aviation industry.

21. The Charter should set minimum timeframes for airlines to respond and resolve lost, delayed and damaged baggage claims.

#### **Right 5**

22. The Charter should capture frequent flyer programs in Right 5.
23. The Department should recommend that the Government legislate key reforms to the Privacy Act.

#### **Right 6**

24. The Charter should strengthen the language of Right 6 from 'target' to 'deadline' to ensure that airlines or airports respond to consumer complaints.
25. The Charter should set minimum internal dispute resolution standards to inform airlines of best practice complaints handling.

#### **Additional recommendations**

26. The Charter should include penalties for non compliance.
27. The Government should introduce a ban on unfair trading practices.
28. The Government should introduce penalties for when consumer guarantees are not met.

## Proposed Right 1: Be treated with dignity and respect, in an accessible and inclusive environment

CHOICE supports the intent behind the first proposed right, but it is too vague and requires further consideration. CHOICE has heard from a number of consumers over the years who have been treated poorly by airline staff at various stages of their journey.

In October 2023, CHOICE conducted a survey of 8947 CHOICE supporters asking about their experiences with the aviation industry in the last 12 months. The survey revealed that many consumers were frustrated with how they were treated when flying:

*“Once you finally get to speak to someone, It just depends on who you’re talking to... some are really rude and unhelpful, making the situation even more frustrating and occasionally you’ll get someone that really helps.”*

*“I had significant problems with QANTAS in 2020 and 2021 with flight cancellations, significantly increased flight costs when re-booked and at one point QANTAS had changed my flight to arrive in Perth nearly 2 weeks after my original booking and about 1 hour before I was due to return home on my original itinerary. Their whole approach to the problem was arrogant, totally insensitive and unhelpful and basically rude!”<sup>1</sup>*

Some people shared how travelling with specific needs and diverse abilities was made even more difficult when they were affected by delays and cancellations:

*“It was for my elderly parents. Dad has aged memory loss and Mum has a physical impairment. They were left stranded for 4-hours without help and Mum couldn’t even get a drink of water for fear of Dad wandering off. They had to keep their bags with them. Staff were rude at the Qantas terminal even though that’s where they were told to go by Jetstar staff. Dad had a toilet accident and was deeply embarrassed. It was a truly horrible day, arriving 7-hours late to their destination.”<sup>2</sup>*

One respondent reflected on the benefits of accessing a low sensory space for their neuro-divergent children:

*“The multiple cancellations and delays were a nightmare, as was navigating Melbourne airport to find our luggage and rebook flights while stuck overnight. Not to mention a cancellation/delay meant a full day at SYD airport. The kindness of a VA Lounge staff member eventually meant my [neuro-divergent] kids could have a low sensory space for 6+hrs, and I could have more comfortable seating to reduce my pain levels, having already spent time in the main terminal.”<sup>3</sup>*

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<sup>1</sup> Respondents to CHOICE 2023 Travel Survey

<sup>2</sup> Ibid

<sup>3</sup> Ibid

## **The Charter should clearly convey expectations for how an accessible and inclusive environment will be established**

The Charter lacks details of how consumers will be respected and how considerations will be made for accessibility or medical requirements. CHOICE recommends that the Department conducts further consultation with disability advocacy groups and people with lived experience to ensure that this right meets their needs. For example, the Charter could outline that in the case of a delayed or cancelled flight the airline will proactively seek out consumers with diverse needs or vulnerabilities who may require more assistance with a long wait in an airport. The Charter could also set the expectation that airports ensure there are low sensory spaces and rooms made available for consumers who need them.

## **The Charter should be more specific about how airlines and airports include languages other than English**

CHOICE welcomes the inclusion of more accessible formats for information provided by airlines and airports, such as communications in languages other than English. However, clarification on how this will be implemented and what it would look like is needed. More concrete examples should be given to guide airlines and airports on how to include more accessible formats for information.

The Charter should set the expectation that telephone interpreters are available via phone and at help desks at airports and clarify the kinds of information that should be translated for consumers. The Department should consult with different language groups to determine how this right could be strengthened and what should be included to improve the accessibility of airports and airlines.

### **Recommendation**

1. The Department should consult with disability advocacy groups, people with lived experience and people from different language groups to establish how the Charter could improve the accessibility of airlines and airports.

## **The Charter should set minimum standards for customer service**

The aviation industry is complicated and confusing, so it is crucial that the Charter outlines minimum standards for customer service, including measures to provide services in a safe and dignified manner and free from discrimination. The Charter should be a one-stop-shop for a consumer to find all the information they need to understand their rights. The current draft Charter lacks the necessary detail to establish these minimum standards, which are addressed in our analysis of Right 2 below. Individual Customer Service Statements or Charters should only be considered if they are intended to go above minimum standards outlined in the Charter.



The Department should also consider incentivising airlines to compete to offer more than the minimum in their own charters or statements.

**Recommendation**

2. The Charter should set out minimum customer service standards.
3. The Government should incentivise airlines to compete to offer more than the minimum standards in their own charters or statements.

## Proposed Right 2: Accurate, timely and accessible information and customer service

For too long, consumers have struggled to access customer service across the aviation industry. Many are unable to get help when purchasing tickets, when their flight is cancelled or delayed or when simply seeking clarity on their rights. The Charter must go further in addressing these issues by setting stronger standards and expectations for airlines and airports to uphold and ensure a better experience for consumers.

COVID-19 and the subsequent cancellations of flights caused a range of problems for the aviation industry and consumers. In 2021, CHOICE surveyed over 4,443 people about their travel experiences during the pandemic.<sup>4</sup> It was clear from CHOICE's research that the industry was not equipped to communicate with consumers in a timely and transparent way. This caused significant stress for consumers as many struggled to receive refunds for cancelled flights:

*"It was stressful, limited communication, changing stories, conflicting advice. It became harder to contact people to follow up through long winded and confusing call centre prompts. I think I got my refund through sheer perseverance."*

*"Extracting teeth has been less painful and drawn out."*

*"It was very, very difficult with many, many phone calls and emails. It was also very distressing and kept us awake at night."*

*"I had to research, investigate and challenge decisions, deductions etc. by providing supporting evidence. A very stressful journey. I cancelled in March 2020 and received a final refund for the flights in December/ November 2020. I used Flight Centre. The flight refund took over 22 weeks although Qantas indicated 12 weeks... Every step felt like a challenge."<sup>5</sup>*

Many people spoke of the frustration of attempting to speak to someone in customer service:

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<sup>4</sup> CHOICE, 2021, 'Consumer Protection for Australian Travellers: A plan for clarity, consistency and fairness', <https://www.choice.com.au/consumer-advocacy/policy-submissions/2021/july/report-on-fairer-consumer-protections-for-australian-travellers>

<sup>5</sup> Respondents to CHOICE's 2021 Travel Survey

*“Phone lines just ring engaged 24/7 for the last 10 months, no response to emails.”*

*“It was an absolute nightmare. Qantas seemed to go out of its way to make things difficult. They deliberately limited the means by which customers could communicate with them. ‘Chat’ option was removed from their webpage, as was a general email address. Phone calls were impossible, as wait times were in excess of 2 hrs – after which we were cut off more than once. When we did get to speak to someone they simply read the ‘script’ advising that there would be lengthy delays in providing refunds... but the people we spoke to often contradicted each other.”*

*“My Travel agent never once initiated contact.”<sup>6</sup>*

While the COVID-19 pandemic was a rare occurrence, it highlighted the inadequate consumer protections within the aviation industry that the Charter should be set up to prevent in future. COVID-19 should be a catalyst for lasting change so consumers don’t have to suffer through these egregious experiences ever again. In its current form, the Charter does not go far enough to protect consumers when regular cancellations and delays occur, let alone if another extreme global disruption event were to occur.

## **The Charter should require a standardised format for airline terms and conditions and conditions of carriage**

CHOICE supports the right for consumers to be provided with clear, simple and transparent terms and conditions that are easily available and identifiable. However, the first two points of Right 2 in the Charter allow for significant subjectivity regarding terms and conditions and conditions of carriage, which could create confusion for consumers.

Airline terms and conditions vary between carriers making it difficult for a consumer to quickly read, understand and compare different policies. CHOICE proposes that a standardised format of terms and conditions and conditions of carriage be developed as this would make it easier for consumers to find and understand their rights and ensure greater transparency and consistency across the industry. A standardised format could include key delay and cancellation information up front in the form of a table to ensure it is easy to find when needed.

### **Recommendation**

4. The Charter should require airlines to use a standardised format of terms and conditions and conditions of carriage.

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<sup>6</sup> Ibid

## Key information should be provided at the point of booking

When purchasing a ticket, consumers are not always provided with all of the key information they require should something go wrong and their flight is delayed or cancelled. The Charter should outline what specific information must be included at the point a ticket is purchased. Consumers should be informed of their rights if a flight is delayed and cancelled, including remedies and when they are entitled to them, and information on how to lodge a complaint to the airline and to the soon to be established Ombuds Scheme.

### Recommendation

5. The Charter should clearly state what information the airline must provide to consumers at the point of purchase regarding their rights.

## Customer service representation should be proportionate

Consumers often struggle to access and obtain necessary information from customer service representatives – both on the phone and in person. Consumers should have access to support when needed at any point of their travel experience from purchasing tickets to accessing remedies when flights are delayed or cancelled. CHOICE supports the intention of the Charter to further strengthen access to customer service representatives, but this should be better defined.

In September 2022, CHOICE conducted a mystery shop to understand how long consumers would have to wait to speak to someone from Qantas or Virgin airlines on the phone. Our research revealed that an individual calling Qantas would be on the phone for an average of 21 minutes or up to 50 minutes, before their call is answered. By comparison, Virgin came in under a quarter of that average time with a 5 minute wait and a maximum of 13 minutes.<sup>7</sup> Of course, many people previously reported vastly longer wait times in the many hours, or were unable to get through to a representative at all.

One customer service representative being made available in person or on the phone may not always be sufficient for the volume of consumers who require assistance. In the case of customer service representatives being made available at the airport, this should be proportionate to the number of passengers the airline knows will be transiting through the airport at specific times.

Airlines should also be made to manage peak periods of demand including staff at the airport and on the phone. Where significant disruptions occur, such as extreme weather events, the

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<sup>7</sup> CHOICE, 'The Spirit of Disappointment: CHOICE Shonkys', accessed at: <https://www.choice.com.au/about-us/media/media-releases/2022/november/the-spirit-of-disappointment-choice-shonkys#:~:text=For%20consumers%20who%20need%20to,and%20up%20to%2050%20minutes.>

airline should ensure that more staff are made available to handle questions and complaints and this should be explicit in the Charter. To further manage peak demand periods, airlines and airports should be required to offer customer-friendly strategies like call back services to prevent people waiting long periods of time on the phone – rather than leaving this as a suggestion as it's currently framed in the Charter.

#### **Recommendation**

6. The Charter should make customer service expectations more explicit in the Charter, such as the number of representatives to be made available in the airport and on the phone.
7. The Charter should require airlines and airports to provide customer-friendly strategies, including offering call back services.

### **Consumers need to be provided with more detail at the point of delay or cancellation**

Under the Charter, consumers are entitled to different rights to refunds and rebooking depending on the reason that their flight is delayed or cancelled, including whether it is within, or outside of, the airline's control. However, consumers are often not informed of the reason for the delay or cancellation by airlines which creates further confusion and difficulty for the consumer as they attempt to access a remedy.

CHOICE's October 2023 Travel Survey revealed that 40% of respondents had their flight cancelled or delayed in the previous 12 months.<sup>8</sup> For those who had their flight cancelled, 64% said no reason was given for the cancellation<sup>9</sup> and 97% of respondents who had their flight cancelled said it was cancelled by the airline.<sup>10</sup>

There is significant information asymmetry that the Charter has not addressed, which will make it difficult for consumers to know what their rights are and to enforce them.

The Charter should state that when the consumer is notified of the delay or cancellation, the airline must provide the consumer with:

- The reason for the delay or cancellation, including whether it was within the airline's control or not and whether it is due to actions of a third party;
- The consumer's rights and options to a remedy and how to access them, and;
- How to make a complaint, both to the airline and to the Ombuds Scheme.

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<sup>8</sup> CHOICE, October 2023, Travel Survey (n=8946)

<sup>9</sup> CHOICE, October 2023, Travel Survey (n=1563)

<sup>10</sup> CHOICE, October 2023, Travel Survey (n=1602)

Providing this information to the consumer will better enable them to access a fair remedy that is appropriate to their circumstances and know what their options are should they have reason to complain.

#### **Recommendation**

8. The Charter should include further details about the information that must be provided to the consumer by the airline in the event of a delay or cancellation.

### **The Charter should not recommend further airline customer service statements or charters**

As mentioned earlier in this submission, CHOICE is not supportive of airlines or airports drafting individual customer service statements or charters. The Aviation Customer Rights Charter should be the document consumers can turn to for all their queries regarding their rights in their travel journey. Having multiple charters or statements risks further confusing consumers, unless the intention is for airports and airlines to go above and beyond the minimum standard outlined by the Charter, in which case, the Charter should make this clear.

## **Proposed Right 3: Aviation industry customers have the right to prompt and fair remedies and support during and after cancellations, delays and disruptions**

The COVID-19 pandemic revealed deep cracks within the aviation industry when planes were grounded and flights were, in most cases, cancelled indefinitely. Consumers struggled to contact their airlines and get support regarding these cancellations and were unable to receive satisfactory refunds or remedies. The Charter, in its current draft form, does not adequately address the problems that were brought to the surface during the COVID-19 pandemic and it does not go far enough to protect consumers going forward.

CHOICE heard from many people who were affected by delays and cancellations and struggled to receive a refund or adequate remedy during the COVID-19 pandemic:

*“I am a 70 year old female who spends about 7 months each year independently travelling as a budget grey nomad. I was going to (the) USA to see my grandchildren, then Greece, Jordan, Israel, Dubai, UK, Cyprus, Singapore then back to Aus. In total I had 21 cancellations to deal with. Most I got because of friendly USA and EU refund regulations... Aus was very difficult although I had luck with bank chargebacks.”*

*“Had 3 trips planned - Emirates to Italy, Italy to Ireland on Aer Lingus, Qantas to Sydney, Jetstar to Adelaide. All cancelled, some refunded, some gave credits.”*

*“Trip was cancelled by Webjet, not us. They are sitting on \$20,000. Only offer a credit, no refund.”*

*“Trip to Melbourne for the Comedy Festival & Harry Potter at the Theatre - all events cancelled, received refund for accommodation & events & even extended airport car parking but getting a refund for our flights which were cancelled by Virgin was a nightmare.”*

*“Trip to Fiji with my daughter for about 10 days. Booked through My Fiji (Intrepid Travel). Received refund for land part of holiday but no refund for air fares. Intrepid say Virgin will only give credit but I want refund as virgin do not fit to Fiji any longer. No advice from Intrepid re credit given or time frame for use.”*

*“Trip to Bali booked through a travel agent, was able to get the hotel refunded but only credit for airfares. Not planning on flying now for years but refund runs out in September.”<sup>11</sup>*

## **The Charter may be offering less than consumer guarantees already offer**

Under the Australian Consumer Law, consumer guarantees require airlines to supply their services with due skill and care and within a reasonable time. If the airline does not meet these guarantees, the consumer is then entitled to a remedy which could take the form of a refund or a replacement flight, depending on whether the failure to meet the consumer guarantee is minor or major. If it is major, consumers are also entitled to compensation for consequential loss or damage that was reasonably foreseeable, as well as a refund or replacement.<sup>12</sup>

The Charter states that:

*“If a flight is disrupted or delayed for more than 3 hours, for reasons within the airline’s control, customers should, at no cost to the customer, receive:*

- *assistance to rebook with original or alternative airlines, without fees*
- *the option to cancel time-dependent flights with a full refund*
- *meals, meal vouchers/reimbursement or access to a lounge where food is available, where flights are delayed*
- *accommodation and transfers where a customer is required to remain in an away-from-home port overnight”<sup>13</sup>*

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<sup>11</sup> Respondents to CHOICE Travel Cancellations Survey 2021

<sup>12</sup> ACCC, ‘Travel delays and cancellations’, accessed at: <https://www.accc.gov.au/consumers/specific-products-and-activities/travel-delays-and-cancellations>

<sup>13</sup> Interim Aviation Industry Ombuds Scheme, December 2024, ‘Aviation Customer Rights Charter: Consultation Paper’, accessed at: <https://www.infrastructure.gov.au/sites/default/files/documents/aviation-customer-rights-charter-consultation-paper.pdf>

This right does not include any mention of compensation beyond accommodation, transfers, meals, meal vouchers and reimbursement when a consumer could be entitled to more under the consumer guarantees. If a flight was significantly delayed, i.e. not provided within a reasonable time, a consumer may be entitled to compensation for reasonably foreseeable losses (such as accommodation, transfers and tour bookings they can no longer be used), as well as a rebooked flight or refund, under consumer guarantees. “Other reasonable losses” should be included in this section of the Charter so that consumers know they can access further recourse that is at least in line with what they might be entitled to under their consumer guarantee rights.

Consumer guarantees do not apply when the consumer misses the flight through no fault of the airline or when the flight is delayed or cancelled due to the actions of a third party, for example, when the Government implemented restrictions on travel during the COVID-19 pandemic. In cases like this, the consumer’s ability to obtain a refund or credit will be determined by the terms and conditions of their booking.<sup>14</sup>

Reasons due to the actions of a third party are narrower than simply reasons outside of the airline’s control. For example, consumer guarantees may provide remedies to consumers for disruptions caused by weather events and situations like bird strikes, such as a refund and compensation for foreseeable losses, but the current draft of the Charter would not. However, it is still unfair for consumers to bear the cost for situations they have no control over that cause a delay or cancellation, including those caused by the actions of third parties, and consumers should at least be able to rebook or receive a refund in these situations also – and airlines already provide remedies to consumers in these situations, as detailed below.

Not only does this part of the right not provide consumers with additional rights, it may even provide less than what consumers are already entitled to under the Australian Consumer Law. If this is not rectified it will create a regulatory burden for both the new ombuds scheme and for airlines and airports, as it will not be clear which set of standards they must adhere to and how they should interpret the Charter – and could actually limit rights.

#### **Recommendation**

9. The Charter should not provide for remedies and compensation that are less than what might be provided under Australian Consumer Law consumer guarantees. The distinction of ‘inside the airline’s control’ should be reconsidered and compensation for ‘other reasonably foreseeable losses’ specifically included.

### **The Charter may be offering less than some airlines already offer**

When a flight is delayed or cancelled by an airline, for reasons outside of its control, some airlines will still provide compensation in the form of meal and credit vouchers. Some airlines make no distinction between flights cancelled or delayed, within or outside of their control,

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<sup>14</sup> ACCC, ‘*Travel delays and cancellations*’, accessed at: <https://www.accc.gov.au/consumers/specific-products-and-activities/travel-delays-and-cancellations>

offering the consumer the same remedy had the flight delay or cancellation been in their control. The table below outlines the different policies **in relation to refunds, rebooking and credits**, for the major airlines in Australia.

<b>Airline/ Charter</b>	<b>Delay within the airline's control</b>	<b>Delay outside of control the airline's control</b>	<b>Cancellation within the airline's control</b>	<b>Cancellation outside of the airline's control</b>
The Charter <sup>15</sup>	<p>If a flight is disrupted or delayed for more than 3 hours, for reasons within the airline's control, customers should, at no cost to the customer, receive:</p> <ul style="list-style-type: none"> <li>• assistance to rebook with original or alternative airlines, without fees</li> <li>• the option to cancel time-dependent flights with a full refund</li> </ul>	Not mentioned	<p>Customers should receive a refund for a cancelled flight within 14 days of the cancellation being notified, regardless of the fare type, where an alternative flight has not been agreed. The refund should be to the full amount paid by the customer, including baggage charges, pre purchased meals, extra leg room fees and any payment fees and charges.</p>	Not mentioned
Qantas <sup>16</sup>	<p>Refunds for delays, cancellations and overbooking: Customers are entitled to a refund in the following situations:</p> <ul style="list-style-type: none"> <li>• If we cancel your flight and we cannot offer you suitable alternative arrangements.</li> <li>• If we delay your flight to the extent that you have to cancel your travel.</li> <li>• If we make a significant change<sup>#</sup> to the scheduled flight time and we are unable to book you on an alternative flight that is acceptable to you.</li> <li>• If we cause you to miss a connecting Qantas flight on which you have a confirmed reservation.</li> <li>• If we are unable to carry you and you have a confirmed reservation.</li> </ul>			

<sup>15</sup> Interim Aviation Industry Ombuds Scheme, December 2024, 'Aviation Customer Rights Charter: Consultation Paper', accessed at: <https://www.infrastructure.gov.au/sites/default/files/documents/aviation-customer-rights-charter-consultation-paper.pdf>

<sup>16</sup> Qantas, 'Compensation and Refunds', accessed at: <https://www.qantas.com/au/en/book-a-trip/flights/compensation-and-refunds-policy.html?>



<p>Jetstar<sup>17</sup></p>	<p>Refunds for delays, cancellations and overbooking: Customers are entitled to a refund in the following situations:</p> <ul style="list-style-type: none"> <li>• If we make a significant change to your scheduled flight time for a reason within our control.</li> <li>• A significant change means a change of three hours or more to your scheduled departure time.</li> <li>• If we change your scheduled departure time by less than three hours for a reason within our control but you are unable to use the booking for its intended purpose and we are unable to book you on an alternative flight that is acceptable to you.</li> <li>• If we are unable to carry you due to commercial overbooking and you have a confirmed reservation.</li> </ul>	<p>Credit voucher for the value of your flight upon request.</p> <p>If you do not travel because we are unable to re-book you on a Jetstar flight acceptable to you, and the purpose of your trip is void.</p>	<p>Same as delays within the airline's control.</p>	<p>Same as delays outside of the airline's control.</p>
<p>Virgin<sup>18</sup></p>	<p>In the event we need to delay your scheduled service and your new flight time is not suitable to you:</p> <ul style="list-style-type: none"> <li>• There may be some circumstances where we will seek to transfer you to a service operated by another carrier to</li> </ul>	<p>In the event we need to cancel your scheduled service, we will move you to the next available Virgin Australia service in the same cabin to the same destination without charge.</p>		

<sup>17</sup> Jetstar, 'Compensation and Refunds', accessed at: <https://www.jetstar.com/au/en/help/articles/compensation-and-refunds>

<sup>18</sup> Virgin Australia, 'Guest Compensation Policy', accessed at: <https://www.virginaustralia.com/us/en/about-us/policies/legal/compensation/>

	<p>the same destination if this is suitable to you.</p> <ul style="list-style-type: none"> <li>• If the delay is for 2 hours or more, we may try to move you to next available Virgin Australia service to the same destination without charge</li> <li>• If we cannot make suitable alternative arrangements, you may request a travel credit or a refund of the price you paid for your impacted flight</li> </ul>	<ul style="list-style-type: none"> <li>• There may be some circumstances where we may transfer you to a service to the same destination operated by another carrier, if this is suitable to you.</li> <li>• If we cannot make suitable alternative arrangements, you may request a travel credit or a refund of the price you paid for your impacted flight.</li> </ul>
Rex <sup>19</sup>	<p>In the event of a delay exceeding 90 minutes (excluding uncontrollable delays such as weather conditions etc), Rex will provide refreshments or vouchers for refreshments if requested. Do note that due to the limited facilities at some of the regional airports Rex operates to, refreshments/meals may not always be available at those ports.</p> <p>Rex will not cover the cost of a hotel room or taxi fares in the event of a cancellation, delay or diversion, this is outlined in their Conditions of Carriage.</p>	<p>When a Rex flight is cancelled, Rex will search for alternative means to get you to your destination. We will attempt to:</p> <ol style="list-style-type: none"> <li>offer you a seat on an alternative flight on the same day or another day;</li> <li>find alternative means of transport (like buses) to bring you to the destination airport;</li> <li>fly you to the nearest alternative Rex port and you make your way from there.</li> </ol> <p>If you accept alternative transport from us, we would have been considered to have fully discharged our responsibility with regards to your air ticket.</p> <p>If you refuse the alternatives provided or if no alternatives are provided, then we will refund the remaining unused portions of your itinerary on Rex to the original method of payment</p>

In the case of a delay or cancellation, within or outside of the airline’s control, Qantas, Virgin and Rex airlines will all provide the consumer with a refund if they are unable to rebook with the airline. Jetstar will provide the consumer with a travel voucher. By comparison, the Charter does not mention what should happen if the flight delay or cancellation is outside of the airline’s control. Point 4 of Right 3 states that:

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<sup>19</sup> Rex airlines, ‘Disruption FAQ’, accessed at: [https://www.rex.com.au/FlightInfo/disruptions\\_faq.aspx](https://www.rex.com.au/FlightInfo/disruptions_faq.aspx)

*“Customers should receive a refund for a cancelled flight within 14 days of the cancellation being notified, regardless of the fare type, where an alternative flight has not been agreed. The refund should be to the full amount paid by the customer, including baggage charges, pre purchased meals, extra leg room fees and any payment fees and charges.”*

It is unclear if this is conditional on the reason being within the airline’s control (as mentioned in point 2 of Right 3) or if this is regardless of the reason. Consumers should expect the same treatment and access to refunds when flying with any airline in Australia. The Charter should clarify or include the right to rebook or refund a flight when it is both within and outside of the airline’s control.

Consumers should also have the right to a refund or to rebook at no additional cost at any point following a delay as the reason for travel may be affected by the proposed delay. In some cases the airline will change flight times days or even months ahead. If the consumer’s reason for travel is time bound, for example, they are attending a meeting, funeral or wedding, they may need to adjust their chosen flight to one that will arrive earlier. The consumer should not have to pay to do so if the airline is responsible for adjusting the time of the flight after the consumer has already purchased it. This right should also extend to consumers who are bumped off overbooked flights.

#### **Recommendation**

10. The Charter should include the right to rebook or to a refund for flights that are cancelled or delayed for reasons within and outside of the airline’s control.

#### **Refunds and rebooked flights should be offered regardless of the method in which the consumer purchased the ticket**

Flight tickets booked through third party websites and travel agents often add a further layer of confusion for consumers when the flight is delayed or cancelled. When booking through third party websites, It can be much harder to receive a timely refund or remedy. We heard from many consumers throughout the COVID-19 pandemic who struggled with these issues:

*“Booked through Booking.com... Governments announced travel restrictions, I rang to cancel for reasons beyond my control and was told nothing could be done except through Booking.com. The only relevant option there was to cancel. Then I was told I had cancelled, it was my decision to do that and no refund would be given...”*

*“For the last 12 months I have been trying to get my money back from TripADeal to no avail. The phone is unanswered. I have been on hold for 3 hours. I have sent emails that get a generic response and do not know what else to do. I have received very rude*

*emails from them when they do reply... This is the most difficult process I have ever been through...<sup>20</sup>*

The Charter currently states that:

*“The default position of airlines will be the provision of a refund in the original form of payment (including cash, credit or flyer reward points), with a travel voucher only being issued if the customer chooses that option.”*

CHOICE recommends that this also includes bookings made through travel agents and third party websites to ensure that regardless of how the flight was purchased, the consumer will still be protected in the event that the flight is delayed or cancelled. Furthermore, consumer guarantees cover flights purchased through third party websites and travel agents<sup>21</sup>, so the Charter should also include them for consistency across the industry.

**Recommendation**

11. The Charter should include the right to a refund or to rebook regardless of the method in which the ticket was purchased, e.g. including third party websites and travel agents.

All airline policies make reference to the consumer potentially being entitled to further compensation under the Australian Consumer Law. The Charter should also inform consumers of their consumer guarantee rights.

**Recommendation**

12. The Charter should inform consumers of their consumer guarantee rights.

**The Charter should set clear minimum standards in the aviation industry to adequately protect consumers**

**The Charter should establish minimum levels of compensation for different scenarios**

Airlines have inconsistent approaches to compensation for meals, accommodation and airport transfers in the event that a flight is delayed or cancelled, within or outside of their control. As noted earlier, consumers also have rights to compensation under the consumer guarantees.

The table below shows the different policies for compensation (ignoring any additional entitlements under the consumer guarantees) for each airline:

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<sup>20</sup> Respondents to CHOICE 2021 Travel Survey

<sup>21</sup> ACCC, 'Travel delays and cancellations', accessed at:

<https://www.accc.gov.au/consumers/specific-products-and-activities/travel-delays-and-cancellations>

<b>Airline</b>	<b>Delay/cancellation is within the airline's control</b>	<b>Delay/cancellation is not within the airline's control</b>
Qantas <sup>22</sup>	Qantas will provide: <ul style="list-style-type: none"> <li>● A meal voucher for a delay over two hours or;</li> <li>● \$30 per person overnight and \$50 if the new departure time exceeds 12 hours of original departure and the customer is not at their home airport</li> <li>● Assistance to find accommodation or up to \$200 for a room</li> <li>● Airport transfers for overnight delays</li> </ul>	No compensation provided
Jetstar <sup>23</sup>	Jetstar will provide: <ul style="list-style-type: none"> <li>● A meal voucher for delays over three hours or;</li> <li>● \$30 per person overnight</li> <li>● \$200 per room and reasonable costs of airport transfer if you are not at your home airport</li> </ul>	No compensation provided
Virgin <sup>24</sup>	Virgin will provide: <ul style="list-style-type: none"> <li>● Refreshment vouchers at 2 hour intervals, and;</li> <li>● Reasonable cost of airport transfers, \$200 per night for accommodation and up to \$30 per night for meals - if you are not at your home airport</li> </ul>	No compensation provided
Rex <sup>25</sup>	Rex will provide refreshments or vouchers if requested if the delay exceeds 90 minutes.	No compensation provided

The Charter should set the baseline amounts for providing compensation for meals, accommodation and airport transfers where the delay or cancellation is within the airline's control. Where the reason for the delay or cancellation is not within the airline's control, no airlines offer any form of compensation. The Charter should at least ensure compensation is provided for events such as weather and bird strikes, as detailed above, and make an additional exception for consumers experiencing vulnerability (for example, children travelling alone) and require the airlines to consider meal vouchers, travel and accommodation for these consumers where appropriate and regardless of the reason for the delay or cancellation.

<sup>22</sup> Qantas, 'Compensation and Refunds', accessed at: <https://www.qantas.com/au/en/book-a-trip/flights/compensation-and-refunds-policy.html?>  
<sup>23</sup> Jetstar, 'Compensation and Refunds', accessed at: <https://www.jetstar.com/au/en/help/articles/compensation-and-refunds>  
<sup>24</sup> Virgin Australia, 'Guest Compensation Policy', accessed at: <https://www.virginaustralia.com/us/en/about-us/policies/legal/compensation/>  
<sup>25</sup> Rex airlines, 'Disruption FAQ', accessed at: [https://www.rex.com.au/FlightInfo/disruptions\\_faq.aspx](https://www.rex.com.au/FlightInfo/disruptions_faq.aspx)

These measures will ensure that a consumer is treated fairly regardless of the airline that they fly with and it will ensure that the Charter has all of the information a consumer needs in the event their flight is delayed or cancelled. These amounts should be reviewed periodically to ensure the amount remains reasonably inline with current prices.

### **The introduction of set compensation amounts would be simpler**

The European Union compensation scheme (EC261) provides consumers with an entitlement to compensation for delays of 3 hours or more. The amount of compensation is tiered based on the delay and the type of flight. There are also conditions on whether it is a flight to the European Union or not and whether the flight distance is under 1,500km, between 1,500km and 3,500km, or over 3,500km. Compensation for delays ranges from €250 to €600 based on these conditions.<sup>26</sup>

Consumers are also entitled to a full refund if the cancellation occurs within 7 days of the flight departure date, or between 2 weeks and 7 days of the flight's departure and they are not offered an alternative flight which will allow them to depart no more than 2 hours before the original scheduled time of departure and to reach their final destination less than four hours after the original scheduled time of arrival.<sup>27</sup>

Introducing a compensation scheme similar to EC261 would be much simpler for both consumers and airlines as it would prevent any ambiguity or interpretation in the delivery of compensation for delayed or cancelled flights.

### **The consumer should be compensated if they have to book on another airline**

In some cases a consumer may need to purchase a new ticket on another airline when their original flight is cancelled or delayed. Currently the Charter states that:

*"If customers have had to book a new flight with another airline due to their original airline not having a reasonable replacement flight, then the original airline will refund the cost of the original flight."<sup>28</sup>*

However, under consumer guarantees the consumer may not only be entitled to a refund of their original flight, they may also be entitled to compensation for any additional cost incurred by

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<sup>26</sup>Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91 (Text with EEA relevance) - Commission Statement. Accessed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX%3A32004R0261>

<sup>27</sup> Ibid

<sup>28</sup> Interim Aviation Industry Ombuds Scheme, December 2024, 'Aviation Customer Rights Charter: Consultation Paper', accessed at: <https://www.infrastructure.gov.au/sites/default/files/documents/aviation-customer-rights-charter-consultation-paper.pdf>

purchasing of the new flight.<sup>29</sup> The Charter should include the right to further compensation for flights booked outside of the original airline booking.

### **The Charter should clearly define ‘delay’, ‘disruption’ and ‘cancellation’**

Different rights apply to consumers when a flight is delayed or cancelled. However, the Charter does not explicitly define key terms, including ‘delay’, ‘disruption’ and ‘cancellation’. Clarity is crucial in ensuring consumers understand their rights and how they apply. The Charter should provide clear definitions of key terms throughout, particularly of what determines a delayed, disrupted or cancelled flight.

It is unclear what the term ‘disrupted’ means in the Charter, and whether point four flows on from point two, or is a separate point creating the right to a refund for any cancelled flight, regardless of the reason. This should be clarified.

### **The Charter should clearly define what ‘without fees’ means**

CHOICE asked respondents to our 2023 travel survey if they had been charged a fee for accessing a refund. Of those that were able to access a refund, 7% reported being charged a fee of as much as \$50. For almost 5% of people, the fee was between \$50-\$100 and for a small group, 3%, the fee charged was more than \$200.<sup>30</sup>

CHOICE supports the Charter including the right for consumers to rebook flights without fees, but the Charter should go further to state that consumers should have access to refunds without extra fees or charges. It should also clarify that when a consumer is booked onto a new flight by the airline or by the consumer themselves, they will not have to pay any extra fees or charges, even if the flight, seat or route is more expensive.

As noted earlier, if a consumer needs to purchase the ticket themselves, they should be reimbursed for the difference in cost by the airline; this would also be in line with consumer guarantees. The Charter should clearly define what ‘without fees’ means and should include a right to reimbursement where the consumer has had to purchase a new flight with a new airline.

### **The Charter should establish minimum terms and conditions for travel vouchers and credits**

The COVID-19 pandemic revealed how unfair airline travel vouchers and credits can be for consumers. In many cases, it was the only remedy offered to consumers, yet the time limit in which to use it was extremely limited. As the pandemic continued for a number of years, many

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<sup>29</sup> ACCC, ‘*Travel delays and cancellations*’, accessed at: <https://www.accc.gov.au/consumers/specific-products-and-activities/travel-delays-and-cancellations>

<sup>30</sup> CHOICE, October 2023, Travel Survey (n=233)

consumers were unable to use their vouchers in time and lost their money to expiry dates. We heard this from a number of consumers in our 2021 travel survey:

*“It has been a nightmare. All our accommodation was booked directly and refunded almost immediately. Flight Center have been dishonest and unhelpful. They told us we would need to cancel, and offered a voucher, and did not explain that by accepting a voucher we were cancelling the flights and then would not be eligible for a refund. We have to travel by November this year or lose all our money which equates to about \$7K between the group.”*

*“We received accommodation deposit \$300 and insurance payment \$902 back. The rest is supposedly in credit voucher with Virgin. How are we going to spend \$9000 by 2022 in interstate travel?”*

*“Have zero chance of using up our flight credit by the deadline because the conditions are so tight and there are so many others who need to use them up in the same time frame.”<sup>31</sup>*

When flights were grounded at the start of the COVID-19 pandemic, Qantas issued flight credits instead of refunds in many cases. These credits could only be used for flights that cost the same or more than their original fare if they booked it after 30 September 2021. If a consumer wanted to book a flight that cost less, they would have to buy a whole new ticket. For example, if a consumer had a \$500 credit for a Sydney to Melbourne flight and the price of the flight had dropped to \$475, the consumer wouldn't be able to use the credit, even if they waived the \$25 loss. Instead, the consumer would have had to purchase a new ticket leaving their credit untouched. For consumers holding credits for international flights they didn't have the option to spread the credits across many domestic flights, if they booked after 30 September 2021. Credits issued after 30 September 2021 had an expiry of 12 months.<sup>32</sup>

In September 2023, it was revealed that Qantas and Jetstar alone were holding \$570 million in unredeemed travel credits from flights cancelled due to the COVID-19 pandemic, which were due to expire before the end of the year.<sup>33</sup> After significant public pressure, Qantas announced that Qantas customers could access refunds for credits if they requested it and customers of Jetstar could use their vouchers indefinitely, but they also had to request it.<sup>34</sup> CHOICE is supportive of vouchers only being issued when the consumer requests them, however, the Charter should go further to explicitly state the minimum terms and conditions of travel vouchers, similar to the terms and conditions of gift cards.

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<sup>31</sup> Respondents to CHOICE's 2021 Travel Survey

<sup>32</sup> A, Kollmorgen. April 2022, 'Qantas flight credit policy unfair to customers', accessed at: <https://www.choice.com.au/travel/on-holidays/airlines/articles/qantas-flight-credits-failure>

<sup>33</sup> V, Winter & D, Maguire, September 2023, 'Qantas and Jetstar are holding \$570 million in flight credits. Here's how to check what credits you have and how to claim them', accessed at:

<https://www.abc.net.au/news/2023-09-01/how-to-redeem-qantas-jetstar-flight-credits/102797356>

<sup>34</sup> Ibid



CHOICE recommends that the Charter include the following minimum terms and conditions for travel vouchers, including:

- a) a minimum term of three years;
- b) the ability to transfer the credit or voucher to another person;
- c) the ability to split over multiple bookings;
- d) an obligation on travel and tourism businesses to convert credits or vouchers to a refund in certain circumstances including at the expiration of the term; and
- e) an obligation to treat bookings made with credit or vouchers in the same way as bookings paid for in cash (i.e. no restrictions, additional fees to use etc).

### **The Charter should allow consumers to cancel or change a booking within 24 hours of making the booking**

Consumers should have the flexibility to make changes or cancel their booking within 24 hours of making the booking. This would help to reduce the amount of excessive fees paid by the consumer when genuine mistakes are made such as an error in the name or date of departure. In the USA, airlines are required to allow customers to cancel or change a booking free of charge within 24 hours of the booking made and when it is made seven days or more prior to the flight departure.<sup>35</sup>

#### **Recommendations**

The Charter should:

13. Establish set levels of minimum compensation for different scenarios.
14. Include the right to further compensation when a flight is delayed or cancelled and a new flight must be booked with a new airline.
15. Define 'delay', 'disruption' and 'cancellation'.
16. Clearly state what 'without fees' includes, to ensure access to refunds without extra fees or charges.
17. Set minimum standards for the terms and conditions of travel vouchers and credits.
18. Include the right to cancel or change a booking free of charge within 24 hours of a booking made seven days or more prior to the flight departure.

## **Proposed Right 4: Aviation industry customers have the right to safe and timely baggage handling and fair remedies for damage and delays**

CHOICE supports proposed Right 4, as consumers struggle to receive baggage in a safe and timely manner and access fair compensation for delays or damage. The Charter should be

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<sup>35</sup> US Department of Transportation, 'Guidance on the 24-hour reservation requirement', accessed at: <https://www.transportation.gov/airconsumer/notice-24hour-reservation>

strengthened by establishing clear minimum standards for compensation, timeframes and rights.

### **The Charter may still confuse consumers on their baggage rights**

CHOICE heard from many consumers in our 2023 travel survey who had poor experiences with delayed, lost or damaged luggage. In some cases the consumer never received compensation for a lost or damaged bag and in others they never even received a response from the airline. The Charter does not go far enough as it does not specify how much a consumer should be compensated or when they should receive their compensation when their bag is lost, delayed or damaged. If the Charter had existed back in 2023, it would not have provided clarity for the experiences detailed below:

*“Qantas lost my bag and I contacted them via email. Never heard back a year later still waiting”*

*“I flew down to Sydney a few weeks ago from Ballina... after we boarded the plane the captain advised us that the baggage lift had broken down and they were waiting for a replacement lifter to be brought out. A few minutes later he informed us that it also wasn't working. He said the plane had to leave so when we arrived in Sydney we would need to give our details to the baggage desk and our luggage would be delivered to our Sydney address. Four days later my bag arrived after I had been wearing the clothes I travelled in... When I returned home I was told at the airport that those lifters are not the property of the airport but belong to Jetstar. Consequently I attempted to get some sort of compensation for the money I had to spend on clothes required for my visit to the Opera House, but after numerous emails back and forth with Jetstar I still have not been compensated.”<sup>36</sup>*

### **The Charter should set the industry standard for claim times and compensation for damaged, delayed or lost baggage**

In its current draft form, the Charter does not outline any specific timing for both making claims and receiving compensation from the airline where a bag is damaged, delayed or lost. CHOICE strongly recommends that the Charter include very specific guidance to ensure that consumers have one source of truth and that all airlines treat consumers fairly.

At present, the airlines have different policies when it comes to handling claims for damaged, delayed or lost baggage. CHOICE proposes that the approach set out below be included in the Charter.

Having regard to international laws and domestic airline policies (Appendix 1), CHOICE recommends the following position for lost, delayed and damaged baggage:

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<sup>36</sup> Respondents to CHOICE Travel Survey, October 2023

- If a bag is delayed (lost for more than 24 hours and up to 21 days) the consumer should be entitled to compensation for essential items such as clothes, toiletries etc.
- If a bag is lost (it is not found after 21 days) the consumer should be entitled to compensation equivalent to the value of the bag and its contents.
- For compensation of essential items purchased while a bag is delayed, the consumer has 21 days from the point of loss to process a claim.
- If a bag is lost, the consumer has two years to make a claim for the lost bag, from the point of loss.
- If a bag is damaged, the consumer is encouraged to alert airport staff before departing the airport. However, claims will be considered up to 21 days from the point of damage and the consumer should be entitled to compensation equivalent to the value of the bag.

#### **Recommendation**

19. The Charter should set specific standards for claim times and compensation for damaged, delayed or lost baggage.

### **The Charter should define damaged, delayed or lost baggage**

The Charter does not currently define when a bag is lost, delayed or damaged. CHOICE strongly encourages the Department to define damaged, delayed and lost baggage within the Charter to ensure the language of the Charter is consistent with consumer expectations, both domestically and internationally. For example, the Montreal Convention defines a delayed bag as a bag lost for up to 21 days and bags lost for more than 21 days are considered lost<sup>37</sup>. The Charter could also include a list of potential damages to baggage that must be covered by the airline such as, dents to the baggage exterior and broken handles or wheels

#### **Recommendation**

20. The Charter should define damaged, delayed or lost baggage to ensure consistency in the approach to baggage across the aviation industry.

### **The Charter should set minimum timeframes for airline responses to claims**

Airlines do not always guarantee a time in which they will respond to a consumer's complaint regarding lost, delayed or damaged baggage. This means that consumers do not always know how long it will be before they hear back from the airline. Without a timeframe, complaints could be delayed indefinitely. CHOICE encourages the department to include minimum timeframes for airline responses on delayed, lost or damaged baggage. These should be in line with general complaint responses whereby the airline should respond within 24 hours and resolve the complaint within 30 days (as discussed later). This will help promote accountability and

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<sup>37</sup> AirHelp, 'Montreal Convention — Your Passenger Rights on International Flights', <https://www.airhelp.com/en-int/montreal-convention/#baggage>

transparency from the airline and help prevent the escalation of the complaint to the new Ombuds Scheme.

#### **Recommendation**

21. The Charter should set minimum timeframes for airlines to respond and resolve lost, delayed and damaged baggage claims.

## **Proposed Right 5: Aviation industry customers have the right to the protection of their personal information**

CHOICE supports the right of consumers to have their personal information protected in accordance with the law but calls on the Charter to explicitly include Frequent Flyer Programs. CHOICE has long advocated for the strengthening of privacy laws and the Government could go further to support consumer data protection in the aviation industry.

### **Frequent flyer programs should be included in The Charter**

16.4 million people are members of the Qantas Frequent Flyer Program<sup>38</sup> and 11 million people are members of the Velocity program<sup>39</sup>. These programs share consumer data with numerous third parties, for example the Qantas Frequent Flyer Program is affiliated with Woolworths' Everyday Rewards Program and Velocity is linked with the Flybuys program who are affiliated with Coles, Bunnings Warehouse, Target, Kmart, Liquorland, Officeworks and more<sup>40</sup>. Consumers should be able to trust that the personal information that is collected through these frequent flyer schemes is kept in accordance with the law. The Charter should explicitly identify frequent flyer programs as being subject to the Charter and ensure that consumers can rely on these programs to collect, hold and dispose of their data in accordance with the law.

#### **Recommendation**

22. The Charter should capture frequent flyer programs in Right 5.

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<sup>38</sup> Statista Research Department, Aug 30 2024, 'Number of members of the Qantas Airways Limited Frequent Flyer Program from financial year 2018 to 2024' accessed at: <https://www.statista.com/statistics/1402513/qantas-number-of-qantas-frequent-flyer-members/#:~:text=In%20the%202024%20financial%20year,%2Don%2Dyear%20since%202018.>

<sup>39</sup> Virgin Australia, 4 December 2022, 'Velocity Frequent Flyer soars to 11 million members', accessed at: <https://www.virginaustralia.com/au/en/newsroom/2022/12/velocity-frequent-flyer-soars-11-million-members/#:~:text=%2211%20million%20members%20is%20a,Velocity%20family%2C%22%20he%20said.>

<sup>40</sup> *ibid*

## **The Government should strengthen privacy laws**

CHOICE has long advocated for the strengthening of privacy laws to better protect consumers from potentially risky data practices. While the Charter can not improve these laws directly, we call on the Government to legislate the following reforms to the Privacy Act, including:

1. A fair and reasonable use test to ensure businesses including airlines are only using consumer data in line with consumer expectations;
2. Expanding the definition of 'personal information' to include data relating to a person, such as technical and inferred information;
3. Individual rights such as the right to access and delete your data held by businesses including loyalty schemes (including access to an explanation about how data was collected and what it has done with the information), and rights to object to the collection, use or disclosure of personal information;
4. Requiring businesses to set out all types of information used in substantially automated decisions in privacy policies and allowing consumers to request meaningful information about how substantially automated decisions with legal or similarly significant effects are made
5. Requiring businesses using high-risk data practices to produce a publicly available Privacy Impact Assessment; and
6. Prohibiting businesses from trading in (i.e. the sale of) personal information.

### **Recommendation**

23. The Department should recommend that the Government legislate key reforms to the Privacy Act.

## **Proposed Right 6: Provide feedback, make complaints and exercise their rights without retribution**

CHOICE supports the right for consumers to provide feedback, make complaints and exercise their rights without retribution. This right should be strengthened by including further details around complaint handling timelines and the expectations on airlines when handling complaints.

### **Stronger language would help set the standard for complaint handling timelines**

At present, there is no standard timeline for all airlines to respond to, and resolve, consumer complaints. Without a standardised approach, consumers are often left confused and frustrated when they receive a delayed response, an inadequate response or no response at all.

Blown-out response times were a significant issue under the previous external complaints handling system, the Airline Customer Advocate (ACA). In its latest 2023 Annual Report, the ACA revealed the average time it was taking for airlines to resolve complaints:<sup>41</sup>

<i>Airline</i>	<i>Average days to finalise complaints</i>
Jetstar	18
Qantas	97
Rex	19
Virgin Australia	16

The average number of days taken to finalise a complaint was 37 across all airlines in 2023.<sup>42</sup>

The Charter states that:

*“all feedback and/ or complaints will be acknowledged by, and responded to, by the airline or airport in a reasonable timeframe (with a **target** 24 hours to acknowledge and 30 days to resolve)”.*

Given the size and scale of the current problem, the word ‘target’ should be changed to ‘deadline’ to ensure that airlines are responding within the proposed time frame. CHOICE supports the timeframe identified in the Charter.

**Recommendation**

24. The Charter should strengthen the language of Right 6 from ‘target’ to ‘deadline’ to ensure that airlines or airports respond to consumer complaints.

**The Charter should set minimum internal dispute resolution standards**

The Charter does not currently adequately address internal dispute resolution processes. Consumers are not given any guidance on what to expect from airlines and airports when they are not satisfied with their experience. It is not sufficient for the airline or airport to explain how feedback can be shared or how to make a complaint (point 3 of Right 6). Airlines and airports should adopt the approach of financial firms and proactively identify consumer complaints. The Charter should also include specific details on what a consumer can expect to receive in the final response to the complaint.

<sup>41</sup> The Airline Customer Advocate, 2023, ‘Annual Report’, accessed at: [https://www.airlinecustomeradvocate.com.au/\\_lib/Docs/AnnualReport/Annual\\_Report\\_2023.pdf](https://www.airlinecustomeradvocate.com.au/_lib/Docs/AnnualReport/Annual_Report_2023.pdf)

<sup>42</sup> *ibid*

ASIC has developed strong regulatory guidance on internal dispute resolution (IDR) for financial firms that is considered best practice and should be considered in the development of the Charter. The guidance ensures that financial firms proactively identify complaints and consider any expression of dissatisfaction as a complaint. Specifically, the Charter could draw on the following sections of ASIC's IDR process:

#### RG 271.30

*We expect firms to take a proactive approach to identifying complaints. A response or resolution is 'explicitly expected' if a consumer clearly requests it. It is 'implicitly expected' if the consumer raises the expression of dissatisfaction in a way that implies the consumer reasonably expects the firm to respond and/or take specific action. A consumer or small business is not required to expressly state the word 'complaint' or 'dispute', or put their complaint in writing, to trigger a financial firm's obligation to deal with a matter according to our IDR requirements.*

#### RG 271.31

*Financial firms should not categorise an expression of dissatisfaction that meets the definition of 'complaint' as 'feedback', an 'inquiry', a 'comment' or similar (and therefore not to be dealt with in the firm's IDR process) merely because:*

- a) the complainant expresses their dissatisfaction verbally;*
- b) the firm considers that the matter does not have merit; or*
- c) a goodwill payment is made to the complainant to resolve the matter without any admission of error.*

#### RG 271.32

*Under this guide, the following expressions of dissatisfaction are complaints:*

- a) posts (that meet the definition of 'complaint' set out in RG 271.27) on a social media channel or account owned or controlled by the financial firm that is the subject of the post, where the author is both identifiable and contactable;*

*Note 1: We do not expect financial firms to seek to identify complaints made on third party social media accounts or channels.*

*Note 2: When responding to a complaint made on social media in accordance with RG 271.32(a), a financial firm must ensure consumer privacy is protected.*

*Note 3: Representatives of financial firms must refer complaints made on social media in accordance with RG 271.32 (a) to their licensee, as they are required to do for complaints they receive through other channels.*

- b) an objection to a proposed decision about how and to whom to pay a superannuation death benefit distribution;*
- c) complaints about a matter that is the subject of an existing remediation program or about the remediation program itself (e.g. delays, lack of communication);*

d) *complaints about the handling of an insurance claim (e.g. excessive delays or unreasonable information requests).*<sup>43</sup>

The ASIC regulatory guidance also includes details of what a final response to a complaint should contain (RG 271.53). For example, the final response should include the outcome of the complaint, reasons for the decision, the right to escalate and the contact details of the Ombuds Scheme.

**RG 271.53**

*An 'IDR response' is a written communication from a financial firm to the complainant, informing them of:*

- a) *the final outcome of their complaint at IDR (either confirmation of actions taken by the firm to fully resolve the complaint or reasons for rejection or partial rejection of the complaint);*
- b) *their right to take the complaint to AFCA if they are not satisfied with the IDR response; and*
- c) *the contact details for AFCA.*

*Note 1: In order to give an IDR response, unlicensed COI lenders who have not joined AFCA must inform the complainant of the final outcome of their complaint at IDR within 30 calendar days.*

*Note 2: If the complaint relates to a superannuation death benefit distribution, the death benefit decision-maker must also give the complainant information about the 28 calendar day time limit (under s1056 of the Corporations Act) for lodging a complaint with AFCA (see RG 271.84(a)). This time limit must be included in a death benefit decision-maker's notice.*

*Note 3: If a complaint has been referred to IDR by AFCA, the financial firm may draft the IDR response to reflect the fact that the customer has already initiated contact with AFCA.*<sup>44</sup>

CHOICE supports some of the initiatives outlined in this Right, such as the ability of family members, carers, advocates and legal representatives to be able to support or represent a customer and the facilitation of consumer rights under the Charter without fear of retribution. However, the Charter should go further by setting minimum internal dispute resolution standards that outline what a final complaint should include and call on airlines to proactively identify complaints, drawing on ASIC's IDR process guidance.

**Recommendation**

25. The Charter should set minimum internal dispute resolution standards to inform airlines of best practice complaints handling.

<sup>43</sup> Australian Securities and Investments Commission, September 2021, 'Regulatory Guide 271: Internal Dispute Resolution', pp.14 accessed at: <https://download.asic.gov.au/media/3olo5aq5/rg271-published-2-september-2021.pdf>

<sup>44</sup> Australian Securities and Investments Commission, September 2021, 'Regulatory Guide 271: Internal Dispute Resolution', pp.20 accessed at: <https://download.asic.gov.au/media/3olo5aq5/rg271-published-2-september-2021.pdf>



## The Charter should include penalties for non-compliance

At present, it is unclear what the consequences will be for airlines and airports should any of the Rights within the Charter be breached. There would be significant benefits to introducing penalties for non-compliance. Airlines and airports would be discouraged from breaching any of the Charter rights and consumers would be able to trust that their rights will be protected.

The ACCC should be the key regulator with oversight of compliance and enforcement of relevant requirements imposed upon the aviation industry. The ACCC should be resourced appropriately to fulfil these additional functions.

### **Recommendation**

26. The Charter should include penalties for non compliance.

## The Charter should be complemented by improvements to the Australian Consumer Law

More general improvements to the Australian Consumer Law will also support consumer protection in the airline sector. In particular, we highlight the following reforms:

### **Ban unfair trading practices**

The Federal Government has consulted on options to amend the Australian Consumer Law to introduce a ban on unfair trading practices. The Government should introduce legislation to introduce this ban, with a blacklist prohibiting certain practices. We see significant benefits for airline customers from this kind of provision in relation to customer service and complaints handling. Such a provision would ensure airlines cannot discourage complaints or consumers from obtaining remedies by making the processes difficult to use or inaccessible. A ban on unfair trading could also assist with the valuing and devaluing of loyalty reward programs. Airlines such as Qantas and Virgin are able to change the value of frequent flyer points whenever they decide, regardless of the value the points had when the consumer initially accumulated or purchased them. Unilateral unfair changes to the value of points in a frequent flyer scheme could be captured by a ban on unfair trading practices.

### **Recommendation**

27. The Government should introduce a ban on unfair trading practices.

### **Penalties for consumer guarantees**

The Australian Consumer Law contains certain consumer guarantees including, most relevantly for airlines, that services must be provided with due care and skill and must be provided on time. However, currently there are no penalties for non-compliance. The Government has

consulted on the introduction of penalties but should progress with legislation to ensure regulators can enforce consumer guarantees.

**Recommendation**

28. The Government should introduce penalties for when consumer guarantees are not met.

# Appendix

## 1. Airline policies for lost or damaged baggage

	Lost	Damaged
<b>Montreal Convention</b> <sup>45</sup>	<p><b>Claim times</b> The customer must make a claim for a delayed baggage within 21 days. Bags lost for longer than 21 days are considered lost, and you will then have 2 years to file a claim.</p> <p><b>Compensation</b> Delayed baggage means you can claim for replacement items that are essential for your trip. If it is clear the luggage has been completely lost or damaged, you can claim for reimbursement of the value.</p>	<p><b>Claim times</b> Claims for damaged bags must be submitted within 7 days.</p> <p><b>Compensation</b> If it is clear the luggage has been completely lost or damaged, the customer can claim for reimbursement of the value.</p>
<b>EU 261</b> <sup>46</sup>	<p><b>Claim times</b> The customer must make a claim for their lost or damaged luggage to the airline within 7 days, or within 21 days of receiving the luggage if it was delayed.</p> <p><b>Compensation</b> If the consumer's checked-in luggage is lost, damaged or delayed, the airline is liable and the consumer would be entitled to compensation up to an amount of approximately €1300.</p>	
<b>Qantas</b> <sup>47</sup>	<p><b>Claim times</b> The customer must make a claim for their lost bag within: Domestic - 21 days International - 21 days</p> <p><b>Compensation</b> Customers can claim reimbursement for essentials purchased in the first 21 days of a lost bag. After 21 days they</p>	<p><b>Claim times</b> The customer must make a claim for their damaged bag within: Domestic - 3 days International - 7 days</p> <p><b>Compensation</b> Qantas uses its discretion to pay for the replacement or repair of damaged bags or mobility aids.</p>

<sup>45</sup> AirHelp, 'Montreal Convention — Your Passenger Rights on International Flights', <https://www.airhelp.com/en-int/montreal-convention/#baggage>

<sup>46</sup> Your Europe, 'Air Passenger Rights', accessed at: [https://europa.eu/youreurope/citizens/travel/passenger-rights/air/index\\_en.htm#luggage](https://europa.eu/youreurope/citizens/travel/passenger-rights/air/index_en.htm#luggage)

<sup>47</sup> Qantas 'Baggage Services' accessed at: <https://www.qantas.com/au/en/travel-info/baggage/baggage-services.html#damaged-baggage>

	can claim compensation for the lost bag.	
<b>Jetstar<sup>48</sup></b>	<p><b>Claim times</b> The customer must make a claim for their lost bag within: Domestic - 21 days International - 21 days</p> <p><b>Compensation</b> Information not provided online</p>	<p><b>Claim times</b> The customer must make a claim for their damaged bag within: Domestic - 3 days International - 7 days</p> <p><b>Compensation</b> Information not provided online</p>
<b>Virgin<sup>49</sup></b>	<p><b>Claim times</b> The customer must make a claim for their lost bag within: Domestic checked baggage - 3 days Domestic carry on baggage - 21 days from the date you should have received the checked baggage from Virgin and 7 days from the date the carriage ended International within 21 days of receiving your checked baggage from Virgin</p> <p><b>Compensation</b> Customers can claim reimbursement for essentials if their bag is delayed more than 24 hours. After 7 days customers can claim compensation for the lost bag.</p>	<p><b>Claim times</b> The customer must make a claim for their damaged bag within: Domestic checked baggage - 3 days Domestic carry on baggage - 21 days from the date you should have received the checked baggage from Virgin and 7 days from the date the carriage ended International within 21 days of receiving your checked baggage from Virgin</p> <p><b>Compensation</b> All damage to baggage needs to be reviewed and evaluated by Virgin Baggage Services agents. Accordingly, customers are advised to report any damage to baggage to the Baggage Services office before leaving the airport. Or a claim can be made via a form within the mentioned time limits.</p>
<b>Rex<sup>50</sup></b>	<p>Claims for baggage damaged or lost due to negligence on the part of Rex, must meet the following conditions to be accepted:</p> <ul style="list-style-type: none"> <li>• Must be filed and reported within 3 days of the flight arrival at the destination.</li> </ul>	

<sup>48</sup> Jetstar 'Lost, damaged and delayed baggage', accessed at: <https://www.jetstar.com/au/en/contact-us/lost-damaged-and-delayed-baggage>

<sup>49</sup> Virgin Australia 'Delayed and damaged baggage', accessed at: <https://www.virginaustralia.com/au/en/travel-info/baggage/delayed-damaged-baggage/>

<sup>50</sup> Rex airlines, 'Damaged or lose baggage claims', accessed at: <https://www.rex.com.au/feedback/ShowFAQ.aspx?aid=128>

- Must be submitted at the destination airport, using forms provided by Rex.
- The damaged baggage must be sighted with the thermal baggage tag still attached by a Rex staff member.

Claims will not be approved if reported after 3 days or if the damage is deemed not to be due to negligence by Rex.