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### **BARA Response to Aviation Customer Rights Charter - Consultation Paper**

The Board of Airline representatives Australia (BARA) is an industry association representing the interests of the majority of international carriers that serve Australia, providing approximately 60% of all international aviation capacity operated to Australia (based on BITRE CY2024 YTD data). A current list of BARA members is attached to this submission as Appendix 1.

BARA welcomes the opportunity to provide further input to the Aviation Customer Rights Charter (Charter) consultation paper, and by extension to guidelines for the Aviation Industry Ombud Scheme (AIOS). It is BARA's understanding that the primary role of the Charter is to define some clear, concise and over-arching standards and expectations for aviation customers, to which the AIOS will refer when adjudicating on prospective contacts. Given the range of airlines, destinations, and countries of origin of BARA members, BARA supports the Charter to provide guidance of overall standards and aviation industry response protocols, whilst allowing individual airlines the flexibility to reflect their unique offering and situation as to exactly how the expected levels of customer response are delivered.

BARA has consulted with member airlines to provide this consolidated perspective encompassing the broad range of international carriers who provide regular air services to Australia. BARA members represent many of the most globally respected and established airlines and take great pride in managing their customers' needs and expectations, including when inevitable disruptions occur. BARA members already operate to and are subject to various customer protection regimes as they exist in different jurisdictions and are therefore aware of both good examples where government regulations to protect the interests of aviation customers work in practice, and other examples where regulation may lead to sub-optimal customer outcomes through the unintended consequences of either imprecise or too rigid regulation.

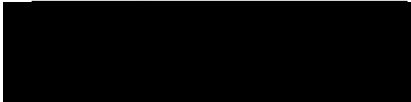
As highlighted in our response to Proposed Right 3, which deals with customer remedies when cancellations, delays or disruptions occur, it is critical for the Charter to clearly differentiate between day-of-operation disruptions, and ongoing issues where customers may wish to contact their airline to further communicate about their journey or experience. Furthermore, as delays and disruptions are

often caused by factors outside of an airlines control, that the Charter be clear in this delineation for customers. This is discussed in more detail in our response to Proposed Right 3.

BARA provides the following comments, observations and where possible suggestions with respect to each of the six proposed Customer Rights.

BARA thanks the Department for encouraging input and appreciates the opportunity to provide these comments. Please contact BARA should you wish for any further clarification on any point.

Yours sincerely



Stephen Pearse  
**Executive Director**

## **Proposed Right 1: Aviation industry customers have the right to be treated with dignity and respect, in an accessible and inclusive environment**

As the Charter consultation paper notes, the majority of aviation customers move through their journeys without issue or mishap. BARA member airlines all strive to treat their customers with equal dignity and respect. Airline operations are highly complex however air travel is essentially a customer service proposition, as airlines operate in a highly competitive market where consumers have considerable choice. BARA members agree that aviation industry customers should always be treated with dignity and respect, and equally that the Charter should acknowledge the mutuality of this right on behalf of aviation customers.

BARA offers the following contextual challenges for the Government to consider with respect to the practicalities of international aviation operations, and the inclusion of other stakeholders to be covered by the Charter and AIOS to enhance communication and overall outcomes.

Key comments: -

- BARA submits that a centralised, government hosted 'universal' website to provide an overarching guide for aviation customers in Australia would be the most appropriate solution to meeting the stated aim of the Charter and avoid unnecessary duplication or create customer confusion with multiple airlines attempting to independently provide similar information (especially for foreign airlines). The UK Air Passenger Travel Guide<sup>1</sup> is a good example – with the rider that BARA would support an Australian version to be independently hosted (ie: not within a government department website) and easier for consumers to find.
- Airlines all have comprehensive terms and conditions of travel with various levels of explanation as to what is or is not covered for customers. A centralised & simplified publicly available version with airlines able to provide additional specific links would assist customers to better understand what they are entitled to, what they may be able to do themselves to ensure that they can receive any specialised services, and how they can contact airlines or the Ombuds Scheme if they wish to raise issues.
- A universal government hosted site would also be able to inform consumers of what response metrics and options are expected to be available from airlines, and equally what information they may be required to provide to ensure that their appropriate needs and expectations can be met. Many international airlines operating to Australia will have customer communications in other languages than English which can be linked (or replicated should the government desire) to a centralised site, however the airlines should be free to choose the languages they provide based on their global communication standards.
- To enable airlines to provide the desired level of care, airlines must have up-to-date customer contact details and permission to communicate directly with them. This is especially important when seeking to provide service for customers with special needs.
- Travel agents (TA) and other 3<sup>rd</sup> parties (including online travel agents (OTA)) provide a very significant proportion of airline bookings (70% of international bookings according to the industry's 2023 Aviation Green Paper submission<sup>2</sup>). These booking entities may be local or offshore to the customer and if those bookings do not contain the requisite contact or other

<sup>1</sup> UK Air Passenger Travel Guide [www.gov.uk/government/publications/air-passenger-travel-guide/air-passenger-travel-guide](http://www.gov.uk/government/publications/air-passenger-travel-guide/air-passenger-travel-guide)

<sup>2</sup> ATIA AGP Submission Dec-2023 [www.atia.travel/Advocacy/Submissions#562106-december-2023-aviation-green-paper](http://www.atia.travel/Advocacy/Submissions#562106-december-2023-aviation-green-paper)

pertinent information, airlines cannot either prepare for providing the appropriate levels of service or communicate directly with the customer if the need arises.

- BARA members are committed to providing safe and dignified travel for all customers and adhere to the Disability Discrimination Act 1992 and Disability Transport Standards. If customers with special needs book air travel through an intermediary and are not pre-advised to an airline in advance of travelling, this can make it far more difficult or potentially impossible for an airline to provide the correct level of services, if for example access to special equipment or personnel are required to provide assistance and enable the customers' journey.
- It is critical therefore that to deliver against this proposed right, that these other aviation journey stakeholders (Australian Travel Agents and other 3<sup>rd</sup> party booking channels) are included within the scope of the Charter and subject to the AIOS if they fail to provide the requisite information or service. Without inclusion, airlines will continue to be challenged by inadequate or non-existent contact information which makes servicing particularly in times of disruption (which is a significant focus of the Charter's {Proposed Right 3} both difficult and (if disruption occurs before a customer has reached an airport) sometimes impossible to deliver if a customer cannot be contacted in time.
- BARA supports the work that the Australian Government undertakes through participation in ICAO and the development of consistent international standards. IATA has developed a range of 'best practice' guidelines, including for the safe handling of mobility aids, for customers with disabilities which BARA supports. Aviation is a global industry, and BARA strongly supports that to achieve the best outcomes for customers, particularly those travelling with any kind of disability, that Australian standards wherever possible be aligned and harmonised with best practice international standards, and neither limited nor over-prescribed in local regulation.

## **Proposed Right 2: Aviation industry customers have the right to accurate, timely and accessible information and customer service**

BARA members support measures to improve the provision of accurate, timely and accessible information to customers. As noted under Proposed Right 1, public websites such as those hosted by Government in the UK (Air Passenger Travel Guide), or the US by the Department of Transport<sup>3</sup> (USDOT) provide good examples.

Key comments: -

- As outlined under Proposed Right 1, BARA would suggest that the proposed obligations to provide either separate customer service statements or charters is impractical to administer across the breadth of international carriers servicing Australia (BARA members) and more relevantly would be less effective in providing customers with access to the information they require or helping airlines to provide the customer service outcomes desired.
- BARA proposes that the drafting of this Right be revised to more clearly focus on defining the appropriate standards of customer service expected, with the best method of delivery for

<sup>3</sup> USDOT [www.transportation.gov/airconsumer](http://www.transportation.gov/airconsumer)

airlines to determine. BARA members operate far and wide including to remote and regional areas where 'standard' service standards or delivery may not be possible.

- The suggested mandatory channels of communication for airlines to provide information to customers to access the appropriate level of customer service are not therefore in BARAs view practical or necessarily customer-outcome focused. The customer service delivery options outlined are limited and do not provide for either technological or future improvements to the means by which airlines may deliver enhanced customer service. Furthermore, BARA members are all (bar one) headquartered overseas, operate in wholly different time-zones, and many operate only limited services to Australian airports – therefore the requirements to either have customer-service personnel available at the airport and/or via contact centre (with a requirement to provide call-back services) is not practical nor focused on the actual customer outcome.
- For BARA members, operational and customer-facing staff (including for many airline services delivered via third-party ground handling agents) are available during the specific hours of their airlines' operation and (for the vast majority of instances) provide and deliver resolution of customer issues related to the day of travel during those times. Flexibility within the drafting of the Charter to permit airlines to manage customer service as needed in a range of circumstance (including for example the very infrequent occurrence of diversions to remote Australian aerodromes) needs to be incorporated.
- BARA considers that the bullet-point under Proposed Right 2 which deals with information about delays, cancellations and disruptions to be provided to customers "promptly after it is known by the airline" needs to be more specifically drafted. It is the provision of *accurate* information (as soon as an airline is aware and is satisfied as to its accuracy) that is most important. BARA contends that the word 'promptly' may be interpreted quite differently not only by different customers but also by operators. Preventing misinformation during a time of disruption is equally important to better manage customer communications and expectations. Airlines strive to provide accurate, timely and informative communications (ie: including what actions are being taken to mitigate the impact of any disruption) as soon as practicable.

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

An international aviation journey is a highly complex undertaking, and whilst occasionally flights are disrupted, delayed or (at worst) cancelled, most international aviation customers are satisfied or highly satisfied with their experience. BARA considers this is an important context to restate when seeking to specifically define customer rights when disruptions occur, as flexibility is paramount to allow international airlines to provide the best achievable customer outcomes in each situation.

When disruptions do occur, the international airlines represented by BARA already provide their customers most or all of the options detailed under Proposed Right 3 and are therefore supportive in principal. International aviation customers in Australia have considerable choice when selecting which airline they wish to fly on, hence airlines already work to meet their customers' expectations every day, as if they do not, they know that those customers can chose future travel with other airlines with whom they compete.

The significant challenge however with articulating Proposed Right 3 is that there are vast differences in customer expectations and customer service options available for airlines to assist when contrasting a disrupted or delayed 1-hour domestic flight between major cities in Australia, to a 5-hour flight to a remote Australian regional town or Pacific Island destination, or to a multi-leg 24-hour journey to the other side of the world; with every variation of that journey range in between. As highlighted by industry participants in the Department-led workshops, this variability creates very significant issues with the application of a single definition or trigger (3-hours) for activating specific customer service remedies.

Key issues: -

- Any public communication of expected customer service standards for response to flight disruptions must first start with a clear delineation between ‘controllable’ (within the airlines’ control) or not-controllable reasons. There are many factors to consider in this regard, and BARA would point to the work undertaken in Canada<sup>4</sup> over several years to reach a broadly acceptable list of circumstances as something the Australian Government could use as starting point for refinement in the Australian context.
- As raised by multiple industry stakeholders during workshop sessions conducted by the Department, the proposal for a single ‘fixed’ 3-hour disruption or delay trigger for customers to then be eligible for alternative remedies is both inequitable and impractical (and could lead to poorer customer outcomes) if applied equally to all airlines, destinations or situations.
- BARA is not at this time proposing an alternative ‘matrix’ of time or conditions based upon variable criteria, as the development of any such outcome (if appropriate) will require further detailed consultation. BARA is ready and available to work with the Department to help develop a more customer-orientated range of suitable responses that could be described in the Charter.
- In the context of ‘controllable’ mechanical delays where an international airline is *genuinely and actively* trying to remedy the issue, with an expectation of being able to resolve the mechanical issue and operate the delayed service, BARA does not support the application of any specific time trigger for disruption compensation or refund-eligibility to commence, as this could create unintended safety and operational consequences. This is especially relevant in situations where an international airline may only operate one service a day, and the customer-service implications of a flight cancellation (which may be triggered if customer re-protection has to commence at a defined time) are potentially far worse for customers collectively than (for example) a 5-hour delay where a mechanical issue has been safely and satisfactorily resolved, with suitable communication and in-situ services provided to customers during the delay, and onward travel (and customer re-protection to onward flights from overseas hubs if required) has been resolved.
- The Charter under Proposed Right 3 bullet point 3 states that if ‘customers **have had** to book a new flight...due to their original airline **not having a reasonable replacement flight**’. BARA consider that these terms (**BARA highlighted**) are subjective and open to considerable (mis)interpretation. At issue is when in the customer-resolution journey a refund may need to be agreed as the most suitable outcome – at which point a refund can be activated (see below). In many cases, eligibility for a refund (if the customer requests it) may not necessarily provide them with an improved outcome if alternatives are limited, expensive or not available.

<sup>4</sup> Canadian Transportation Agency flight disruption guide (updated Sept-22) [www.otc-cta.gc.ca/eng/publication/types-and-categories-flight-disruption-a-guide](http://www.otc-cta.gc.ca/eng/publication/types-and-categories-flight-disruption-a-guide)



## Timelines for Refunds – Disruptions vs Complaints

- As stated, BARA considers it critical to be clear within the Charter between what timelines are to apply for responding to customer in situations of disruption and where the disruption is within the airlines control, versus what timelines may apply for (generally post-travel) complaints to the AIOS.
- The provision of a refund and/or other compensation to a customer due to a flight disruption does not of itself necessarily create a complaint. Most international customers are satisfied with how they are treated during delays and disruptions, and therefore whilst both parties would rather not have experienced the disruption, the provision of remedies to customers up to and including a refund (if eligible and requested) may not require any further action.
- A disrupt occurrence *may* engender a customer complaint; if so, typically this will occur post travel and therefore any such complaint should be subject to a first resolution process with the airline directly, and then if the complainant is not satisfied by referral to the AIOS (to be managed within the yet-to-be finalised AIOS procedures). Under the consultation sought in response to the AIOS, BARA supported the broad international standard of 8-weeks (or 60 days) for a full resolution process to evolve before complaints were eligible to be referred to the Ombuds Scheme. BARA continues to support this timeline.
- For refunds as a result of disruption, where a customer is eligible (once the appropriate criteria are agreed) and has elected to receive a refund, there has been much feedback provided from industry to the Department as to why 14-days from 'cancellation notification' is not achievable or within the airlines' control. Different channels of booking by customers (direct vs indirect) create very different pathways as to how refunds can be processed and therefore how quickly refunds can reach the customer.
- Airlines can only process refunds to the original Form of Payment (FOP) and have no control as to how long these can take to repatriate monies to the consumer. With indirect bookings, airlines use the IATA BSP infrastructure to automatically refund to the agents who made the original booking. BARA understands that IATA have provided in their submission some more detailed description of how the IATA BSP system works and why this can limit the time frame for refunds.
- Once a refund for an airfare booked via a travel agent is initiated, it is then the responsibility of the agent to process or pass on to the customer, and airlines will have no visibility as to what other services or fees the customer may have paid to the agent, or how long it will take the agent to provide the refund. Furthermore, the air ticket may have been booked by the agent via an additional 3<sup>rd</sup> party (a 'consolidator' or 'air tickets' business) which in turn may have no formal contractual agreement with the original airline.
- The net result is that a Charter timeline to apply for the *processing* of refunds should only start from the time a customer is *eligible and requests or agrees* to a refund (as distinct from any other remedy that the airline may propose) and should be clarified as referring to the timeframe within which the refund will have been *processed* by the airline.

- The responsibility of the agent or booking entity to refund the actual monies paid for an air-ticket is additional reason why travel agents should be included within the remit of the Charter and AIOS.

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

BARA provides data in Appendix 2 showing the percentage of missed bags per thousand (a standard airline industry measure) for international airline operations to/from the 4 major Australian international airports for users of the BARA-specified Unisys-operated baggage reconciliation system (BRS). BARA acknowledges that there were challenges and sub-optimal performance against several airline metrics including the delivery of baggage that occurred during the re-starting of international aviation after the pandemic. This included real manpower difficulties for GHAs to hire enough staff at airports to support the unprecedented rush of demand for air travel once international border restrictions were lifted.

These however were once-in-a-generation issues and as the data clearly demonstrates, there has been a steady recovery and improvement in overall baggage handling for carriers flying to Australia ever since, with current baggage mishandling in Australia generally lower than the international average<sup>5</sup>. BARA readily accepts that any lost bag represents a significant customer-service failure for the customer concerned, and airlines already have every incentive (both service and cost oriented) to minimise such occurrences and re-connect passengers and their bags as quickly as possible.

The expectation for customers to have safe and timely baggage handling and fair remedies for damage and delays is therefore clear; however, BARA does not support a need to add additional local regulation through the Charter to what are already comprehensive international rights and conventions in place. BARA members are firmly of the view that the Montreal Convention 1999 (MC99) or other country-specific regulations (if not a signatory to MC99) provide adequate remedies and levels of compensation for international air travel.

Specifically with respect to Proposed Right 4, BARA would suggest that the wording of bullet point 2 be amended to avoid customer misinterpretation of what defines a 'necessary purchase of appropriate clothing and toiletries'. The provision of such amenities to customers by airlines can include stock provision rather than requiring individual purchase by customers and is generally covered under both MC99 and an airlines own Conditions of Carriage – which as per comments in response to Proposed Right 1 (and 2) can be included under a simplified and universal description of Rights within the proposed 'Air Passenger Guide' for Australian travellers.

<sup>5</sup> Source SITA [www.sita.aero/resources/surveys-reports/sita-baggage-it-insights-2024](http://www.sita.aero/resources/surveys-reports/sita-baggage-it-insights-2024)



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

BARA restates its feedback to the AIOS with respect to the protection of personal information. International airlines are subject to ICAO guidelines for the handling, protection and exchange of passenger data required to enable compliance with international law and the specific demands of border and other government agencies in all jurisdictions. Any complaint that may arise from a customer believing that their personal information has been compromised or mistreated should however be submitted and managed through the Office of the Australian Information Commissioner (OIAC). BARA supports that this the most appropriate and competent body with both the expertise and the capacity to adequately manage and adjudicate on the complex questions of data privacy.

### **Proposed Right 6: Aviation industry customers have the right to provide feedback, make complaints and exercise their rights without retribution**

BARA provided data to the Australian White Paper process (in response to the Aviation Green Paper<sup>6</sup>) detailing that the level of complaints made to and handled by international carrier members operating to Australia was both very low and were, with the exception of an increase in refund related complaints which were unique to the resumption of travel post Covid, stable.

The number of international airline complaints related to international airlines that are collectively referred to external review bodies (such as State Tribunal bodies), as per confidential input provided to BARA, is very small. BARA does not therefore consider that there is either an ongoing or systemic issue with customer service handling for BARA member airlines in Australia. Nonetheless BARA members have from the start of the Aviation White Paper process been open to inclusion within the proposed Ombud Scheme (AIOS).

As raised in response to Proposed Right 3 however, BARA considers that the Charter needs to more clearly articulate the acceptable timeframes for responding to the different situations of a disruption, delay or cancellation on the day of operation (Proposed Right 3) and other or referred complaints.

For disruptions and delays, airlines generally provide resolution options based on the situation on the day of the disruption or travel. For other customer complaints however, these will usually arise post-travel and be handled by dedicated customer complaint personnel. For these types of complaints, the Proposed Right 6 timeframe of all feedback and /or complaints being acknowledged by airlines within 24 hours is very short and potentially not feasible or practical for many BARA members. Even an automated response (to an email for example) within 24 hours is potentially problematic given time-zone and weekend/ weekday differences internationally. An automated 'acknowledgement' ("your email has been received") may be possible, however BARA questions the value of such tokenism in genuinely resolving consumer complaints.

BARA provided feedback to the AIOS that it supported the generally accepted international practice for complaints to be acknowledged promptly (which could be an autot-acknowledgement within

<sup>6</sup> <https://www.infrastructure.gov.au/have-your-say/aviation-green-paper>

48hours or a an initial response within 7 days) and for a customer resolution period of up to 8 weeks (or 60 days) to allow for a full internal process between the customer and the airline to be actioned and for each party to reach an agreed resolution or final position. This would be a 'baseline' as most complaints are resolved much faster, and airlines can seek to further differentiate themselves with their own response and resolution standards. However BARA members do not consider 30 days to be adequate for either the airline or the customer to exhaust this process for more complex or disputed cases which can take considerable time to assimilate and review all the relevant information, especially if other parties (such as travel agents or other travel service providers) are also involved.

BARA considers that should such complex cases be eventually referred to the AIOS, that the Ombudsperson would prefer to review a thorough examination of the customer issue, process followed and responses provided, rather than being required to re-prosecute a complaint due to a lack of information from either party which could have been discovered had adequate time been allowed.

BARA also reiterates its position as provided in feedback to the AIOS consultation that only the customer (or someone directly representing the passenger such as a direct family member or individual legal representative) be able to prosecute the complaint, and that referral to the AIOS takes place only after either the defined period (8 weeks/60 days) or a 'deadlock letter' has been issued to the customer. Specifically, any 'class action' complaints should be disallowed. BARA does not consider that it would serve either Australian consumers or the purpose of the Charter or operation of the AIOS to encourage the growth of commercial entities seeking compensation via commission on behalf of international aviation consumers, as has occurred in Europe under EC261.

*Appendix 1: Current BARA member airline list*



AIRASIA Aviation Group representing: -

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

AIR CANADA

AIR NIUGINI

AIR NEW ZEALAND

AIRCALIN

ALL NIPPON AIRWAYS

AMERICAN AIRLINES

ASIANA AIRLINES

BATIK AIR LINES

CATHAY PACIFIC AIRWAYS

CHINA AIRLINES

CHINA EASTERN

CHINA SOUTHERN AIRLINES

DELTA AIR LINES

ETIHAD AIRWAYS

EVA AIRWAYS

FIJI AIRWAYS

GARUDA INDONESIAN AIRWAYS

HAWAIIAN AIRLINES

JAPAN AIRLINES

LATAM AIRLINES GROUP

KOREAN AIR LINES

MALAYSIA AIRLINES

NAURU AIRLINES

PHILIPPINE AIRLINES

QATAR AIRWAYS

ROYAL BRUNEI AIRLINES

SCOOT

SINGAPORE AIRLINES

SOLOMON AIRLINES

SOUTH AFRICAN AIRWAYS

SRILANKAN AIRLINES

THAI AIRWAYS INTERNATIONAL

TURKISH AIRLINES

T'WAY AIR

UNITED AIRLINES

VIETNAM AIRLINES

VIRGIN AUSTRALIA

XIAMEN AIRLINE

Appendix 2: International Airlines Missed Baggage Trends  
– Source: BARA/Unisys BRS data SYD/MEL/BNE/PER airports

