



24 October 2024

Department of Infrastructure, Transport, Regional Development, Communications and the Arts
GPO Box 594
Canberra ACT 2601

By email: aviationconsumer@infrastructure.gov.au

Re: Association of South Pacific Airlines submission for *The Aviation Industry Ombudsman Scheme Consultation*

This is a response by the Association of South Pacific Airlines (**ASPA**) to the first reform proposed in the Aviation White Paper for the creation of an Aviation Industry Ombudsman Scheme (“**AIOS**”).

Overview of ASPA

ASPA is a trade association of regional South Pacific airlines, which was established in June 1978 at the direction of the South Pacific Civil Aviation Council. The inaugural meeting of ASPA was in Suva, Fiji on 30-31 May 1979. ASPA represents the interests of member airlines and is a not-for profit organisation.

The objectives of ASPA are to promote cooperation among member airlines to develop commercial aviation in the South Pacific region; to provide a forum for members to air their views on common interests; to advise the South Pacific Regional Civil Aviation Council or other regional international bodies on matters relating to South Pacific aviation; and cooperation in areas of mutual interest such as marketing, training of personnel, maintenance and ground services.

Current members of ASPA include the following airlines:

- Aircalin
- Air Caledonie
- Air Rarotonga
- Air Marshall Islands
- Air Niugini
- Air Vanuatu
- Air Tahiti
- Air Tahiti Nui
- Air Kiribati
- Lulutai Airlines
- Nauru Airlines
- Samoa Airways
- Solomon Airlines
- PNG Air
- Fiji Airways

ASPA members operate into and out of Australia and would be impacted by changes to Australian aviation policy and regulations.

Challenges Facing South Pacific Airlines

The International Air Transport Association (IATA) published its Airline Profitability Outlook on 5 June 2023, in respect of the global airline industry. As part of that analysis, IATA has identified a number of risks facing airlines which include:

- the economic and geopolitical environment;
- only 2.8% of operating profit stands between \$803 billion in global revenues and \$781 billion in expenses, so overall industry profitability is “fragile”;
- inflation fighting measures are occurring at different rates in different markets. Risk of a recession remains, which could lead to job losses;
- the wars in Ukraine and the Middle East could escalate further and have negative impacts on global aviation. Geopolitical tensions already weigh upon international trade and any escalation of these wars represents a risk to the industry;
- supply chain issues caused by geopolitical tensions and COVID-19 challenges remain. Airlines are directly impacted by aircraft parts supply chain disruptions that have not yet been resolved, which negatively impacts the delivery of new aircraft and the ability of airlines to maintain and deploy their existing fleets; and
- regulatory cost burdens including increasing costs for compliance with punitive passenger rights regimes and regional environmental initiatives.¹

Asia-Pacific carriers have not reached pre-Covid levels and demand has been slower than other regions. In June 2023, IATA found that international traffic for the Asia-Pacific region was at 71% of pre-pandemic levels whereas traffic for the North American region already exceeded pre-COVID levels.² Net profit for Asia-Pacific carriers in 2023 is -\$6.9b YTD.³ Whilst IATA’s June 2024 figures show an increase in profits for the Asia-Pacific region to \$2.2 billion, their analysis still shows that international travel in the region remains “subdued”.⁴

There are several key challenges facing ASPA members which include:

- local workforce capability and capacity which was severely affected by COVID-19 and is a major part of the post-COVID-19 recovery;
- market scale – a key challenge for suppliers in the Pacific is the small scale of individual States;
- regulation differences between States which leads to increased overheads for all commercial operators in the region;
- safety and security assurance - the cost of compliance with international safety and security standards is essential but must be economically sustainable;
- aviation infrastructure and assets – upgrading and modernisation of infrastructure, equipment, facilities and aircraft is essential for safe operations and functionality;
- air traffic rights as a barrier to connectivity in the region.

The ASPA member airlines face other unique challenges:

¹ *Airline Profitability Outlook Strengthens*, IATA Press Release No. 26, 5 June 2023

<https://www.iata.org/en/pressroom/2023-releases/2023-06-05-01/>

² [IATA - IATA Remarks at Airline Industry Day Laos](#)

³ Ibid.

⁴ <https://www.iata.org/en/pressroom/2024-releases/2024-06-03-01/>

- **Geographic Constraints and Long Distances:** the vast distances between South Pacific nations and major international hubs, such as Australia, pose logistical challenges. Long-haul flights result in increased fuel consumption, maintenance costs, and operational complexities. This challenge directly contributes to higher operational expenses, reducing profit margins for airlines that must navigate extensive routes to serve their geographically dispersed populations.
- **Majority-Leased Aircraft and Limited Fleet Flexibility:** ASPA member airlines often rely on leasing arrangements for their fleets due to the prohibitive costs of purchasing and maintaining aircraft. This limits their flexibility in adapting to changing market conditions or implementing specialized services. Leasing agreements contribute to higher fixed costs, reducing the ability of ASPA members to invest in modern, fuel-efficient aircraft or tailor their fleets to specific route demands.
- **Thin Profit Margins and Financial Sustainability:** Operating in regions with small populations results in limited passenger traffic, making it challenging for airlines to achieve economies of scale. Thin profit margins hinder their ability to absorb unexpected shocks or invest in infrastructure improvements. Financial sustainability becomes a critical concern, potentially affecting the ability of ASPA member airlines to maintain service reliability, safety standards, and overall competitiveness.
- **Limited Market Diversification:** The concentration of destinations, with Australia being a major hub, exposes ASPA member airlines to market vulnerabilities. Dependence on a few key routes leaves them susceptible to fluctuations in demand, regulatory changes, or external economic shocks. Lack of market diversification can amplify the impact of external factors, leading to revenue volatility and increased operational risks.
- **Ownership and Operation by Developing Countries:** Airlines in the South Pacific are often owned and operated by developing countries with limited resources. This can impede their ability to invest in modern technologies, infrastructure, and training programs. While contributing to national connectivity and economic development, the limitations in financial capacity may hinder these airlines in achieving international standards and remaining competitive in the global aviation landscape.

The Australian Government has also identified some of the key challenges specifically facing Pacific Island countries including their small and dispersed populations, narrow-based economies, and vulnerability to natural disasters that present significant constraints to development.⁵

The ASPA members recognise the Australian Government's commitment to supporting 'a strong and united Pacific family'⁶ and the desire to assist where possible in strengthening connections and economic prosperity.⁷

These many challenges facing the South Pacific region need to be acknowledged and understood, not only to understand the impact that any policy decisions will have on the region, but also to develop tailored policies, financial support mechanisms, and infrastructure investments that foster the sustainability and growth of the airline in a region which is special to Australia.

⁵ Dr Angela Clare, Foreign Affairs, Defence and Security, *Pacific Islands – key issues*, https://www.aph.gov.au/About_Parliament/Parliamentary_departments/Parliamentary_Library/pubs/BriefingBook47p/PacificKeyIssues.

⁶ <https://www.dfat.gov.au/geo/pacific>

⁷ <https://www.dfat.gov.au/geo/pacific/economic-prosperity-in-the-pacific>

Aviation White Paper - Towards 2050

A. “A better passenger experience”

In Chapter 3 of the *Aviation White Paper - Towards 2050* (“**White Paper**”), attention is drawn to consumer protections in the airline sector in Australia and particularly how customer complaints for flights cancellations and delays are addressed.

The first reform proposed by the White Paper is the creation of an Aviation Industry Ombudsman Scheme (“**AIOS**”) to replace the Airline Customer Advocate.

The proposed AIOS will have the power to adjudicate passenger complaints about Australian airlines, airports and international airlines operating in Australia. The White Paper states the AIOS will be able to:

- a. deliver an external dispute resolution service in relation to the conduct of airlines and airports;
- b. direct airlines and airports to provide specific remedies to customers;
- c. issue public guidance (consistent with the relevant legislation) on the obligations of airlines’ and airports’ to their customers;
- d. make policy recommendations to the Australian Government;
- e. impose penalties for ‘non-compliance’;
- f. refer instances of systemic misconduct under the *Competition and Consumer Act 2010* (Cth) to the ACCC.

The White Paper does not provide detail about a number of issues which are critical to understand in order to evaluate the proposal. Instead, there is a call for submissions on many of these issues.

The *Aviation Industry Ombuds Scheme – Consultation Paper* (August 2024) includes questions on page 23 and we submit answers to those questions (using the same numbering as in the Consultation Paper) we feel qualified to comment on.

Design of the Aviation Industry Ombuds Scheme

- 1. What should be the objectives of the Aviation Industry Ombuds Scheme (“AIOS”)?**
- 2. What powers and functions should the ombudsperson have?**
- 3. What governance arrangement should be adopted for the Aviation Industry Ombuds Scheme?**
- 4. If a board is established to govern the Aviation Industry Ombuds Scheme, what powers and functions should the board have?**
- 5. Is it appropriate to appoint two individual ombudspersons within the scheme – one with responsibility for aviation consumer issues, and the other with responsibility for aircraft noise?**
- 6. What governance arrangement should be adopted for the Aviation Industry Ombuds Scheme?**
- 7. If a board is established to govern the Aviation Industry Ombuds Scheme, what powers and functions should the board have?**

In response to questions 1-7 ASPA makes the following submissions:

Traditionally, an ombudsman scheme is designed to try to find a resolution acceptable to both parties to a dispute. The Telecommunications Ombudsman, for example, resolves 88% of complaints at a 'stage 1' level by referring the complaint to the provider. This focus on conciliation is recognised in the White Paper which states: *'The Australian Financial Complaints Authority and the TIO, 2 of the largest industry ombuds schemes, received 66,388 and 96,987 complaints respectively in the financial year ending 30 June 2023. While many of these complaints were referred back to the business for resolution, involvement of the ombudsperson provides external scrutiny and the prospect of an external, binding decision if parties to a dispute could not reach agreement and timely resolution.'*

The White Paper foreshadows that the AIOS will be empowered to resolve disputes, direct airlines and airports to provide remedies, publish reports on airline and airport conduct, issue penalties and issue guidance on obligations. This proposed structure deviates from the traditional role of an Ombudsman and creates an organisation which is responsible for creating a Customer Charter, investigating suspected breaches, issuing determinations and enforcing determinations.

A single organisation should not be empowered to both make the rules, investigate breaches and adjudicate and enforce the rules. Such a structure is contrary to principles of good governance and is a fundamental departure from the traditional separation of judicial and executive powers. In addition, a structure where one body is empowered in this way gives rise to the risk of denial of procedural fairness as the checks and balances ordinarily in place to ensure due process are abandoned.

The proposed structure of the AIOS, including the empowerment of the AIOS to both create rules and then adjudicate disputes, is fundamentally flawed and these submissions are directed to limiting the role of the AIOS to a body designed to obtain conciliated outcomes between passengers and airlines and airports.

If there is to be the power to bind the airlines and airports with orders, that power should apply equally to bind the passengers. The Consultation Paper about the creation of the AIOS states, *'decisions made by the ombudsperson will be binding on airlines and airports (but not on customers, who will retain their rights to pursue action through a relevant court or tribunal if they are unhappy with an ombuds scheme outcome).'* This creates a scheme where airlines and airports risk being put to the expense of having claims adjudicated by the AIOS, only to have the outcome rejected by the passenger and being required to again deal with the claim through the Court system, and where passengers can 'try out' their claim in the AIOS but move on to the Court process if they do not like the outcome. Such an approach is burdensome and unfair.

The Government's objective should be to exempt, or to largely exempt, airlines operating to regional and remote areas in Australia and all ASPA member carriers operating to and from Australia from both the Passenger Rights Charter and the operation of the AIOS. The exemptions should be implemented to recognise the importance of ensuring the sustainability of services to remote locations which are already struggling with today's financial challenges and obstacles that are unique to operating between Pacific Island countries. Regional airlines, both within Australia and in the Pacific Island States are essential for connecting remote communities and providing critical services such as medicines and medical services to which they would otherwise not have access. Examples of jurisdictions that have gone before us, such as the European Union's adoption

of EC261, illustrates an established regime which has resulted in almost doubling the cost per passenger on regional carriers. Applying the Passenger Rights Charter and the AIOS to regional carriers and/or ASPA member carriers would also be in direct contradiction to the Government's stated purpose in the White Paper of supporting regional aviation.

As a final comment, the Department should not lose sight of the fact that the airline members of ASPA are almost entirely government owned and the imposition of a new regime on airlines that are largely compelled, either directly or indirectly, to operate into and out of Australia, over and beyond existing international conventions places a potentially onerous burden on neighbouring states.

An illustration of the issues facing one of ASPA members - Nauru Airlines

The problems encountered by Nauru Airlines provides a useful guide to the problems occurring in the region.

Nauru Airlines is the national carrier of the Republic of Nauru and it operates passenger, charter and freight services to and from the Central Pacific. Nauru Airlines' head office is in Nauru and its primary place of business is in Brisbane, Australia. It has been operating in the Pacific for over 55 years.

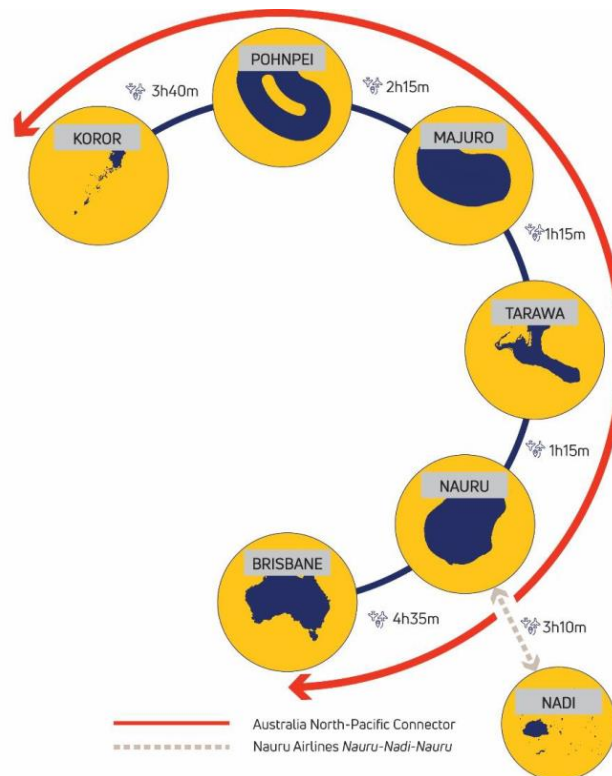
Nauru Airlines operate into and out of Australia and would be impacted by changes to Australian aviation policy and regulations. It has held an Australian Air Operators Certificate since 1996 and operates under the Australian Civil Aviation Regulations.

Nauru Airlines has a unique set of problems relating to its operations in the Pacific region. It operates to Nauru, Fiji, Kiribati Marshall Islands, Federated States of Micronesia, and Palau on a scheduled basis. When Nauru Airlines experiences a delay in Brisbane for instance, which may not be within the control of the airline, and the flight is delayed for more than one or two hours, Nauru Airlines would likely end up having to delay the flight by 24 hours due to the limited hours of operation of the airports at many of its destinations. The most notable of these destinations is Tarawa. What starts as a three hour delay becomes a 24 hour delay with knock-on effects at all destinations on the North Pacific Connector Service (see map below).

The Nauru Airlines crew often do not know if fuel will be available until the aircraft has been refuelled because of fuel truck breakdowns which cause refuelling to stop until the truck has been repaired. Recent refuelling events which have occurred in Nauru, Tarawa and Pohnpei, have resulted in delays to the flight. Sometimes the fuel truck runs out of fuel and staff must fetch more from the fuel storage depot. On one occasion the refueller had to be collected from his fishing boat because he was out fishing and unaware that Nauru Airlines required refuelling – this added about 90 minutes to the flight.

There have also been occasions where the supply ship has been delayed and the fuel runs out. Obviously these issues, which are outside the direct control of the airline, are being created by additional cultural challenges not faced by its competitors operating only in Australia and these issues are complex to manage, educate around and resolve.

In addition, there are no maintenance facilities at any of the airports other than Nadi or Port Moresby on the network. This means that if there is a small technical problem it can take the Nauru Airlines engineer time to fix it due to a lack of available aircraft ground support services.



Further to the challenges other Pacific carriers face, Nauru Airlines does not operate new aircraft and getting parts for the older aircraft is a significant challenge. When a breakdown occurs, it can take days to get the parts to repair the aircraft which may be on an island at least 5 hours away from Brisbane. This adds expenses and complexity to serving the route. In another example, Nauru Airlines had an aircraft stuck in Honiara for two days and had sent parts with two different flights to repair the aircraft. However, it then became apparent that even more parts were required, adding to the ongoing delays and frustrations.

Air Traffic Control (ATC) is co-ordinated via HF radio which was a system designed in the 1940s through Oakland in California. As a result of this aging “technology”, ATC will insist that the outbound aircraft wait on the ground until the inbound aircraft has landed. This can add 30 to 45 minutes to the departure time on occasions.

The airports that Nauru Airlines travel to are all small and constrained. Most struggle to handle the turnaround of one aircraft so if two aircraft are on the ground at the same time, there is likely to be a delay in departing of at least one aircraft.

There is a shortage of accommodation throughout the Pacific (including Nadi) and when there is a disruption, there are limited choices in where to accommodate passengers. This immediately adds costs to the operation in increased staffing to manage the disruption either through longer hours being undertaken by ground staff or additional staff being asked to assist to accommodate all passengers. Adding penalties to airlines on already very low margins in addition to these disruption costs will have an immediate and likely devastating impact on these communities and must be avoided.

The only other airline that operates to most of the Nauru Airlines airports is United Airlines. Their services are scattered through the week so Nauru Airlines does not have the opportunity to simply negotiate with United Airlines to move passengers to one of their flights as it may not be available for a day or two. United Airlines also does not operate to Tarawa, Nauru or Fiji. By comparison,

in domestic Australia, it is relatively easy to move passengers on to another flight within an hour or two.

Most Pacific Island countries do not have suitable airport facilities to handle disabled passengers, so Nauru Airlines is forced into managing with whatever assistance or facilities are available. This also leads to inefficiencies in embarking and disembarking passengers with disabilities and has flow on impacts to Nauru Airlines operations, including adding to or causing delays.

Some Pacific Island countries have a declining population and most have small populations which makes them unattractive to big carriers. Imposing penalties for delays in this environment will further discourage any competition in the region. The Pacific Island countries that Nauru Airlines flies to rely heavily on the service and have limited means to pay the true cost of providing a service in a very thin market.

If Nauru Airlines is forced to cover the costs for disruptions and provide compensation to passengers when there are such delays, it is highly unlikely that a service to many of the islands will remain financially viable and Nauru Airlines would have to withdraw its services.

8. Should the government adopt a phased approach to the application of the Aviation Industry Ombuds Scheme to different categories of airlines and airports?

As we have indicated above, we do not think a one size fits all approach is appropriate for the AIOS. Different categories of airlines and airports should be treated differently. Regional operators face significantly different challenges to those of its established national carriers such as less availability of aircraft, less availability of crew at regional locations as well as limited abilities to carry out maintenance at regional locations. Imposing a consumer protection regime upon competitors that are not operating on an even playing field is fundamentally unjust and must be resisted at all costs.

Complaint handling

9. What types of complaints should be eligible for consideration by the Aviation Industry Ombuds Scheme, and what types of complaints should not?

The aviation industry in Australia is highly regulated and it is important to ensure that the types of complaints to be investigated by the AIOS do not overlap with matters dealt with in existing legislation. In particular:

1. any function with potential safety implications for airlines, such as setting standards regarding acceptable and unacceptable delays, should be transferred to the Civil Aviation Safety Authority (CASA);
2. the power to issue penalties for breaches should remain exclusively with CASA to avoid any situation where airlines face a conflict between potential breaches and safety concerns;
3. privacy complaints should continue to be directed to the OAIC;
4. matters dealt with by the *Civil Aviation (Carriers' Liability) Act 1959*, the Montreal Convention 1999 and other international liability conventions should be excluded from consideration by the AIOS; and

5. allegations of breaches of the Australian Consumer Law, being a Commonwealth Law with the potential for imposition of penalties, should not be dealt with by the AIOS.

It is also important that whatever systems are put in place are cost effective and do not unjustly enrich those who provide services to passengers bringing claims against airlines. For example, Bott & Co. in the UK boast that they collect over GBP 30 million in compensation on behalf of passengers per year and that their turnover is GBP 16 million per annum – this represents more than 50% profit to the middleman which Australia needs to be careful to avoid in implementing these changes. This outcome of the middleman profiting in no way benefits passengers nor the aviation industry as a whole and it will significantly and unjustly impact carriers to regional and remote locations as well as Pacific Island carriers. As we have indicated there are already international conventions which have canvassed the best way to compensate passengers in these scenarios and these regimes should remain the ultimate decision makers in respect of the appropriate levels of compensation. Compensation values based on length of the delay are also not reasonable nor commensurate with the loss the passenger may suffer in most cases and this methodology of determining compensation must be avoided if carriers operating to regional and remote locations are to have a reasonable chance of survival. Reviewing the cost benefit analysis with the view to balancing the competing priorities is critical for any changes the Government proposes to implement in this space.

11. Should the Aviation Industry Ombuds Scheme be able to accept complaints relating to breaches of privacy by members of the scheme?

No, as we have indicated above, the OAIC has already been established to handle privacy complaints and there does not appear to be any justification for a separate scheme for consumers of aviation services.

12. How should the Aviation Industry Ombuds Scheme handle complaints about airlines and airports in relation to services purchased through a travel agent or other third party?

It needs to be recognised that airlines are not responsible for all distribution channels for the sale of airline tickets. It is therefore unfair to hold airlines accountable for the actions of travel agents or other third parties such as airports. If airlines are to be accountable solely to passengers, their liability should at least be limited to those tickets that they directly distribute to their passengers. This is how applicable contract laws in Australia currently operate to the sale of tickets to passengers.

In addition, complaints regarding delay or cancellation should be only be directed to the party which caused the delay or cancellation, whether that be the airline, the airport or the air traffic controllers. Depending on the reason for the delay eg: delays caused by the airport, airline or air traffic control, the authority responsible for the direction to delay or cancel the flight should be held accountable to the passengers, not the airline purely because they are the operator of the service and the party who sells the ticket to travel. This is particularly so where the airline has no authority to refuse the direction of the airport and/or air traffic controller and the airline is bound to comply with the directions for sound safety reasons.

13. What existing complaints schemes or processes have the potential to overlap with the Aviation Industry Ombuds Scheme?

We refer to and repeat our response to question 10 above.

14. Who should be eligible to make complaints to the Aviation Industry Ombuds Scheme?

For the reasons set out above, if the AIOS is to be introduced and apply to aviation operations within Australia and to and from Australia, only passengers travelling on Regular Public Transport (RPT) services should be able to rely on the Passenger Rights Charter and the AIOS. This means the following services should be excluded:

1. all operations to regional and remote airports within Australia should be exempt from both the Passenger Rights Charter and the operation of the AIOS;
2. all operations to and from Australia and the Pacific States should be exempt from both the Passenger Rights Charter and the operation of the AIOS;
3. all operations operated by aircraft carrying less than [12] passenger seats should be exempt from both the Passenger Rights Charter and the operation of the AIOS;
4. passengers who have not paid for their tickets should be exempt from both the Passenger Rights Charter and the operation of the AIOS (eg: FIFO operations).

15. If small business and not for profit (NFP) organisations are eligible to make complaints, in addition to consumers, what criteria should be applied to define eligible small businesses and NFPs?

Our view is that only passenger should be able to make complaints under the AIOS.

16. What complaint resolution process should the Aviation Industry Ombuds Scheme adopt?

We refer to and repeat our response to question 10 above.

18. What time limit should apply for making a complaint?

There should be short time limits of between 21-30 days from the date of the loss because once a certain period has passed the ability for a carrier to investigate that complaint significantly diminishes. This is because online information, CCTV images, etc are not retained for extended periods due to the sheer volume of information that would be required to store for either airlines and/or airports processing thousands of passengers a day across the country.

19. What should be the maximum monetary amount the ombudsperson is able to award?

Further to our response to question 10 above, any monetary amounts need to align with the international conventions already ratified and implemented by Australia via our Commonwealth laws.

There should be a complete exemption from paying compensation for routes that are essential to economic development to avoid any further reduction to connectivity to remote areas.

B. Aviation Customer Rights Charter

The White Paper also announced on page 55 of Chapter 3 that it will develop a second reform called the Aviation Customer Rights Charter, which will be developed by the AIOS. The Charter will set out what the ombudsperson considers to be minimum service levels by airlines and airports including:

- a. entitlements of passengers to refunds for flights that are cancelled or delayed, and appropriate time frames and methods for providing refunds;

- b. an indication of the length of flight delays that are considered ‘unreasonable’;
- c. reasons for disruptions, delays, and cancellations that are considered within the airlines’ control; and
- d. other obligations towards passengers in the event of cancelled or delayed flights, such as providing support to make alternative travel arrangements.

The White Paper provides little information on the rights that will be created by the Customer Rights Charter. The Government has foreshadowed a consultation process regarding the charter in 2024 and 2025. In the meantime, the following factors are relevant to the creation of any customer rights charter:

- a. **Safety:** safety is paramount in any industry and safety in the aviation industry is particularly important. In Australia, the safety of civil aviation is regulated by domestic law such as the *Civil Aviation Act 1988* (Cth) and the *Civil Aviation Safety Regulations 1998* (Cth) as well as by obligations under international treaties such as the Chicago Convention. It is critical that any proposed reform with respect to passenger rights gives sufficient and proper regard to the potential safety implications of such a reform.
- b. **International liability regime:** there is an international regime which regulates the rights of passengers engaged in international air transport, including by providing rights in respect of delay to passengers and cargo. It will be critical to ensure that any rights given to consumers in the Customer Rights Charter do not conflict with or modify this regime;
- c. **ACL:** in Australia, the Australian Consumer Law (ACL) provides consumers with rights where services have been paid for and not provided. While the White Paper states that the Charter will provide for rights ‘*consistent with requirements under the Australian Consumer Law*’ there is a real risk of inconsistencies and uncertainty where the Customer Rights Charter deals with the same issues as the ACL and where passengers are empowered to seek remedies from both the AIOS and the Courts.
- d. **Evolving rights:** the Consultation Paper states, ‘*the charter will be updated from time to time as the ombudsperson makes decisions on individual complaints and identifies common and emerging issues in the sector.*’ This suggests that the rights afforded to passengers may be unilaterally changed over time. An approach requiring consultation with the industry prior to any change to the charter would be more appropriate;
- e. **Regional Aviation:** aviation services to regional locations within Australia and the Pacific are critical for the connectivity of those living and working in these locations. The White Paper provides no guidance on whether or not the Passenger Rights Charter will apply to charter flights or low capacity regional air transport operations. The consideration of a Customer Rights Charter should involve an express and separate consideration of the requirement to ensure that regional aviation services continue to remain viable as well as the operating conditions on those routes which may make mitigating delays impossible.

There is currently no clarity in the White Paper as to how any proposed Aviation Customer Rights Charter would apply to flights to remote and regional locations such as the Pacific Island nations. There are very material differences between high frequency main line domestic and international operations and flights to remote and regional locations operating with low schedule frequency. It

is important that a “one size fits all” approach is not adopted because it could have unintended effects such as further reducing the viability of connections between Australia and its Pacific Island neighbours.

C. Show Cause for Delayed or Cancelled Flights

The White Paper also foreshadows on page 56 that airlines will now need to report the reasons for delays and cancellations to the Bureau of Infrastructure and Transport Economics (BITRE) under a “*show cause process*”. Aggregated data about the reasons for flight delays and cancellations will be published regularly, which the Government has stated will improve transparency.

While it does not appear that there will be any consequences imposed by the Government for the delayed or cancelled flights at this stage, the process is likely to increase the administrative burden on the airlines and the publication of this information is likely to lead to media interest. Requiring airlines to defend the reasons for flight delays or cancellations may have safety implications.

D. Disability Access

The Aviation White Paper foreshadows the following measures to enhance disability access in aviation:

- a. the creation of aviation-specific disability standards to clarify the obligations that aviation service providers have to people with disabilities and which will form part of a new Schedule to the *Disability Standards for Accessible Public Transport 2002* (Transport Standards), contained in the *Disability Discrimination Act 1992* (Cth).
- b. encouraging airports and airlines to publish Disability Access Facilitation Plans (DAFPs) which include information such as: procedures for transporting mobility aids and assistance animals; the extent of direct assistance available to passengers with disabilities; and new contact details to assist passengers with disabilities to provide feedback on their travelling experience.
- c. providing people with disabilities the option to provide information about various assistance requirements (such as wheelchairs powered by lithium-ion batteries or assistance animals) in advance to airlines online with a view to creating a passenger profile that can be accessed each time they travel and which will facilitate their travelling experience and reduce any risk of being denied boarding.
- d. reviewing airline policies that limit the number of passengers on a flight who require assistance.
- e. consulting about options to increase compensation for loss or damage to wheelchairs or other mobility devices during air travel.
- f. to require Leased Federal Airports (LFAs) to demonstrate how they facilitate disability access in airport master plans and major development plans; and
- g. reporting on the progress of airlines’ and airports’ towards compliance with the new disability standards, after the rules take effect.

Whilst there has not yet been a call for submissions on the disability standards, the Government needs to be mindful of competing legislation such as the recently enhanced privacy and data protection laws and how airlines (especially regional carriers) can reasonably and cost effectively

navigate any new proposed standards which might include the collection of additional passenger data via the creation of passenger profiles.

Recommendations

As noted above, we strongly suggest that the Government think deeply before imposing these changes onto all participants in the aviation industry via a one size fits all methodology. It will not work successfully to improve passenger experiences and/or increase connectivity to remote regions in Australia and the Pacific Islands in particular. Instead, it may very well cause the cessation of much needed services and further isolate these communities.

Accordingly, we recommend that the Government seriously consider the following alternate options:

1. all operations to regional and remote airports within Australia be exempt from both the Passenger Rights Charter and the operation of the AIOS;
2. all operations to and from Australia and the Pacific States be exempt from both the Passenger Rights Charter and the operation of the AIOS;
3. all flights operated by aircraft carrying less than 12 passenger seats should be exempt from both the Passenger Rights Charter and the operation of the AIOS;
4. passengers who have not paid for their tickets should be exempt from both the Passenger Rights Charter and the operation of the AIOS (eg: FIFO operations);
5. in respect of larger operators, our view is that any liability placed on the airline should be capped at the airfare paid by the passenger; and
6. operators with an annual load of [X] passengers or less in the preceding year should be subject to reduced compensation of 50%.

Conclusion

In the event that the Department does not accept this submission and intends to include Pacific Island carriers and Australian regional operators in the proposed scheme, ASPA requests the opportunity to make further submissions on the matters identified in the Call for Submissions, the proposed Passenger Rights Charter and changes to disability requirements.

Further, ASPA is willing to meet with Government to discuss and canvass together in more detail the issues raised above to ensure that the Government has a full understanding of the issues and consequences of some of the proposed changes on regional Australia and operations to and from (and within) the Pacific Island States. We would welcome any opportunity to discuss these submissions further.


Brett Gebers

ASPA Chairman


David Tohi

ASPA Secretary General