

Pay on Delay Bill:

The Pay on Delay Bill which has been proposed by Senators Bridget McKenzie and Dean Smith is much needed in Australia and requires serious consideration.

As COVID showed us, the lack of protection Australians have in this area is simply not good enough. It is well behind other countries such as the USA, EU/UK, and Canada to name a few. I have dealt with thousands of Australians who have suffered as a result of our brittle laws in this space.

Comparable laws from other jurisdictions need to be implemented in Australia to hold airlines accountable. This includes compensating Australians for the inconvenience of airlines delaying and cancelling flights. Without significant deterrents in place, nothing will change.

Unfortunately, the White Paper was extremely disappointing. It was ambiguous at best and flight compensation didn't even get a mention. It appears that the main aim is to introduce an ombudsperson without any significant changes to the ACL. It's as if no lessons were learned from COVID.

The two main changes that are desperately needed to protect Australians are:

1/ The automatic right to a refund for all airline cancellations including force majeure events. If Australians pay for a flight and it's cancelled, there are no situations where a refund being denied is acceptable.

2/ The right to compensation for delayed and cancelled flights when it is within the airline's control. Australians rely on airlines to get to destinations on time. Significant delays and last-minute cancellations are a great inconvenience and can prove to be very costly.

Please refer to the attached for my Green Paper submission

Aviation Green Paper submission by Adam Glezer, Consumer Champion

28 November 2023

Background

My name is Adam Glezer and I'm a Consumer Advocate. I have been fighting for consumer protections to be put in place in the aviation industry since 2020. I have spoken to dozens of federal MPs about the seriousness of the issues as well as other consumer bodies such as CHOICE and the Consumer Action Law Centre. I have facilitated countless stories in the media that have shown the huge effect delays and cancellations have had on consumers and the lack of empathy from the airlines.

The lack of protection in our laws and regulations has always been there; it's just been exposed by COVID. Even though it's encouraging that consumer protection has been referenced in the Green Paper, it's not something that can be glossed over. Significant regulations desperately have to be put in place regarding airline cancellations and delays, to give Australians a fighting chance of getting justice.

We are a long way behind other jurisdictions and the airlines have been taking advantage of the Government doing nothing about it. As a Consumer Advocate, I deal with multiple situations daily where consumers have been taken advantage of and haven't been able to do anything about it because of the lack of protections in place.

1. Flight cancellations – the right to a refund

The pandemic highlighted the inadequacies of the Australian Consumer Law. Section 267 of the Competition and Consumer Act 2020 (Schedule 2) excludes a consumer from taking action against a supplier of a service if the failure to comply with the consumer guarantee was due to "a cause independent of human control." Currently, the only fallback customers have are the terms and conditions (or Conditions of Carriage) that are determined by the airline. These are generally not written in favour of the consumer. This absence in our laws and the unbalanced terms and conditions need to be remedied.

The EU and UK have comprehensive regulations targeting various suppliers within the travel industry. These regulations provide that in the event of a cancellation, passengers have the choice between rerouting or reimbursement (refund) for flights.¹

In the U.S., regulations provide for customers to receive refunds for cancelled flights within 7 days for credit card payments and 20 days for cash or cheque payments. In response to COVID, The U.S. Department of Transportation released a statement on 3 April 2020, reiterating these obligations. They similarly provided the provision for vouchers so long as customers had the choice of a refund.²

As with the EU, UK and US, I propose that Australia introduces laws where consumers have an automatic right to a refund for all airline cancellations, which includes force majeure events.

¹ [EUR-Lex - 32004R0261 - EN - EUR-Lex \(europa.eu\)](https://eur-lex.europa.eu/lexuris/ui/#!/document/32004R0261) and https://www.caa.co.uk/uk-regulations/other/consumer-protection/#accordionPanel_28093719

² <https://www.bottonline.co.uk/flight-delay-compensation/claim-guides/how-much>

2. Flight delays– the right to a refund

According to EU rules, a flight which has been postponed by three hours or more is to be considered as cancelled. You have the same rights as in case of a flight cancellation.³

In the US, a consumer is entitled to a refund if the airline makes a significant schedule change and/or significantly delays a flight and the consumer chooses not to travel.⁴

I propose that Australia introduce laws, which gives consumers the automatic right to a refund for a significant delay (say, greater than 3 hours.)

3. Flight delays and cancellations - compensation

When flight delays and cancellations occur in Australia, compensation is not mandatory. Customers are lucky to get a \$15 food voucher. When flights are cancelled at the last minute, consumers can still be left significantly out of pocket for having to book an alternate flight and potentially organise additional accommodation. A refund from the airline simply isn't good enough.

The European Union

EU Regulation 261/UK Regulation 261 holds airlines accountable for cancelling flights within 14 days and for flights delayed greater than 3 hours. In the EU, customers can receive up to 600 Euros compensation depending on factors, such as the distance of their flight, the length of the delay in getting to their destination and when the flight was cancelled:⁵

Flight distance	Less than 3 hours	3 hours or more	More than 4 hours	Never arrived
All flights 1,500km or less	0	€250	€250	€250
Internal EU flights over 1,500 km	0	€400	€400	€400
Non-internal EU flights between 1,500km and 3,500km	0	€400	€400	€400
Non-internal EU flights over 3,500km	0	€300	€600	€600

It is important to note, that in the EU, compensation doesn't apply for cancellations and delays occurring outside of human control.⁶

³ [FAQs | Air passenger rights - Your Europe \(europa.eu\)](#)

⁴ [Refunds | US Department of Transportation](#)

⁵ <https://www.bottonline.co.uk/flight-delay-compensation/claim-guides/how-much>
<https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1476179175834&uri=CELEX:32004R0261>

⁶ [EUR-Lex - 32004R0261 - EN - EUR-Lex \(europa.eu\)](#)

If the flight is delayed such that the expected time of departure is at least a day after the time of departure previously announced, passengers are additionally entitled to the following:

- Hotel accommodation in cases where a stay of one or more nights becomes necessary or where a stay additional to that intended by the passenger becomes necessary.
- Transport between the airport and place of accommodation (hotel or other).

These types of assistance fall under “the right to care” under EU 261 and are available regardless of the reason your flight is delayed.⁷

When traveling domestically within the US, your rights during a flight delay are principally governed by the airline's contract of carriage and the Passengers' Bill of Rights. However, Biden's administration submitted draft legislation to Congress in June, seeking to mandate that airlines pay cash compensation for delays of three hours or more when carriers are responsible.⁸

I propose that Australia adopts a model similar to the EU for compensation relating to cancellations and delays. This has been a tried and tested model since its establishment in 2005.

4. Complaint Handling

The Airline Consumer Advocate (ACA) is funded by the airlines and is therefore not impartial in resolving consumer complaints. It does very little more than give Australian consumers a false sense of security that a body is actually on their side and will fight for them to get a fair result. They are very difficult to elicit a response from. If consumers are lucky enough to get one, they are normally told to go back to the airline for a resolution.

I propose that the Government fund an independent body that gives Australian consumers a fair chance. Having a genuinely impartial and proactive body that is empathetic towards consumers and fights for them when the airlines have not done the right thing would be invaluable.

I'm 100% supportive of an Airline Ombudsman as long as we get the relevant laws put in place for them to enforce. Without protections put in place, it's a complete waste of taxpayer dollars because there is nothing they can do.

Conclusion

If deterrents aren't put in place for the airlines, nothing will change. The lack of competition in the Australian aviation industry makes these protections even more important as consumers have very limited options, even if they've been wronged by an airline. Consumer Protection when it comes to Aviation has to be taken seriously. Nothing has happened in this space for way too long and action in this area that affects millions of Australians is well overdue.

⁷ [What Is EU 261 And How Does It Work? – Forbes Advisor](#)

⁸ [White House Wants Aviation Bill to Include New Consumer Protections \(skift.com\)](#)