

Submission to the Senate Rural and Regional Affairs and Transport (RRAT) committee inquiry into Airline Passenger Protections (Pay on Delay) Bill - June 2024



Dear Committee Secretary,

The Regional Aviation Association of Australia (RAAA) welcomes the opportunity to provide a submission in response to the Committee's Inquiry into the 'Airline Passenger Protections (Pay on Delay) Bill 2024'.

About RAAA

The RAAA is a not-for-profit organisation formed in 1980 to protect, represent and promote the combined interests of its regional aviation organisations across Australia.

Airline members include Regional Express, Alliance Airlines, Airnorth, Nexus Airlines, Skytrans, Hinterland, Sharp Airlines, Skippers, and Link Airways. Other members include airports, engineering and flight training companies, finance and insurance companies and government entities. RAAA's members operate successful and growing businesses providing employment and economic sustainability within regional and remote areas of Australia.

The RAAA has approximately 125 members and directly employ over 10,000 people, many in regional areas. On an annual basis, the RAAA's Air Operator Certificate (AOC) members jointly turnover more than \$1.5 billion, carry well more than 2 million passengers and move over 23 million kilograms of freight. Our regional airport members also provide and manage critical infrastructure across Australia.[1]

Introduction

The RAAA acknowledges that the issues around flight delays and cancellations can be highly emotive and frustrating for members of the travelling public who are directly affected. In acknowledging this it is also important to understand the key issues that contribute to the inconvenience caused by flight delays and flight cancellations. Put simply there are many factors that can contribute to flight delays and flight cancellations. While airlines have a major role to play in ensuring the quality and timeliness of the services they provide, most factors that contribute to flight delays and flight cancellations are not under the direct control or influence of airline operators.

[1] <https://raaa.com.au/>

It is also important to note that any consideration of a 'delay and pay' scheme has the potential to significantly impact regional and remote communities across Australia and the regional airline operators who provide vital services to them. There is real potential that any additional cost involved in the scheme may ultimately be passed onto the travelling public via the cost of ticket sales. Any new scheme should consider the type of airline operation and the locations they are operating into to protect the services provided to regional and remote communities across Australia. This may include excluding certain operators or locations from any proposed scheme.

Currently the travelling public also have several consumer protections available to them to ensure their rights are upheld and where appropriate financial recourse via refunds and travel credits are available.

In this submission we will outline our view of the current situation and in particular discuss:

- the contributing factors that can cause flight delays and cancellations,
- international aviation experience of similar consumer compensation schemes,
- the potential for undesirable consequences for regional aviation if such a scheme were to be introduced,
- the shared industry ambition to ensure flight cancellations and delays are minimised as best as practically possible, and
- examples of the positive and proactive actions being undertaken by aviation stakeholder participants to improve On-Time Performance (OTP) and customer service.

Contributing Factors To Flight Delays

There are numerous reasons for flight delays and flight cancellations in Australia. These can be stand-alone factors or, in some instances, a combination of factors that ultimately result in major flight delays or flight cancellations.

Weather

The safe carriage of a flight is very much dependent on the prevailing weather conditions at the departing aerodrome location, the flight route to be flown and at the destination aerodrome. Adverse weather outcomes are generally flight planned when possible, however the changeability of weather as a natural phenomenon cannot be fully predicted or accounted for. It is well recognised both internationally and in Australia that weather is one of the highest contributing factors to flight delays and flight cancellations.

Of the many adverse weather conditions wind is the most dynamic and potentially the most impactful on the safe operation of an aircraft. All aircraft are required to take off and land into the wind. Aerodrome runway alignments are generally designed and orientated for known historic wind conditions at a specific location. At all aerodrome locations the seasonal wind conditions, and the operational impact they potentially have, are now well known. For example, Sydney Kingsford Smith Airport predominantly operates its two parallel runways in a range of 'operational modes' to optimise the greatest number of arrivals and departures simultaneously. It is well known that at certain times of the year the dominant north-south wind orientation can shift to an east-west orientation which then necessitates the active (or in use) runway to be changed to single runway operations. The net impact is effectively a halving of the runway capacity. At peak operating times this means that the 'acceptance rate' for the aerodrome is halved. This is not something that any airline operator can change or influence and is very much out of their control.

Weather conditions also vary dramatically around the country from location to location and from season to season. For example, cooler southern state temperatures contribute to fog delays whilst the wet season in northern Australia impacts scheduling through torrential rain and cyclones. As is widely reported Australia has been experiencing more regular and more significant weather events in recent years.

Air Traffic Control (Airservices Australia)

Airservices Australia (Airservices) is the Government owned organisation that solely provides air traffic control services across 11 percent of the world's airspace including over mainland Australia.[2]

Airservices provides this service to airlines and other airspace users 24/7. Most airline activities occur in Class A and Class C airspace where the conduct of a flight is actively managed and coordinated by Airservices' air traffic controllers.

The aviation industry has emerged from the operational paralysis of COVID with operational capacity growing rapidly over the last couple of years as the industry has recovered. Today both international and domestic air travel has nearly reached or exceeded pre-COVID levels. This has presented challenges for Airservices as they have grappled with staff shortages and numerous service delivery unavailability. These have been the topic of intense discussion by the RRAT committee and those appearing before it.

Airservices have openly admitted that they need to improve their service delivery. In Airservices' own Australian Aviation Network Overview - January 2024, and at recent Senate Estimate hearings, Airservices stated that one in eight flight delays can be directly attributed to Airservices.[3][4] Additionally, airspace congestion, particularly at peak travel times, across all major Australian airports continues to present challenges for both Airservices and airlines alike. Airservices has therefore sought to actively recruit more air traffic controllers and have publicly stated that they now anticipate continual service delivery improvement over the months ahead.

Airservices has also implemented and continues to evolve an active Ground Delay Program (GDP) that seeks to better manage arrivals and departures at many of the major airports. In short, the GDP effectively means airlines are given an exact time window when they can depart or arrive. This is actively managed daily via the airport's slot management (booking) system. So, while an airline may schedule a flight for a particular arrival or departure time ultimately this can be affected by factors like network congestion or weather events described previously.[5]

Enroute air traffic volumes and constrained airport traffic capacity can also require an airline to slow down in flight to delay the arrival time and better sequence the airline traffic into the arrival aerodrome. Most of us have experienced the inflight announcement from a pilot stating 'due to congestion air traffic control have asked us to slow down'. Once again this is not something that an airline has any ability to change or influence.

RAAA member airlines must conform with both the GDP and airport slot systems. Additionally, they can be adversely impacted by the delays that may eventuate in the broader system. This can be further exacerbated by the low volume or number of flights that are scheduled into regional areas.

For example, some regional airlines only operate one or two services a day into or out of a regional aerodrome or remote community. Appropriately they will be as flexible and accommodating with their passengers' needs as they possible can, however many regional flights 'hub' through larger regional cities or major city airports and the regional airline can be impacted by the late arrival of passengers onboard other in-bound flights. When this occurs, it is outside the influence of our members airlines as they can be very much constrained by the operations of the other larger airlines and airport capacity constraints.

[2] <https://www.airservicesaustralia.com/>

[3] <https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;db=COMMITTEES;id=committees%2Festimate%2F27704%2F0003;query=id%3A%22committees%2Festimate%2F27704%2F0000%22>

[4] www.airservicesaustralia.com/wp-content/uploads/2024/02/Australian-Aviation-Network-Overview-January-2024.pdf

[5] <https://www.airservicesaustralia.com/about-us/our-services/air-traffic-flow-management/>

Airport Infrastructure

There are many factors that relate directly to an aerodrome, its infrastructure and the daily operations that can contribute to flight delays. Some of these include.

- Planned runway and taxi-way maintenance works
- Unplanned runway pavement failures requiring immediate repair
- Aerobridge mechanical failures or other gate issues
- Foreign Object Debris (FOD) on runways and/or taxiways
- Airport security screening delays
- Baggage handling delays or equipment breakdowns
- Ground handling services provider delays/issues
- Booking system/computer outages
- Fuel supply, refuelling delays and distribution infrastructure issues

Passenger Management Issues

- Passenger late check-ins and no shows
- Passengers fail to board
- Disruptive passengers
- Medical emergencies landside and airside
- Terminal issues with security/fire alarm evacuations

Other Airline Operational Issues

- Skills shortages and training challenges post-COVID
- Pilot, Licenced Aircraft Maintenance Engineers (LAME), cabin crew and ground handling staff shortages
- Aircraft serviceability and maintenance issues



International Experience of Similar Consumer Compensation Schemes

International experience of similar ‘delay and pay’ schemes are well documented. The United States, Canada and some European countries have implemented their own ‘delay and pay’ compensation schemes however it has been demonstrated that such schemes does not actually address or resolve the key factors that can affect flight delays or flight cancellations.

While airlines are the public facing entities of aviation, they only have the ability to influence some, but not all, of the contributing factors for flight delays or flight cancellations. This can be amplified for some regional airlines.

In some jurisdictions the implementation of similar schemes has had the detrimental effect of increasing the price of airline tickets to compensate for the real or potential need to pay fixed price or strict liability compensation to affected passengers. Alternatively, the cost impact to an airline operator may be absorbed in their operational expenses but this can lead to reduced service levels or fewer flights.

For example, the European Commission study on the current level of air passenger rights in the EU (2020) stated ‘a key issue for the airlines is the fact that the right to redress defined in Regulation 261/2004 is not guaranteed and as a result they are not able to recover costs for care and compensation that they might have incurred from third parties (e.g. from airports, ANSPs, ground handlers and other parties) where these may have contributed to the disruption. The Regulation’s costs then are either internalised by airlines, impacting their profitability, or are externalised as an increase in fares’.[6]

Additionally, a study report by the European Regions Airlines Association (ERA) entitled ‘An ERA study into Regulation EU261: passenger compensation for delayed or cancelled flights. Does it really protect the passenger?’ highlighted that ‘EU261 as amended by the Court of Justice of the European Union (CJEU) is an existential threat to regional carriers as a group, without whom connectivity and logistical support for the regions and local communities would be lost’.[7]

Proactive Steps Already Underway

Aviation White Paper

The Aviation Green Paper contemplates potential approaches to assist with the management of passengers’ consumer rights. The RAAA, like many in the aviation sector, is looking to the soon to be released Aviation White Paper for further clarity on Australian aviation policy for the next 25 years and what is proposed or may be implemented by the Government. One of the proposals includes the potential for an Aviation Ombudsman. The RAAA believes that any proposed system like a ‘delay and pay’ scheme should not be developed or implemented until after the White Paper is released and all details are known. Any discussion or proposal for a compensation scheme can then be better informed.

[6] <https://op.europa.eu/en/publication-detail/-/publication/f03df002-335c-11ea-ba6e-01aa75ed71a1/language-en>

[7] https://www.eraa.org/sites/default/files/era_eu261_study_brochure_final_version_26sep.pdf



On-Time Performance (OTP)

All Australian airlines and regional operators are now, more than ever, intensely focussed on their On-Time Performance (OTP). It is good business practice and integral to customer service and satisfaction outcomes that airline operators strive for the highest levels of OTP. Recent statistics from the Bureau of Infrastructure, Transport and Research Economics (BITRE) reflect the ongoing improvements in OTP by Australian airline operators as the post-Covid recovery has continued.

For example, for April 2024, on time performance over all routes operated by participating airlines (Hinterland, Jetstar, Qantas, QantasLink, Rex Airlines, Skytrans, Virgin Australia and Virgin Australia Regional Airlines) averaged 79.2 per cent for on time arrivals and 79.9 per cent for on time departures. The cancellation rate for the month was 2.3 per cent. The equivalent figures for April 2023 were 71.8 per cent for on time arrivals, 71.2 per cent for on time departures and 3.9 per cent for cancellations.[8]

The financial costs to an airline for any flight delays or flight cancellations can be considerable. Additional 'direct' costs can include having to reschedule flights, rebook passengers on alternate flights and/or accommodate passengers overnight. Indirectly the airline may also incur additional operational costs associated with having both aircraft and flight crew out of position within their own networks. These are all undesirable for all parties and the airlines are highly motivated to avoid such scenarios caused by delays.

Data Sharing

Recently there has been a specific focus on improving operational performance across the entire aviation industry. Airlines, airports, aviation industry peak bodies (like the RAAA), Airservices and the Civil Aviation Safety Authority (CASA) now meet regularly to share data, including specific operational performance data with the explicit aim of improving OTP and customer service levels while maintaining a laser-like focus on aviation safety. Through several fora and industry roundtables there is a heightened level of awareness and application in trying to ensure that the aviation system continues to work and that it evolves to meet the growth challenges. Our local system is also being informed by overseas experience and where appropriate is adopting best practice approaches from our aviation industry counterparts overseas. All of this engagement is delivering positive economic outcomes for Australian businesses, including trade and tourism.

[8] https://www.bitre.gov.au/statistics/aviation/otp_month

Conclusion

The RAAA acknowledges and understands the frustrations experienced by the traveling public when their travel plans are disrupted by flight delays and flight cancellations. While airlines do have a significant role in ensuring the safe and timely delivery of services to the traveling public there are many other contributing factors beyond an airline's control that have significant impacts on flight delays and flight cancellations.

Any consideration of a 'delay and pay' passenger compensation scheme needs to be well considered in the context of the problem that it is trying to address. This includes looking to other overseas jurisdictions and their experience in running such schemes and the potential for unintended consequences or unfavourable outcomes from such a scheme.

Furthermore, there is a real possibility of adverse impacts for communities in regional and remote locations across Australia. Any new scheme should consider the type of airline operation and the locations they are operating to, so as to protect the services provided to regional and remote communities. This may include considering excluding certain airline operators and/or locations from any proposed scheme.



Contact

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