

AAPA

ASSOCIATION OF ASIA PACIFIC AIRLINES

Association of Asia Pacific Airlines
(Reg. No. 587)
36th Floor, Menara Maxis
Kuala Lumpur City Centre
50088 Kuala Lumpur
Malaysia

Our Ref: IAD/L0306/APR24/ASC/BL

30 August 2024

Senator Glenn Sterle
Via Committee Secretary
Senate Standing Committee
Rural and Regional Affairs and Transport Legislation Committee
PO Box 6100
Parliament House
Canberra ACT 2600
Australia

Dear Senator Sterle,

PROPOSED AIRLINE PASSENGER PROTECTIONS (PAY ON DELAY) BILL 2024 IN AUSTRALIA

The Association of Asia Pacific Airlines (AAPA) is the trade association of major international airlines based in the Asia Pacific region. Its members include Air Astana, Air India, All Nippon Airways, Bangkok Airways, Cathay Pacific Airways, China Airlines, EVA Air, Garuda Indonesia, Japan Airlines, Malaysia Airlines, Philippine Airlines, Royal Brunei Airlines, Singapore Airlines, Thai Airways International and Vietnam Airlines. AAPA member airlines operate multiple passenger and cargo flights to various points in Australia, and many more via codeshare with partner airlines based in Australia.

AAPA welcomes the opportunity to provide comments to the abovementioned Bill. The areas of concern to us are set out below.

Scope and Rationale

As a general principle, AAPA believes that any industry-specific regime must deliver improved outcomes for consumers, and should not undermine current protections available to consumers. We are of the view that the existing Australian Consumer Law (ACL) remains relevant and fit-for-purpose, as it already provides a comprehensive framework for consumers including provisions guaranteeing rights and compensation.

Further, AAPA believes that any regulatory initiative should not take away or undermine incentives for airlines to innovate in relation to customer service. Today, consumers have the freedom to choose the services they need at different price points available to them. This has the effect of keeping the cost of travel affordable for the travelling public. An overly-prescriptive compensation-based regime will result in increasing the cost of travel for



passengers, given that additional resources would be required to ensure compliance, with no evidence that delays would be reduced systemically. Any additional costs that are absorbed airlines will impact profitability, and eventually, result in reductions in network connectivity with fewer choices for passengers.

Lessons from Other Jurisdictions

The first and second readings of the Bill referenced compensation schemes in other regions such as the U.S., Canada, and the European Union. There is, however, no evidence that these aviation-specific schemes have successfully reduced the number of flight delays or cancellations in their respective jurisdictions. Such schemes fail to take into consideration the global environment in which airlines operate, and a complex patchwork of national passenger rights regulations often leads to greater confusion for passengers. For example, the EU261 regulation has resulted in uneven implementation and interpretation across different EU Member States, generating an unprecedented volume of case law, resulting in the Commission issuing further guidelines after its introduction, whilst a more comprehensive revision is still being studied.

Where international aviation is concerned, the Montreal Convention 1999 (MC99), to which Australia is a signatory, sets out the obligations and liability limits of carriers. In this regard, we urge the Australian government to fully align its regulatory initiatives with the principles and guidelines enshrined in such international conventions. In addition, should the Government decide to proceed with legislation on passenger rights, we call on it to also adhere to the International Civil Aviation Organization's (ICAO) core principles on consumer protection, with due regard to the need to strike an appropriate balance between the protection of consumers and industry competitiveness.

Factors Affecting On-time Performance

Given the complex and closely interconnected aviation networks today, airlines have every incentive to minimise disruptions and delays, particularly where circumstances are within their control. A delay in a particular flight could have a downstream effect of further delays in an airline's network, resulting in increased operational costs and inconvenience to passengers. On-time performance is also a competitive advantage for airlines in an intensely competitive marketplace.

A significant percentage of delays in the system is due to external factors beyond an airline's control, such as weather conditions, air traffic control measures, infrastructure limitations, airport congestion or government restrictions. In addition, there may be safety reasons for delays, and no air carrier would operate in conditions where safety may be called into question. A compensation-based framework targeting delays unfairly attributes overall responsibility on



carriers, without recognising that the causes of the delays may lie with other parties in the aviation ecosystem. We submit that compensation-based regimes are blunt instruments that ignore the fundamental causes of delays and cancellations.

Passenger Care During Disruptions

The disruptions that occurred in the immediate aftermath of the COVID-19 pandemic, with the sudden reopening of borders notably in the Asia Pacific region, resulted from a combination of different factors including government actions, supply chain disruptions, and shortages in technical and operational personnel throughout the aviation ecosystem. These were temporary restart issues, and airlines used best efforts to manage such disruptions in the face of multiple challenges, while fully recognising that customer service levels fell short of expectations regionally and internationally. Since then, carriers have taken significant steps to improve service levels and operational reliability, as travel across the region gradually resumed. Recent passenger surveys conducted by the International Air Transport Association (IATA) indicate that well over 90% of passengers were satisfied with their last flight.

In Australia, the latest data published by the Bureau of Infrastructure and Transport Research Economics (BITRE) showed a steadily improving trend in terms of on-time performance rates, as well as reductions in flight cancellations over the past year, demonstrating that the aviation sector's ongoing efforts to improve service levels are effective.

Airlines have in place well-established processes to provide care to their passengers during incidents of delays, cancellations or denied boarding, which includes offering affected passengers a variety of service recovery options, including placing them on the next available flight, vouchers, travel credits and meals. Prescriptive measures, such as mandating minimum levels of treatments in these situations will serve only to remove airlines' ability to differentiate themselves through the services they offer and thus reducing choices for consumers, and could ultimately result in higher overall air fares for passengers.

Best Practices in Regulation

The commercial air transport industry is complex and closely interdependent ecosystem, involving a chain of stakeholders and processes working together to provide a seamless experience for passengers. In this regard, whilst AAPA still believes that the ACL remains fit-for-purpose in addressing consumer interests, we are of the view that any aviation-specific regulation on consumer protection should recognise an element of shared responsibility of all stakeholders during an event of a flight disruption, as well as a mechanism for airlines to seek redress in flight disruption situations beyond their control. It should also allow for flexibility for airlines to determine the most appropriate types of care or compensation to meet the needs of passengers, given that delays could be due to many different factors.



Improved Communication Efforts

In this regard, we believe that there is merit in pursuing greater efforts towards consumer education, so that they are fully aware of the terms and conditions of different types of fares when making a purchase. Airline terms and conditions of carriage exist to provide legal certainty for both consumers and airlines, similar with other consumer purchases.

IATA, in its studies, have consistently found that one of the key priorities for passengers in the event of disruption is to have the ease of access to better information during disruptions and before travel starts. In this regard, airlines have been consistent in upgrading their systems to provide real-time information to their passengers through investments in newer digital platforms and technologies. At the same time, we emphasise that better information flow would require a collaborative action taken amongst all stakeholders involved to ensure that the information communicated to passengers is timely, reliable, and consistent. Airlines depend on a variety of information sources including airports, air traffic controllers, and government agencies, thus there is a need for shared accountability between all stakeholders, to play their part in ensuring passengers are well-informed during an event of a disruption.

General Comments

As a general comment, before embarking on any regulatory initiative, we would recommend that the Government performs a comprehensive cost-benefit analysis, taking into account the complex and interdependent nature of the global aviation ecosystem, to determine if the cost of compliance with the rule might outweigh the benefits that it is seeking to achieve.

We further urge the Australian government to pursue an approach that balances the interests of passengers while allowing airlines the commercial freedom to offer a variety of care and services that best meet their customers' needs, keeping the cost of air travel affordable for all.

AAPA appreciates the opportunity to contribute our views on the above. We look forward to more dialogue with you to further our common objective of providing safe, efficient air transportation for the travelling public.

Thank you.

Yours sincerely,

Beatrice Lim

Director – Industry and Regulatory Affairs