



Senator Glenn Sterle
Via Committee Secretary
Rural and Regional Affairs and Transport Legislation Committee
PO Box 6100, Parliament House
Canberra ACT 2600
By email: rrat.sen@aph.gov.au

7 June 2024

RE: Airline Passenger Protections (Pay on Delay) Bill 2024

Dear Senator Sterle,

Airlines for Australia and New Zealand (A4ANZ) welcomes the opportunity to make a submission in response to the Committee's Inquiry into the *Airline Passenger Protections (Pay on Delay) Bill 2024*.

A4ANZ is an industry group representing airlines based in Australia and New Zealand, including international, domestic, regional, full service, and low-cost carriers. Established in 2017, A4ANZ's members include Qantas, Virgin Australia, Regional Express (Rex), Jetstar and Air New Zealand.

The broader topic of consumer protections in aviation was covered extensively in the recent Aviation Green Paper¹, through the roundtable consultations and the many written submission processes which enabled both organisations and individuals to share their insights and perspectives. A4ANZ encourages the Committee to consider these submissions together with the work that has been undertaken by the Department of Infrastructure, Transport, Regional Development, Communication and the Arts in developing the Aviation White Paper.

In this submission, we have not responded directly to each of the individual provisions within the Bill, but rather to what we understand to be the Bill's intent; that passengers receive fair and proper treatment, and reach their intended destination. These are goals wholeheartedly shared by A4ANZ and its members, which we acknowledged in our submission to the Aviation Green Paper – which can be read in full [here](#).

However, as we also outlined in that submission, these goals cannot be achieved by airlines alone. There are other factors, and participants in the aviation ecosystem whose performance can impact whether a journey goes to plan – for example, recent flight disruptions in Perth were caused by problems with the airport's fuel lines, an issue over which airlines had no control – all of this must be taken into consideration when designing effective policy.

Before promoting airline compensation schemes as a silver bullet for Australian consumers – as a number of recent statements by Senators appear to be suggesting² – A4ANZ asks the Committee to note that, under the frequently-referenced EU261 compensation regime, customer complaints have in fact *increased* since its introduction, with the scheme placing upward pressure on airfares.³ In Canada, another jurisdiction often held up as an example for Australia to follow, consumer protection regulations introduced in 2019 have resulted in a large – and growing – backlog of unresolved consumer compensation complaints (71,000 as at April 2024).⁴

None of this is to say that improvements should not be made to the way in which information can be accessed by Australian consumers regarding their rights in relation to air travel, or how easily the complaints process can be navigated in the event of a disruption. Quite the contrary, and A4ANZ and our members have all acknowledged this – both in our submissions to the Aviation Green Paper and since, with support for the concept of an aviation ombudsman.

Since pandemic-related border closures were lifted, travel disruptions have been a challenge all over the world, not just Australia. No one in the airline sector – whether in Australia or globally – has denied that since travel restarted, the experience for travellers has in many cases fallen well short of what passengers, and industry itself expect. As we note in our submission to the Aviation Green Paper, it has not always been straightforward for consumers to know what to expect from airlines and others when things don't go to plan. Airlines have all acknowledged this and have taken significant steps to improve the customer experience.

Such was the significance of the impact of COVID-19 on travel, international experts predicted that it would take at least until 2025 for aviation to fully recover to its pre-pandemic settings.⁵ Thankfully, in Australia, with domestic passenger levels now exceeding 2019 figures, domestic and international airfares declining, and on-time performance improving, we are well on track – and in some cases, ahead – of that.⁶

Despite this, there continues to be misinformation spread – and indeed quoted in the Parliament – about the apparent state of delays and cancellations, their causes and potential solutions, including who bears responsibility – which we address below by outlining the evidence.

BITRE data from April 2024 documented a cancellation rate of 2.3%, a big improvement on the December 2023 figure of 5.0%. Similarly, on-time performance (arrivals) was at 79.2% in April 2024, significantly better than the 63.6% recorded in December 2023.⁷ When compared to data from 2019, in which average cancellation rates were 2.1% and on-time arrivals at 78.4%,⁸ it would seem that efforts by the aviation sector to not only return to pre-pandemic performance, but improve on it, are well advanced. This includes aspects such as vastly improved rates of mishandled baggage, now below pre-COVID levels. Moreover, the most recent ACCC Airline Monitoring Report noted that airfares are stabilising and have declined since last year, despite jet fuel prices remaining above pre-pandemic levels.⁹

This demonstrates – as we stated in our submission to the Aviation Green Paper – the importance of policy makers not placing undue weight on temporary restart issues that occurred as the industry recovered from COVID, when making recommendations about significant policy reforms.

In addition to relying on out-of-date statistics, recent commentary suggests that there is a lack of understanding – including among some politicians – about the factors that can disrupt travel, the laws and standards already in place in Australia to protect travellers, the impacts of compulsory compensation schemes in other jurisdictions, and the current performance of airlines.



This Committee plays an important role in addressing these misconceptions and providing evidence-informed advice to the Parliament. As such, we ask the Committee to consider the facts we have outlined below (with references cited):

Compensation schemes don't work to reduce delays

- The idea that introducing a “pay on delay” scheme in Australia will stop flights being delayed or cancelled is based on flawed logic, and not supported by evidence from other jurisdictions.¹⁰
- The existence of such schemes in other regions has not resulted in significant or sustained improvements to on-time performance,¹¹ nor were they able to prevent all the disruptions we saw throughout 2022 and 2023 as the sector recovered from the significant impacts of the pandemic.¹²
- This is because regulation that requires airlines to pay compensation does not – and was never intended to – address the fundamental causes of delays, the majority of which are outside airlines’ control.^{13,14}

Most factors causing delays are outside airlines’ control

- The biggest contributor to flight disruptions is weather, with international research and government agencies finding it can be responsible for up to 75% of all delays.^{15, 16} Over the most recent summer season in Australia, a number of extreme weather events (storms, flooding and cyclones) contributed to the higher-than-average rates of delays and cancellations.¹⁷
- Performance and staffing issues at Airservices Australia, and their impact on the on-time performance of airlines have also been well-documented.¹⁸ As this Committee heard directly in February, one in every six delays in December 2023 was directly attributable to Airservices, compared to one in twelve, prior to the pandemic.¹⁹

Airlines are already commercially and financially incentivised to minimise disruptions

- Disruptions at a single airport cause flow-on effects throughout the network, adding cost, complexity and inconvenience. Nobody wants this – certainly not the airlines, as they compete to attract and retain customers.
- These factors already act a powerful motivator for airlines to address the factors *within their control* that contribute to delays and cancellations, and as such they continue to work diligently to overcome these issues and improve operational reliability.

Compensation schemes come with risks and unintended consequences

Not only do the compensation schemes not work to reduce delays, but they can have a number of unintended consequences, including:

Increased passenger complaints

- The European Commission (EC)’s review of EU261 found that while the scheme has improved passengers’ awareness of their rights, it is difficult to navigate due the regulations’ complexity – leading to increased frustration and complaints.²⁰

- In Canada, despite the network operating with cancellation rates of just 1% and over 90% of flights departing within an hour of scheduled departure²¹, the establishment of a compensation scheme has generated soaring rates of complaints – some of which remain unresolved after more than 2 years.²²

Legal and regulatory complexity, equalling increased cost

A scheme which only penalises one player in the aviation ecosystem, when multiple factors are at play (see above), has created legal challenges and increased costs – with lawyers the main winners.

- In Europe, EU261 has been subject to more than 70 interpretations by the European Court of Justice.²³
- In the US, there have been issues with defining what constitutes a significant delay and what factors are controllable by airlines.²⁴
- The Canadian Government has spent over 4 years attempting to design a framework that does not just place the onus on airlines, recognising the impact of other players in the ecosystem.^{25, 26}
- Despite their efforts, the Canadian Transportation Agency currently has a backlog of more than 71,000 claims, requiring an additional investment of more than CAD \$76 million to address.²⁷
- Only last year, the UK Government identified “significant complexities” with compensation schemes, determining that further work is needed to consider their merits and limitations.²⁸

Higher airfares and reduced choice

There is a – highly likely – risk that the costs of such a scheme will place upward pressure on airfares and impact scheduling; reducing access and choice for Australians.

- The EC review of EU261 recognised that the scheme generally leads to the cost being passed through to consumers in higher ticket prices, but that where this is not possible – generally due to competitive reasons – regulation costs are internalised by airlines, impacting profitability, and potentially leading to flow-on effects such as decreased connectivity or a reduction in routes operated.²⁹
- The costs for airlines for the provision of passenger rights due to delays and cancellations under the EU scheme are projected to be EUR 8.1 billion in 2025, increasing to 9.2 billion by 2030.³⁰
- A separate European study recognised that the negative impact was greater on smaller, regional routes, reducing competition and connectivity. This is of particular concern in the Australian context.³¹

Undermining of safety culture

Safety must remain airlines’ main priority. There is a genuine risk this culture could be undermined by factors which may push behaviour that seeks to minimise or avoid financial penalties.

- International pilot and engineers’ organisations have raised serious concerns that these schemes mean their members are placed under pressure to release aircraft to service in circumstances which may be marginal, in order to avoid breaching a delay threshold.³²



-
- Analysis from Macgill University’s Institute of Air & Space Law goes further to say that a consumer compensation mandate may be “*wholly inconsistent with the parallel flight safety objectives mandated by applicable aviation law and regulations.*”³³

Legal experts have cautioned that the introduction of a passenger compensation framework “*would constitute a highly significant change to the regulation of public air transport in Australia that would likely increase costs, require a major overhaul of airline terms and policies and mandate a renegotiation of arrangements with third parties who impact on-time performance.*”³⁴

Evidence must guide solutions

- Airlines continue to make significant improvements on their own operational reliability, and how they communicate with passengers and resolve issues when things don’t go to plan. Airlines already provide considerable support for customers who experience long delays that are within their control, including meal vouchers and hotel accommodation.
- There is no case for acting rashly on this issue and seeking to introduce a compensation scheme in Australia, particularly if the objective is to reduce delays *and* keep downward pressure on airfares – as there is no evidence these schemes can deliver on either goal.
- There is, however, a strong case for the Australian Government to fully understand the systemic issues and contributors to reduced efficiency and performance across the whole aviation ecosystem, and to address them where possible – a point we made in our submission to the Green Paper.
- Any aviation industry ombudsman needs to be just that – an *aviation*, not just *airline* ombudsman – with careful consideration of its design to ensure that it:
 - covers the entire ecosystem including airports, travel agents and other service providers, enabling genuine shared accountability; and
 - utilises processes that result in timely resolution of consumer complaints.
- Policy and regulatory responses to consumer protections issues should be:
 - proportionate to the scale of the problem;
 - based on evidence of what actually works;
 - focused on outcomes (reduced disruption, better complaints handling, affordable fares); and
 - subject to an impact assessment to ensure they deliver a net benefit, and to reduce the risk of unintended consequences.

We expect the Aviation White Paper to deal with these issues, noting recent media reporting that the Government may adopt the ACCC’s suggestion of an aviation ombudsman. A4ANZ encourages the Committee to wait for the Aviation White Paper’s release before making further recommendations in this area.

We also encourage the Committee to work with airlines and other aviation sector stakeholders to fully understand the factors impacting on-time performance, and to engage with the evidence arising from jurisdictions with compensation schemes in place, to avoid making recommendations for Australia that would have negative consequences for passengers, tourism and the economy.

Yours faithfully,

Dr Alison Roberts
Chief Executive Officer
Airlines for Australia & New Zealand
Level 26, 360 Collins Street
Melbourne Vic 3000

www.a4anz.com

¹ Australian Government. 2023. Aviation Green Paper – Towards 2050. At:

<https://www.infrastructure.gov.au/department/media/publications/aviation-green-paper-towards-2050>

² Senate Hansard 15 May 2024

https://www.aph.gov.au/Parliamentary_Business/Hansard/Hansard_Display?bid=chamber/hansards/27621/&sid=0011

³ European Commission, Directorate-General for Mobility and Transport, Kouris, S. 2020. *Study on the current level of protection of air passenger rights in the EU – Final report – Study contract*. Publications Office. At:

<https://data.europa.eu/doi/10.2832/529370>

⁴ <https://www.cbc.ca/news/politics/air-passenger-compensation-complaints-1.7183619>

⁵ World Economic Forum. Dec 2022 *When will air travel return to pre-pandemic levels?*

<https://www.weforum.org/agenda/2022/12/when-will-air-travel-return-to-pre-pandemic-levels/>

⁶ <https://www.accc.gov.au/media-release/return-to-pre-pandemic-levels-of-airline-travel-and-capacity>

⁷ <https://www.bitre.gov.au/statistics/aviation/otphome>

⁸ <https://www.bitre.gov.au/statistics/aviation/otphome>

⁹ <https://www.accc.gov.au/system/files/domestic-airline-competition-in-australia-may-2024-report.pdf>

¹⁰ European Commission, Directorate-General for Mobility and Transport, Kouris, S. 2020. *Study on the current level of protection of air passenger rights in the EU – Final report – Study contract*. Publications Office. At:

<https://data.europa.eu/doi/10.2832/529370>

¹¹ European Commission, Directorate-General for Mobility and Transport, Kouris, S. 2020. *Study on the current level of protection of air passenger rights in the EU – Final report – Study contract*. Publications Office. At:

<https://data.europa.eu/doi/10.2832/529370>

¹² European Organisation for the Safety of Air Navigation (EUROCONTROL), Performance Review Commission. 2023. *An*

Assessment of Air Traffic Management in Europe. At: <https://www.eurocontrol.int/news/eurocontrols-performance-review-commission-publishes-its-report-european-air-traffic>

¹³ European Organisation for the Safety of Air Navigation (EUROCONTROL). At: <https://www.eurocontrol.int/news/delays-three-questions-and-many-answers>

¹⁴ United States Department of Transportation, Bureau of Transportation Statistics. *Airline On-Time Statistics and Delay Causes*

At: https://www.transtats.bts.gov/ot_delay/ot_delaycause1.asp

¹⁵ Federal Aviation Administration (FAA). Aug 2023. FAQ: Weather Delay <https://www.faa.gov/nextgen/programs/weather/faq>

¹⁶ Abdelghany, K. et al. 2004. *A model for projecting flight delays during irregular operation conditions*. Journal of Air Transport Management, Vol 10 (6). <https://doi.org/10.1016/j.jairtraman.2004.06.008>

¹⁷ Airservices Australia. Jan 2024. *Australian Aviation Network Overview* At: <https://www.airservicesaustralia.com/wp-content/uploads/2024/02/Australian-Aviation-Network-Overview-January-2024.pdf>

¹⁸ ABC 7:30 29 Jan 2024. *Shortage of air traffic controllers leading to flight delays with no end in sight*

<https://www.abc.net.au/news/2024-01-29/airservices-australia-air-traffic-controllers-flight-delays/103394592>

¹⁹ Rural and Regional Affairs and Transport Legislation Committee Senate, Estimates Hansard. 12 Feb 2024. *Evidence from Airservices Australia CEO, Jason Harfield*. At:

<https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;db=COMMITTEES;id=committees%2Festimate%2F27704%2F000;query=id%3A%22committees%2Festimate%2F27704%2F000%22>

²⁰ European Commission, Directorate-General for Mobility and Transport, Kouris, S. 2020. *Study on the current level of protection of air passenger rights in the EU – Final report – Study contract*. Publications Office. At: <https://data.europa.eu/doi/10.2832/529370>

²¹ https://tc.canada.ca/sites/default/files/2024-04/air_transportation_performance_graphic_apr25_bar_en.pdf

²² <https://www.cbc.ca/news/politics/air-passenger-compensation-complaints-1.7183619>

²³ IATA. 2023. Aviation Consumer Protection Regulation Should Address Shared Responsibilities. Media Release: 05/06/2023 At: <https://www.iata.org/en/pressroom/2023-releases/2023-06-05-06/>

²⁴ Airlines for America (A4A). 2023. *A4A Statement on the Biden Administration’s Proposal for Cash Compensation for Delayed or Cancelled Flights*. At: <https://www.airlines.org/a4a-statement-on-the-biden-administrations-proposal-for-cash-compensation-for-delayed-or-cancelled-flights/>

²⁵ Standing Committee on Transport, Infrastructure and Communities (Canada). Committee Report – Strengthening Air Passenger Rights in Canada. At: <https://www.ourcommons.ca/DocumentViewer/en/44-1/TRAN/report-10>

²⁶ Canadian Government. 2023. Government Responses to Committee Recommendations. At: https://www.ourcommons.ca/content/Committee/441/TRAN/GovResponse/RP12567147/441_TRAN_Rpt10_GR/DepartmentOfTransport-Report10-Answer-e.pdf

²⁷ <https://www.cbc.ca/news/politics/air-passenger-compensation-complaints-1.7183619>

²⁸ UK Department for Transport. 2023. Response to the aviation consumer policy reform consultation. At:

<https://www.gov.uk/government/consultations/reforming-aviation-consumer-policy-protecting-air-passenger-rights/outcome/response-to-the-aviation-consumer-policy-reform-consultation#executive-summary>

²⁹ European Commission, Directorate-General for Mobility and Transport, Kouris, S. 2020. *Study on the current level of protection of air passenger rights in the EU – Final report – Study contract*. Publications Office. At: <https://data.europa.eu/doi/10.2832/529370>

³⁰ European Commission, Directorate-General for Mobility and Transport. 2023. Commission staff working document: Impact assessment report: Accompanying the documents *Proposal for a Regulation of the European Parliament and of the Council amending Regulations (EC) No 261/2004, (EC) No 1107/2006, (EU) No 1177/2010, (EU) No 181/2011 and (EU) 2021/782 as regards enforcement of passenger rights in the Union & Proposal for a Regulation of the European Parliament and of the Council on passenger rights in the context of multimodal journeys* At: <https://op.europa.eu/s/zgG5>

³¹ European Regions Airline Association. 2019. *An ERA study into Regulation EU261: passenger compensation for delayed or cancelled flights: Does it really protect the passenger?* At:

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

³² European Regions Airline Association. 2019. *An ERA study into Regulation EU261: passenger compensation for delayed or cancelled flights: Does it really protect the passenger?* At:

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

³³ Petsikas, G. McGill University Institute of Air & Space Law. 2022. *Reconciling Airline Passenger Rights and Flight Safety: Will Canada Pick Up the Ball Dropped by the EU?* At:

<https://www.mcgill.ca/iasl/Reconciling%20Airline%20Passenger%20Rights%20and%20Flight%20Safety>

³⁴ HWL Ebsworth Lawyers. 2023. *Aviation Green Paper Series: Competition and Consumer Protection*. At:

https://hwlebsworth.com.au/aviation-green-paper-series-competition-and-consumer-protection/?utm_source=rss&utm_medium=rss&utm_campaign=aviation-green-paper-series-competition-and-consumer-protection