

# **Submission: Aviation Customer Rights Charter – Consultation Paper**

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# About the Justice and Equity Centre

The Justice and Equity Centre is a leading, independent law and policy centre. Established in 1982 as the Public Interest Advocacy Centre (PIAC), we work with people and communities who are experiencing marginalisation or disadvantage.

The Centre tackles injustice and inequality through:

- legal advice and representation, specialising in test cases and strategic casework;
- research, analysis and policy development; and
- advocacy for systems change to deliver social justice.

We actively collaborate and partner in our work and focus on finding practical solutions. We work across five focus areas:

**Disability rights:** challenging discrimination and making the NDIS fairer to ensure people with disability can participate equally in economic, social, cultural and political life.

**Justice for First Nations people:** challenging the systems that are causing ongoing harm to First Nations people, including through reforming the child protection system, tackling discriminatory policing and supporting truth-telling.

**Homelessness:** reducing homelessness and defending the rights of people experiencing homelessness through the Homeless Persons' Legal Service and StreetCare's lived experience advocacy.

**Civil rights:** defending the rights of people in prisons and detention, including asylum seekers, modernising legal protection against discrimination, raising the age of criminal responsibility to 14, advancing LGBTIQ+ equality and advocating for open and accountable government.

**Energy and water justice:** working for affordable and sustainable energy and water and promoting a just transition to a zero-carbon energy system.

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# Recommendations

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## **Recommendation 1 – The Charter be redeveloped and legally enforceable**

*The Charter should be redeveloped to clearly state the obligations and responsibilities of airlines and airports, and to ensure it is legally enforceable.*

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## **Recommendation 2 – The Charter be independently regulated**

*An appropriate regulator should be appointed to monitor compliance of the Charter and take enforcement action. The regulator should be empowered to undertake compliance assessments; investigate issues; analyse data and evidence; engage with stakeholders; agree corrective measures with airlines and airports to implement within an agreed timeframe; impose sanctions; and publish reports and data about compliance and enforcement outcomes.*

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## **Recommendation 3 – Disability-specific consumer rights be included in the Charter**

*The Charter should specifically address the consumer law rights of people with disability when flying by air.*

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## **Recommendation 4 – The Charter cover the entire customer experience**

*The ‘aviation journey’ should cover the entire customer experience from when a customer commences booking a flight until they leave the airport at their destination, as well as any ensuing complaint process, and apply to prospective, current and past customers.*

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## **Recommendation 5 – Proposed Right 1 prescribe requirements of airlines and airports**

*Proposed Right 1 should be refined to clearly prescribe requirements of airlines and airports that must be met to fulfil this right, including for people with disability, and informed by co-design of the aviation-specific disability standards.*

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## **Recommendation 6 – Charter rights be consistently applied**

*To ensure the Charter rights are consistently applied, the Charter should make clear:*

- *All airline or airport statements or charters must be reviewed and endorsed by the appropriate regulator to ensure they are consistent with, and/or further advance, the consumer rights enshrined in the Charter; and*
- *Contractors engaged by an airline or airport must comply with the Charter as if they would apply to the airline or airport, and airlines and airports are legally responsible for the actions or omissions of their contractors.*

### ***Recommendation 7 – Security screening be harmonised across Australian airports***

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*Alongside development of the Charter, the Government should reform and harmonise security screening across Australian airports to ensure consistency in relation to screening people with disability, and to comply with the guiding principles of Australia's Disability Strategy 2021-2031.*

### ***Recommendation 8 – Mandatory disability awareness and manual-handling training***

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*The Charter should mandate the requirement for all customer service staff (including contractors) to undergo disability awareness and inclusion training, including requirements for delivery and frequency of the training, subject to consultation with disability representative organisations. Staff and contractors who provide manual assistance to customers with disability or handle disability aids should undergo annual in-person and hands-on training, and demonstrate their knowledge through competency assessments or certification exams.*

### ***Recommendation 9 – The right to access information in accessible formats***

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*Proposed Right 2 should specify that airlines and airports have the onus of ensuring their communication channels are accessible, including by offering a range of alternative communication options ie formats, languages, materials and methods appropriate to various disability types and people. It should also specify further types of information subject to the right, including schedule changes to flights (not just disruptions, delays and cancellations), security screening, boarding information, connections, gate assignments, baggage and in-flight information and entertainment.*

### ***Recommendation 10 – The right to assistance at airports***

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*Proposed Right 2 should specify that, when a person with disability requests, assistance must be provided at airports from 'kerb to kerb'. Airlines and airports must assign responsibilities to ensure this right is fulfilled.*

### ***Recommendation 11 – Remedies be available in broader circumstances***

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*Aside from disruptions or delays for more than 3 hours, Proposed Right 3 must acknowledge that a customer will be entitled to remedies in a broader number of circumstances. Whether the issue is within the airline's control or not, the impact of the service disruption, delay or failure on the particular customer needs to be considered.*

### ***Recommendation 12 – Reasons within an airline's control be construed in favour of customers***

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*If remedies for disruptions or delays will only be available 'for reasons within the airline's control', Proposed Right 3 should consider introducing a rebuttable presumption that the reason is within the airline's control, unless the airline proves otherwise.*

**Recommendation 13 – Customers be informed of the reason(s) for the disruption, delay or cancellation**

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*Proposed Right 3 should require airlines to inform customers of the reason(s) for the disruption, delay or cancellation.*

**Recommendation 14 – Remedies include compensation for disability supports**

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*Proposed Right 3 should specify that where a customer is entitled to a remedy for a disruption, delay or cancellation, the customer will be compensated for any ensuing impacts to their disability support needs.*

**Recommendation 15 – Original airline compensate additional costs of the new flight**

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*Proposed Right 3 specify: if customers have had to book a new flight with another airline due to their original airline not having a reasonable replacement flight, then the original airline will refund the cost of the flight, and compensate the customer for any additional costs incurred.*

**Recommendation 16 – Right to remedies where disability aids are damaged, lost or misplaced**

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*Proposed Right 4 must specify that if a disability aid is damaged, lost or misplaced during transportation:*

- *there is a rebuttable presumption the airline mishandled the passenger's disability aid, unless the airline proves otherwise;*
- *the customer is entitled to an equivalent replacement disability aid while the original disability aid is repaired or replaced;*
- *the customer is entitled to choose whether the repair or replacement is sourced by a supplier chosen by the customer, or whether the airline or airport source the supplier; and*
- *the customer will be compensated for the cost of repair or replacement as a matter of urgency, including compensation for the cost of an equivalent replacement disability aid while the original disability aid is repaired or replaced.*

**Recommendation 17 – Terminology in Proposed Right 4 be clear and uniform**

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*Proposed Right 4 should specify the meaning to be given to words such as 'damage', 'lost', 'delay', 'misplaced', 'timely manner', 'reimbursed' and 'compensation'. Uniform meanings would assist customers to receive consistent responses and resolutions across the aviation industry.*

**Recommendation 18 – Right to speak in a private area during screening process**

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*Proposed Right 5 should specify a passenger's right to speak with a screening officer in a private area to discuss their medical or personal circumstances prior to screening and following any*

alarm during the screening process. Airports should be required to inform customers about these rights prior to passengers being screened.

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**Recommendation 19 – Right to access personal information**

*Proposed Right 5 should specify a customer’s right to access their personal information from airlines and airports, except where it would be contrary to law. Airlines and airports should provide access to personal information free of charge.*

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**Recommendation 20 – Each airline and airport designate a Complaints Resolution Official**

*Each airline and airport operating in Australia should be required to appoint a CRO and the Charter should enshrine a right for disability-related complaints to be able to be made to a CRO, to ensure prompt and proper resolution of such complaints.*

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**Recommendation 21 – Airlines and airports report internal complaints data**

*Proposed Right 6 should require airlines and airports to improve their complaint handling systems by evaluating and reporting complaints data annually to the Ombuds Scheme, including about the volume of complaints, time taken to resolve complaints, and outcomes achieved.*

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**Recommendation 22 – Right to escalate urgent complaints and access ‘fast track’ pathways**

*Proposed Right 6 should grant consumers the right to be able to escalate urgent complaints and access ‘fast track’ pathways so complaints can be appropriately prioritised, whether complaining directly to airlines and airports, or to the Ombuds Scheme. Stricter timeframes for resolution should apply to complaints about incidents that impact a consumer’s safety, result in personal injury or property damage.*



# 1. Introduction

The Justice and Equity Centre ('JEC'), formerly the Public Interest Advocacy Centre, welcomes the opportunity to respond to the Department of Infrastructure, Transport, Regional Development, Communications and the Arts ('Department') Consultation Paper on the Aviation Customer Rights Charter ('Charter').

The JEC is a leading social justice law and policy centre. Our work focuses on tackling barriers to justice and fairness experienced by marginalised communities. We have a long history of involvement in public policy development and advocacy promoting the rights and equal participation of people with disability.

In particular, we have extensive experience in disability discrimination litigation and public policy development related to public transport. Equal access to air travel is a current priority of our work. We have represented clients in disability discrimination matters against airlines and airports in the Australian Human Rights Commission ('AHRC') and in the Federal Court of Australia. We also work on related law reform in consultation with disability advocates and Disability Representative Organisations. Relevantly, we are a member of the Aviation Accessibility Steering Committee which is leading the work on co-designing options for the new aviation-specific disability standards.

Our submission has been endorsed by the Physical Disability Council of NSW ('PDCN'), the peak body representing people with physical disabilities across NSW, and the Australian Federation of Disability Organisations ('AFDO'), a cross-disability national peak body and a Disability Representative Organisation.

We endorse the submissions of Disability Voices Tasmania ('DVT'), a cross-disability organisation building the collective voice of Tasmanians with disability, and CHOICE, the leading consumer advocacy group in Australia.

Our submission is structured in two parts:

First, we make overarching comments about the form, substance and scope of the Charter. For the Charter to meaningfully improve the experience of consumers in air travel, it must be enforceable and independently regulated.

Second, we make specific recommendations to further develop each of the Proposed Rights so they can more effectively improve consumer protections for people with disability.

## 2. Overarching comments

### 2.1 The Charter must be enforceable and independently regulated

In its current form, the Charter represents generic principles and aspirational targets rather than enforceable consumer rights and protections. This is particularly noticeable in the framing of treatment the Charter says customers 'should' receive rather than 'will' receive, and the

expectations that airlines will provide updates to customers on a ‘regular’ basis, or processes completed in a ‘timely’ manner.

For the rights in the Charter to meaningfully improve air travel for customers, the rights need to express clear commitments. Additionally, compliance with the rights needs to be proactively monitored by an independent regulator and appropriate enforcement avenues made available for violations. Compliance monitoring and enforcement are essential for customers to have confidence they will be treated fairly.

The Consultation Paper states, ‘[t]he AIOS...will be supported by a new regulatory function.’<sup>1</sup> Accordingly, in addition to making a complaint to the Aviation Industry Ombuds Scheme (‘Ombuds Scheme’), the Charter needs to be monitored for compliance by an appropriate regulator, with the powers to undertake compliance assessments; investigate issues; analyse data and evidence; engage with stakeholders; agree corrective measures with airlines and airports to implement within an agreed timeframe; impose sanctions; and publish reports and data about compliance and enforcement outcomes.<sup>2</sup>

Options to achieve this may be to establish the Charter as a legislative instrument or mandatory industry code to be regulated by the Australian Competition and Consumer Commission (‘ACCC’). Either way, significant changes need to be made to the current form and substance of the Charter.

In particular, each customer right needs to be more precisely expressed, to assist airlines and airports to understand how each obligation is to be fulfilled, and to empower customers to understand how their rights should be implemented and realised. Equally, to be dynamic and adaptive over the long-term, and to reflect evolving community standards, the rights must not purport to be exhaustive.

The Government should determine the most effective mechanism to enforce customer rights within the aviation industry, and an updated set of rights should be developed for further public consultation.

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### ***Recommendation 1 – The Charter be redeveloped and legally enforceable***

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*The Charter should be redeveloped to clearly state the obligations and responsibilities of airlines and airports, and to ensure it is legally enforceable.*

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### ***Recommendation 2 – The Charter be independently regulated***

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*An appropriate regulator should be appointed to monitor compliance of the Charter and take enforcement action. The regulator should be empowered to undertake compliance assessments; investigate issues; analyse data and evidence; engage with stakeholders; agree corrective*

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<sup>1</sup> Department, Consultation Paper, 5.

<sup>2</sup> See for example, Insurance Council of Australia, *General Insurance Code of Practice*, pt 13 <<https://insurancecouncil.com.au/cop/>>.

*measures with airlines and airports to implement within an agreed timeframe; impose sanctions; and publish reports and data about compliance and enforcement outcomes.*

## **2.2 The Charter needs to include further rights for people with disability**

Where airlines and airports deliver their services in ways that are inaccessible or non-inclusive, or fail to deliver services at all, people with disability are disproportionately impacted and experience serious consequences. Through our work, we hear accounts from people with disability who regularly experience discrimination, neglect and abuse in air travel.

The experiences of customers with disability may raise a range of legal issues under consumer law or discrimination law. The new aviation-specific disability standards will be a schedule to the *Disability Standards for Accessible Public Transport 2002* (Cth) ('DSAPT'), which are made under the *Disability Discrimination Act 1992* (Cth) ('DDA') and will be aimed towards eliminating discrimination in air travel, as distinct from addressing consumer issues. The Charter will provide consumer law rights for all customers, including customers with disability, and it is imperative it addresses disability needs and experiences. For example, the Charter must specify the rights and obligations to provide support for people with disability when there are service disruptions, and when mobility aids are damaged or lost. We explain this below under Proposed Rights 3 and 4.

### ***Recommendation 3 – Disability-specific consumer rights be included in the Charter***

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*The Charter should specifically address the consumer law rights of people with disability when flying by air.*

## **2.3 The Charter should apply to the whole journey of air travel**

At present, the scope of the Charter is unclear as to what points of the journey it covers. Proposed Right 1 acknowledges:

While most customers move through the aviation journey relatively seamlessly, many also experience a level of friction in their interactions throughout the airport and airline environments.

...

This right is intended to clearly state that customers should be treated appropriately by airports and airlines, regardless of where they are in their aviation journey, or their need for specific assistance.<sup>3</sup>

To give effect to this intent, the 'aviation journey' must cover the entire customer experience as consumer rights issues arise at all stages. This includes from when a customer commences

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<sup>3</sup> Department, Consultation Paper, 8.

booking a flight (and the inquiries they may make before securing the booking) until they leave the airport at their destination, as well as any ensuing complaint process.

For example, many airline booking processes are inaccessible for people with disability, requiring them to book over the phone rather than online, and provide advance notice to airlines when travelling with a wheelchair and extensive documentation for approval to fly with an assistance animal. We represented Rachael Fullerton in her claim against Qantas, after she was required to provide extensive information to be able to travel with her assistance dog<sup>4</sup> – we understand this is a common experience for people who rely on assistance animals. These procedures can deny people the chance to fly at short notice, choose their preferred airline, or take advantage of low cost or discount airline tickets.

The Charter must apply to all customers, whether prospective, current or past, and at all stages of the aviation journey.

#### ***Recommendation 4 – The Charter cover the entire customer experience***

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*The ‘aviation journey’ should cover the entire customer experience from when a customer commences booking a flight until they leave the airport at their destination, as well as any ensuing complaint process, and apply to prospective, current and past customers.*

### **3. Proposed Right 1**

#### **3.1 Requirements should be clearly prescribed and informed by consultation**

The treatment of customers with dignity and respect is foundational to the objectives of the Charter and its Proposed Rights. For too long, people with disability, when travelling by air, have been subjected to discrimination, exclusion, personal injury and experienced damage to mobility devices. The acute experiences of people with disability in air travel have been repeatedly highlighted by people with disability, and acknowledged by the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (‘Disability Royal Commission’),<sup>5</sup> and in the Aviation White Paper.<sup>6</sup>

Proposed Right 1 does not clearly or sufficiently prescribe the requirements that must be met by airlines and airports to ensure the right to be treated with dignity and respect, in an accessible and inclusive environment, will be fulfilled.

For people with disability, simply re-stating that airlines and airports will comply with the DDA and DSAPT, is superfluous without providing further consumer protections, given that airlines and airports have existing obligations under these anti-discrimination laws and systemic failures to

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<sup>4</sup> Evan Young, ‘Qantas agrees to change assistance dog processes after being sued for disability discrimination’, *ABC News* (online, 5 November 2024) <<https://www.abc.net.au/news/2024-11-05/qantas-assistance-dog-federal-court-disability-discrimination/104542616>>.

<sup>5</sup> *Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability*; ‘Chair writes to CEOs of airlines and airports’ (Media release, 3 February 2023); *Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability* (Final Report, September 2023) vol 4, 340.

<sup>6</sup> Australian Government, *Aviation White Paper: Towards 2050* (August 2024) 56-57.

meet consumer needs have continued in these settings. Furthermore, while the new aviation-specific disability standards should assist airlines and airports to fulfil Proposed Right 1, these are primarily intended to provide minimum standards for airlines and airports to ensure their services are accessible and non-discriminatory – for this to be the case, the standards must be comprehensive and prescriptive. Alongside the standards, the Charter should protect all consumer rights, including consumer issues specifically experienced by people with disability.

The process of co-designing the aviation-specific disability standards must involve Government consulting with people with disability on the interpretation and implementation of ‘dignity’, ‘respect’, ‘accessibility’ and ‘inclusivity’ in the aviation journey. This should then guide the interpretation of these terms in the Charter with respect to disability access.

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***Recommendation 5 – Proposed Right 1 prescribe requirements of airlines and airports***

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*Proposed Right 1 should be refined to clearly prescribe requirements of airlines and airports that must be met to fulfil this right, including for people with disability, and informed by co-design of the aviation-specific disability standards.*

### **3.2 Charter rights need to be consistently applied**

The Consultation Paper states, ‘[a]irlines and airports will have a Customer Service statement or charter’. It is unclear what purpose such statements or charters will serve when all airlines and airports should be complying with the Charter. Separate statements or charters could lead to conflicting information, and unnecessary overlap. If airlines and airports do develop separate charters or statements, the statement or charter should be reviewed by the appropriate regulator to ensure it is consistent with, and/or further advances, the consumer rights enshrined in the Charter.

Consistent application of the Charter rights also requires contractors engaged by an airline or airport to have responsibility for compliance. The Charter should state that contractors must comply with the Charter as if they would apply to the airline or airport, and airlines and airports are legally responsible for the actions or omissions of their contractors.

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***Recommendation 6 – Charter rights be consistently applied***

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*To ensure the Charter rights are consistently applied, the Charter should make clear:*

- *All airline or airport statements or charters must be reviewed and endorsed by the appropriate regulator to ensure they are consistent with, and/or further advance, the consumer rights enshrined in the Charter; and*
- *Contractors engaged by an airline or airport must comply with the Charter as if they would apply to the airline or airport, and airlines and airports are legally responsible for the actions or omissions of their contractors.*

### **3.3 Security screening procedures should be consistent**

There is a lack of consistency in security screening at airports in Australia. People with disability may be subjected to secondary or alternative screening measures involving the use of a

handheld metal detector, an explosive trace detection test or a frisk search, despite preferring to use the primary screening method ie body scanners or walk-through metal detectors.

This issue was highlighted in 2022 when Graeme Innes, who has a dog guide, was refused access to use the body scanner at Adelaide Airport, and instead asked to use a walk-through X-ray scanner with his dog guide screened separately.<sup>7</sup> We represented Mr Innes in his complaint to the AHRC, following which Adelaide Airport said ‘security screening queue-management processes had been enhanced to provide greater choice and flexibility to customers living with disability’ and ‘people with assistance animals can now be screened at any security lane, rather than a dedicated lane’.<sup>8</sup>

In addition, there are significant concerns about the privacy impacts and discriminatory nature of body scanners as recognised in the Department of Transport and Infrastructure’s 2012 report ‘The use of body scanners for aviation security screening in Australia: Privacy Impact Assessment’:

Stakeholder consultation has identified a number of community groups, such as people with medical aids, external prostheses and the transgender and intersex communities, who would ordinarily pass through aviation security screening without their particular circumstances coming to the attention of security screeners. Body scanners, however, have different detection capabilities and may reveal more personal conditions than current screening methods.<sup>9</sup>

Therefore, it is unclear how the right to be screened with dignity, free from bias and in line with requirements set by the Department of Home Affairs (‘DHA’) will operate in practice without further legislative change. We recommend the Department works with the DHA and other relevant government departments to address these issues, harmonise security screening across airports in Australia and comply with the guiding principles of *Australia’s Disability Strategy 2021-2031*.

### ***Recommendation 7 – Security screening be harmonised across Australian airports***

*Alongside development of the Charter, the Government should reform and harmonise security screening across Australian airports to ensure consistency in relation to screening people with disability, and to comply with the guiding principles of Australia’s Disability Strategy 2021-2031.*

## **3.4 Customer service staff must be properly trained**

In our work representing clients with disability, many of the issues experienced in air travel relate to poor customer service and inadequate staff training. For example, we represented Akii Ngo

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<sup>7</sup> Evelyn Leckie, ‘Former disability discrimination commissioner Graeme Innes calls for change after “humiliating” Adelaide Airport experience’, *ABC News* (online, 15 May 2022) <<https://www.abc.net.au/news/2022-05-15/sa-adelaide-airport-disability-discrimination-complaint/101068140>>.

<sup>8</sup> Richard Davies and Gladys Serugga, ‘Adelaide Airport settles dispute with former disability discrimination commissioner over “upsetting” security incident’, *ABC News* (online, 23 January 2024) <<https://www.abc.net.au/news/2024-01-23/adelaide-airport-graeme-innes-disability-discrimination-dispute/103375068>>.

<sup>9</sup> Australian Government, Department of Infrastructure and Transport, *The use of body scanners for aviation security screening in Australia: Privacy Impact Assessment* (February 2012) 29-30.

after they fell out of a Jetstar airline chair which a Jetstar staff member was pushing as they disembarked from an aircraft at Adelaide Airport in May 2022.<sup>10</sup> We are also aware of instances where staff have not been aware of the policies and practices relating to customers who rely on disability aids (eg how to assist with transfers, or wheelchair battery requirements), or who have communicated with customers with disability in a disrespectful and/or dehumanising way.

In the United States, where federal legislation to improve accessibility in air travel has existed for over thirty years, the US Department of Transportation has recently introduced further requirements for training of staff who provide assistance to people with disability.

In light of the continuing issues with the treatment of people with disability and the handling of mobility aids, as well as ongoing systemic disability discrimination across the aviation journey, it is clear there is a need for enhanced training of staff.

Currently, each airline and airport determine the breadth and depth of disability-related training. Not only does this raise questions with the adequacy of the training, it also results in a lack of consistency in training. Universal requirements should be mandated as part of the Charter to improve disability-related training and safety, and to properly give effect to the Charter rights, and particularly Proposed Right 1.

The Charter should mandate the requirement for all customer service staff (including contractors) to undergo disability awareness and inclusion training. The Charter should also mandate the requirements for delivery and frequency of the training, subject to consultation with disability representative organisations. For example, the Charter may require the training to be delivered by a disability-led organisation and for staff to undergo the training on an annual basis.

Second, staff and contractors who provide manual assistance to customers with disability (such as transfers) or handle disability aids should undergo annual in-person and hands-on training, and demonstrate their knowledge through competency assessments or certification exams.<sup>11</sup> This should limit the number of injuries to passengers and staff, and the number of mishandled disability aids, as well as the costs of addressing such issues when they arise.

### ***Recommendation 8 – Mandatory disability awareness and manual-handling training***

*The Charter should mandate the requirement for all customer service staff (including contractors) to undergo disability awareness and inclusion training, including requirements for delivery and frequency of the training, subject to consultation with disability representative organisations. Staff and contractors who provide manual assistance to customers with disability or handle disability*

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<sup>10</sup> Josephine Lim, 'Jetstar apologises to wheelchair user who fell at Adelaide Airport while being pushed by a staff member', *ABC News* (online, 18 July 2024) <<https://www.abc.net.au/news/2024-07-18/jetstar-apologises-to-wheelchair-user-who-fell/104094240>>.

<sup>11</sup> Such training and assessment have been recently mandated in the United States through a new US Department of Transportation rule: *Ensuring Safe Accommodations for Air Travelers with Disabilities Using Wheelchairs*, 14 CFR Part 382, §382.141(a) (2024), 102405 <<https://www.transportation.gov/sites/dot.gov/files/2024-12/Final%20Rule%20Ensuring%20Safe%20Accommodations%20for%20Air%20Travelers%20with%20Disabilities%20Using%20Wheelchairs%20-%202089%20FR%20102398.pdf>>.

aids should undergo annual in-person and hands-on training, and demonstrate their knowledge through competency assessments or certification exams.

## 4. Proposed Right 2

### 4.1 The right to access information in accessible formats

The Final Report into the Disability Royal Commission said:

People with disability have a right to access information and communications on an equal basis with others. Information and communications are accessible if people with disability can use and understand them in a way that suits their needs.<sup>12</sup>

Providing information that is accessible means communicating via the customer's preferred mode of communication. Airlines and airports must offer a range of alternative communication options for customers to provide information and enable customers to get in contact. Proposed Right 2 should specify that airlines and airports have the onus of ensuring their communication channels are accessible.

Information is accessible if it is provided via formats, languages, materials and methods appropriate to various disability types and people. This includes Easy English, Easy Read, Braille, videos with captions and audio description, and alternative languages (other than English). For example, communication boards using pictures/icons and text to identify key information, locations and questions can assist people who have speech impediments, are non-verbal or use languages other than English.<sup>13</sup>

Proposed Right 2 refers to the type of information subject to this right, namely:

- terms and conditions when purchasing airline tickets and using airport services;
- conditions of carriage, including a customer's rights regarding delays, refunds, changes and cancellations; and
- information about delays, cancellations and disruptions.

The type of information that should be subject to this right must also include any schedule changes to flights (not just disruptions, delays and cancellations), security screening, boarding information, connections, gate assignments and baggage. Additionally, in-flight information including about safety, instructions, in-flight services and entertainment, need to be provided in an accessible format.

We expect the new aviation-specific disability standards will specify the minimum standards for the formats in which information should be provided, and the type of information that should be

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<sup>12</sup> *Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability* (Final Report, September 2023) vol 6, 39.

<sup>13</sup> See for example, Gold Coast Airport, *At the Airport: Hidden Disabilities* (2023) <<https://www.goldcoastairport.com.au/at-the-airport/hidden-disabilities>>.



provided in such formats, assisting airlines and airports to meet their obligations to customers in relation to this Charter right.

### ***Recommendation 9 – The right to access information in accessible formats***

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*Proposed Right 2 should specify that airlines and airports have the onus of ensuring their communication channels are accessible, including by offering a range of alternative communication options ie formats, languages, materials and methods appropriate to various disability types and people. It should also specify further types of information subject to the right, including schedule changes to flights (not just disruptions, delays and cancellations), security screening, boarding information, connections, gate assignments, baggage and in-flight information and entertainment.*

## **4.2 The right to assistance at airports**

The Charter does not adequately provide rights for a person who needs assistance during the air travel journey. The third dot point for Proposed Right 2 states, '[a] customer service representative will be available at the airport and/or on the phone to assist'. This raises a number of issues:

- it does not specify whether an airline or airport is responsible for appointing the representative;
- it envisages 'a' single customer service representative being available when airports can span large areas with numerous people needing assistance at the same time; and
- enables the representative to assist either in-person at the airport or on the phone.

Without specific obligations on airlines and airports, people with disability have been left unassisted for unreasonable amounts of time, and sometimes in unsafe situations. Our client Emma Bennison is blind and was left unassisted by Jetstar for over 1.5 hours in Melbourne Airport, an experience that was upsetting and stressful, and caused substantial delay and inconvenience.<sup>14</sup>

Where requested, a person with disability should be able to receive assistance from 'kerb to kerb', including on arrival at the airport for the departing flight, assistance to board, assistance in-flight, assistance with transportation between gates to make connections, and assistance with moving from the arriving flight to the kerb for pick-up. This should happen regardless of whether the assistance is provided by the airport or airline – airports and airlines should assign responsibilities between them to ensure this can occur.

We envisage the new aviation-specific disability standards will specify the minimum standards for the type of assistance that is required to be provided at airports, and the responsible parties for

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<sup>14</sup> 'Tasmanian blind woman felt "abandoned" in Melbourne Airport by staff, calling for better disability support', *ABC Radio Hobart* (ABC News, 5 February 2025) <<https://www.abc.net.au/listen/programs/hobart-mornings/tasmanian-woman-complaint-human-rights-comission-/104898684>>; 'Statement – Jetstar and Emma Bennison' (5 February 2025) <<https://jec.org.au/disability-rights/statement-jetstar-and-emma-bennison/>>.

providing this assistance. Nonetheless, the Charter should include a right to ensure that assistance will be available.

### ***Recommendation 10 – The right to assistance at airports***

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*Proposed Right 2 should specify that, when a person with disability requests, assistance must be provided at airports from ‘kerb to kerb’. Airlines and airports must assign responsibilities to ensure this right is fulfilled.*

## **5. Proposed Right 3**

### **5.1 The right to a remedy should be broader**

Aside from disruptions or delays for more than 3 hours – which impacts *all* customers on a particular flight – there are a range of other circumstances where a customer should be entitled to a remedy, including:

- Where a service is not provided to a customer with disability due to the actions or omissions of the airline and which warrant the entitlement to a remedy:
  - For example, where a customer misses a flight (including a connecting flight regardless of whether the flight is with the same airline/codeshare arrangement). We are aware many people who use disability aids experience lengthy check-in processes (even when they arrive at the airport early), as well as lengthy delays in deplaning, because of the policies and practices of the airline relating to disability aids and/or staff not being aware of the policies and practices. These experiences can result in missed flights or missed connecting flights.
- Where a service is not provided to a customer with disability, whether for a reason within an airline’s control or not, and which warrant the entitlement to a remedy:
  - To illustrate, if a customer requires an aircraft access lift, but the lift is unable to be used, the customer will be unable to board/deplane. It may be that the reason the lift is unable to be used is because it was not properly maintained (within the airline’s control) or high winds prevented the operation of the lift (outside the airline’s control). Whether the issue is within the airline’s control or not, the impact of the service failure on the particular customer needs to be considered – in this example, other passengers without similar mobility assistance needs would not be prevented from boarding/deplaning.

If the Charter maintains the current proposal for remedies to be available ‘for reasons within the airline’s control’, we suggest the circumstances that are taken to be within the airline’s control are construed beneficially in favour of customers. This could be through a rebuttable presumption that the reason is within the airline’s control, unless the airline proves otherwise. In these circumstances, a rebuttable presumption offers multiple benefits. First, a customer generally is not well placed to prove an issue was within the airline’s control, while an airline is well placed to provide evidence to rebut the presumption. Second, a rebuttable presumption provides a preferred starting point for resolving the issue, in the context of a ‘customer rights’ charter. Third, in circumstances where the issue may be the result of numerous factors, some of which may be within the airline’s control (eg the lift was not properly maintained) and some of which may not (eg

high winds preventing the operation of the lift), the presumption would assist in identifying whether on the whole, the issue was or was not within the airline's control.

Additionally, as the Consultation Paper recognises, customers are not always informed of the reason(s) for the delay or cancellation.<sup>15</sup> The Charter must require airlines to inform customers of the reason(s) for the disruption, delay or cancellation. Information about the reasons would assist customers to make an informed decision about the type of remedy they may be entitled to, or the type of complaint they can make.

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**Recommendation 11 – Remedies be available in broader circumstances**

*Aside from disruptions or delays for more than 3 hours, Proposed Right 3 must acknowledge that a customer will be entitled to remedies in a broader number of circumstances. Whether the issue is within the airline's control or not, the impact of the service disruption, delay or failure on the particular customer needs to be considered.*

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**Recommendation 12 – Reasons within an airline's control be construed in favour of customers**

*If remedies for disruptions or delays will only be available 'for reasons within the airline's control', Proposed Right 3 should consider introducing a rebuttable presumption that the reason is within the airline's control, unless the airline proves otherwise.*

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**Recommendation 13 – Customers be informed of the reason(s) for the disruption, delay or cancellation**

*Proposed Right 3 should require airlines to inform customers of the reason(s) for the disruption, delay or cancellation.*

## **5.2 Remedies must include compensation for disability supports**

When a flight is disrupted, delayed or cancelled, a customer with disability must be provided with and/or compensated for any ensuing impacts to their disability support needs. For example, if a person is travelling with a disability support worker and their flight is disrupted or delayed and the customer is entitled to a remedy, the customer should also be compensated for the additional hours of disability support required and associated costs. Similarly, any refund for a cancelled flight must also compensate the customer for any costs of disability support that have not otherwise been refunded such as support workers, assistive equipment hire and airport transfers.

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**Recommendation 14 – Remedies include compensation for disability supports**

*Proposed Right 3 should specify that where a customer is entitled to a remedy for a disruption, delay or cancellation, the customer will be compensated for any ensuing impacts to their disability support needs.*

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<sup>15</sup> Department, Consultation Paper, 10.

### 5.3 Original airline should bear cost of new bookings

In the Consultation Paper, the third dot point for Proposed Right 3 states:

If customers have had to book a new flight with another airline due to their original airline not having a reasonable replacement flight, then the original airline will refund the cost of the original flight.<sup>16</sup>

In our view, the original airline should compensate the cost of the new flight, not the original flight. Re-booking a flight with another airline in circumstances where there has been a disruption or delay, is likely to mean a higher fare. There may be further costs or implications for people with disability. For example, the original airline may have offered a discount to travel with a support worker, whereas the substitute airline may not. Any direct or indirect costs associated with booking a new flight with a new airline should be borne by the original airline.

#### ***Recommendation 15 – Original airline compensate additional costs of the new flight***

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*Proposed Right 3 specify: if customers have had to book a new flight with another airline due to their original airline not having a reasonable replacement flight, then the original airline will refund the cost of the flight, and compensate the customer for any additional costs incurred.*

## 6. Proposed Right 4

### 6.1 The right to remedies where disability aids are damaged, lost or misplaced

The Consultation Paper says the Government will consult in the future on amendments to the *Civil Aviation (Carriers' Liability) Act 1959* (Cth) ('CACL Act'), and supporting regulations, to increase the maximum compensation entitlement for passengers whose wheelchairs or other disability aids are damaged or lost by domestic airlines.<sup>17</sup> The JEC welcomes the Government's commitment to consult on increasing the maximum compensation entitlements for wheelchair damage under the CACL Act.

In addition to any potential changes to the CACL Act, the Charter should explicitly enshrine rights for the safe handling of disability aids and the rights of passengers whose disability aids are damaged, lost or misplaced to seek remedies. In addition to the many reports of disability aids being damaged during transportation,<sup>18</sup> there would be many experiences that remain unreported in the media and result in a lack of accountability for loss. These rights would be in addition to a customer's right to make a claim for compensation under the CACL Act and associated state/territory legislation and/or complain to the Ombuds Scheme.<sup>19</sup> Amending the

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<sup>16</sup> Department, Consultation Paper, 10.

<sup>17</sup> Department, Consultation Paper, 11.

<sup>18</sup> See for example, Daniel Miles, 'Teacher seeks reimbursement from Virgin Australia over broken wheelchair, ongoing costs', *ABC Central Victoria* (online, 31 October 2023) <<https://www.abc.net.au/news/2023-10-31/virgin-airline-wheelchair-damage-broken-compensation/103010472>>; Aleisha Orr, 'Zoe's wheelchair was damaged on a Qantas flight. The airline initially refused to repair it', *SBS News* (online, 5 October 2022) <<https://www.sbs.com.au/news/article/zoes-wheelchair-was-damaged-on-a-qantas-flight-the-airline-initially-refused-to-repair-it/5y8jhi1cc>>.

<sup>19</sup> Department, 'The Aviation Industry Ombuds Scheme – Consultation Paper' (August 2024) 15.

Charter in this way would rightly acknowledge that disability aids should be distinguished from luggage, given the significantly different impacts on passengers whose disability aids are damaged, lost or misplaced.

To illustrate, the Charter currently specifies the right for customers to be 'reimbursed for the necessary purchase of appropriate clothing and toiletries where this occurs away from the customer's home port', however is silent on the right to be reimbursed for expenses relating to damaged, lost or misplaced disability aids. This omission is glaring given the impact of the temporary loss of disability aids is much greater than the need for replacement clothes and toiletries.

Proposed Right 4 must distinguish disability aids from luggage, and specify that if a disability aid is damaged, lost or misplaced during transportation:

- there is a rebuttable presumption the airline mishandled the passenger's disability aid, unless the airline proves otherwise;<sup>20</sup>
- the customer is entitled to an equivalent replacement disability aid while the original disability aid is repaired or replaced;
- the customer is entitled to choose whether the repair or replacement is sourced by a supplier chosen by the customer, or whether the airline or airport source the supplier; and
- the customer will be compensated for the cost of repair or replacement as a matter of urgency, including compensation for the cost of an equivalent replacement disability aid while the original disability aid is repaired or replaced.

### ***Recommendation 16 – Right to remedies where disability aids are damaged, lost or misplaced***

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*Proposed Right 4 must specify that if a disability aid is damaged, lost or misplaced during transportation:*

- *there is a rebuttable presumption the airline mishandled the passenger's disability aid, unless the airline proves otherwise;*
- *the customer is entitled to an equivalent replacement disability aid while the original disability aid is repaired or replaced;*
- *the customer is entitled to choose whether the repair or replacement is sourced by a supplier chosen by the customer, or whether the airline or airport source the supplier; and*

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<sup>20</sup> A similar rebuttable presumption has been recently mandated in the United States through a new US Department of Transportation rule: *Ensuring Safe Accommodations for Air Travelers with Disabilities Using Wheelchairs*, 14 CFR Part 382, §382.130(a) (2024), 102401-2  
<<https://www.transportation.gov/sites/dot.gov/files/2024-12/Final%20Rule%20Ensuring%20Safe%20Accommodations%20for%20Air%20Travelers%20with%20Disabilities%20Using%20Wheelchairs%20-%2089%20FR%20102398.pdf>>.

- *the customer will be compensated for the cost of repair or replacement as a matter of urgency, including compensation for the cost of an equivalent replacement disability aid while the original disability aid is repaired or replaced.*

## 6.2 Terminology needs to be clear and uniform

Proposed Right 4 as currently drafted contains ambiguous terminology. For example, it is not clear how the following words should be interpreted:

- ‘damage’ – assuming pre-existing damage is excluded, would damage of any level and to any item be eligible;
- ‘lost’, ‘delay’ or ‘misplaced’ – are there a particular number of days that have to pass before an item is considered lost, delayed or misplaced;
- ‘timely manner’ – time limits should be set for airlines and airports to provide remedies; and
- ‘reimbursed’ or ‘compensation’ – to avoid airlines setting arbitrary amounts, there should be further guidance, subject to maximum liability limits.

The Charter is an opportunity for otherwise ambiguous terminology to be given a uniform meaning, rather than enable airports and airlines to individually dictate meaning. This would assist customers to receive consistent responses and resolutions across the aviation industry, not dependent on the airline they booked with or its subjective interpretation of the right.

### ***Recommendation 17 – Terminology in Proposed Right 4 be clear and uniform***

*Proposed Right 4 should specify the meaning to be given to words such as ‘damage’, ‘lost’, ‘delay’, ‘misplaced’, ‘timely manner’, ‘reimbursed’ and ‘compensation’. Uniform meanings would assist customers to receive consistent responses and resolutions across the aviation industry.*

## 7. Proposed Right 5

### 7.1 Empowering passengers to exercise their rights

Prior to being screened at airports, the Department of Home Affairs advises passengers to ‘[t]ell screening officers if you have any medical devices, aids, implants or if you have other special circumstance that may necessitate assistance.’<sup>21</sup> These types of disclosures can be private and sensitive. We also note the need for people to make such disclosures is growing with the increasing use of body scanners.<sup>22</sup>

While a person is able to request to speak with a screening officer in a private area (to prevent anyone from overhearing a conversation), this does not seem to be a well-known right of passengers. Similarly, if the body scanner alarms, passengers may also opt to discuss the alarm in a private room.

<sup>21</sup> Australian Government, Department of Home Affairs, *Security screening at airports* (3 February 2005) <<https://www.homeaffairs.gov.au/about-us/what-we-do/travelsecure/security-screening-at-airports>>.

<sup>22</sup> Australian Government, Department of Infrastructure and Transport (n 9) 38.

To ensure passengers are aware of these rights, the Charter should specify a passenger's right to speak with a screening officer in a private area to discuss their medical or personal circumstances prior to screening and following any alarm during the screening process. Airports should be required to inform customers about these rights prior to passengers being screened.

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***Recommendation 18 – Right to speak in a private area during screening process***

*Proposed Right 5 should specify a passenger's right to speak with a screening officer in a private area to discuss their medical or personal circumstances prior to screening and following any alarm during the screening process. Airports should be required to inform customers about these rights prior to passengers being screened.*

## **7.2 Right to access personal information**

We are aware of a customer who requested a copy of phone recordings with an airline in which the customer disclosed their personal information, as part of attempting to resolve a dispute between the customer and the airline. When the airline refused to provide the phone recordings, the customer resorted to complaining to the Office of the Australian Information Commissioner.

Customers should have the right to request and access their personal information from airlines or airports (eg copies of recordings and/or transcripts of interactions with the customer), including for the purpose of correcting or updating their information, or managing a complaint process. Airlines and airports should only be able to refuse access to a customer's personal information in circumstances where it would be contrary to law. Airlines and airports should provide access to personal information free of charge.

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***Recommendation 19 – Right to access personal information***

*Proposed Right 5 should specify a customer's right to access their personal information from airlines and airports, except where it would be contrary to law. Airlines and airports should provide access to personal information free of charge.*

## **8. Proposed Right 6**

### **8.1 Designated point of contact for disability-related complaints**

In the United States, airlines of a particular size must designate at least one Complaints Resolution Official ('CRO'), who is the airline's expert in disability-related issues in air travel and has the authority to resolve complaints on behalf of the airline on the spot.<sup>23</sup> We recommend each airline and airport operating in Australia be required to appoint a CRO and the Charter

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<sup>23</sup> *Nondiscrimination on the Basis of Disability in Air Travel*, 14 CFR Part 382, §382.151; US Department of Transportation, Airline Passengers with Disabilities Bill of Rights (5 February 2025) <<https://www.transportation.gov/airconsumer/disabilitybillofrights#The%20Right%20to%20Resolution%20of%20a%20Disability-Related%20Issue>>; US Department of Transportation, Air Travel Complaints <<https://www.transportation.gov/airconsumer/complaint-process>>.

should enshrine a right for disability-related complaints to be able to be made to a CRO, to ensure prompt and proper resolution of such complaints.

***Recommendation 20 – Each airline and airport designate a Complaints Resolution Official***

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*Each airline and airport operating in Australia should be required to appoint a CRO and the Charter should enshrine a right for disability-related complaints to be able to be made to a CRO, to ensure prompt and proper resolution of such complaints.*

## **8.2 Internal complaints processes should satisfy customer needs**

Effective consumer protections and remedies are of significant importance for people who travel by air and there should be strong internal complaint handling processes (ie by appointing CROs as recommended above) with high levels of customer satisfaction. This should be monitored through annual reporting of complaints data by airlines and airports to the Ombuds Scheme, including the volume of complaints, time taken to resolve complaints, and outcomes achieved. Similar to other industry schemes, there could also be financial incentives for airlines and airports to resolve customer complaints in the first instance, and address systemic issues before further complaints are made, ie different fee grades could be imposed on airlines and airports for different types of complaints that do not resolve and are referred to the Ombuds Scheme.<sup>24</sup>

Where a complaint is of a serious nature or requires an urgent response, customers should be able to complain to an airline or airport and the Ombuds Scheme at the same time. The purpose of the complaint being made to the Ombuds Scheme at the same time as it is made to the airline or airport, is so the Ombuds Scheme has a record of the complaint, and can quickly intervene to resolve the complaint if the airline or airport is not responsive or a resolution cannot be achieved. This has the added benefit of assisting the Ombuds Scheme to keep track of the nature and volume of serious and urgent complaints, and of encouraging airlines and airports to satisfactorily resolve complaints before the Ombuds Scheme intervenes. In this circumstance, the Ombuds Scheme fee structure could impose no fee, or a lower fee on the airline or airport, up until the point where the Ombuds Scheme intervenes in the dispute resolution process.

***Recommendation 21 – Airlines and airports report internal complaints data***

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*Proposed Right 6 should require airlines and airports to improve their complaint handling systems by evaluating and reporting complaints data annually to the Ombuds Scheme, including about the volume of complaints, time taken to resolve complaints, and outcomes achieved.*

## **8.3 Escalation of urgent complaints and ‘fast track’ pathways**

The Charter does not adequately prescribe timeframes for the resolution of complaints; instead, it indicates a ‘target’ of 24 hours to acknowledge complaints and 30 days to resolve complaints. We are concerned this will compromise the purpose of the Charter, which is otherwise aimed at addressing the difficulties customers currently face in accessing remedies and the ‘long delays in

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<sup>24</sup> See for example, Energy & Water Ombudsman NSW, *Our funding* <<https://www.ewon.com.au/page/about-us/funding>>.



airlines' responsiveness to complaints'.<sup>25</sup> It may also be inconsistent with the right to prompt and fair remedies (see Proposed Right 3).

In our submission to the Aviation Industry Ombuds Scheme – Consultation Paper, we recommended that customers be able to escalate urgent complaints and access 'fast track' pathways:

...consumers should have the ability to escalate urgent complaints and access 'fast track' complaint resolution pathways so that complaints can be processed and actioned in an appropriate order of priority and consumers can access quicker timeframes for resolution. The escalation and fast track processes should be available when complaining directly to airports and airlines and also when complaining to the Ombuds Scheme.

One way to triage complaints may be to consider the harm experienced (as we considered 'harm' in response to question 10 [in the submission]). At a minimum, we think it is appropriate to prioritise complaints about incidents that impact a consumer's safety, or result in personal injury or property damage. For example, where a wheelchair is damaged in transit, a consumer will require urgent compensation or rectification to remedy the impact of this damage at their destination. This type of complaint needs to be addressed within hours so that appropriate action can be taken.

Other complaints relating to travel delays where only a monetary outcome is sought may be a lower priority, and should be resolved within a reasonable period of time to be determined by the Board once constituted. However, there may be other grounds on which it is appropriate for a person to seek prioritisation or a 'fast track' pathway, such as where they are experiencing financial hardship.<sup>26</sup>

We strongly recommend setting stricter timeframes for certain categories of complaint including complaints about incidents that impact a consumer's safety, result in personal injury or property damage.

### ***Recommendation 22 – Right to escalate urgent complaints and access 'fast track' pathways***

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*Proposed Right 6 should grant consumers the right to be able to escalate urgent complaints and access 'fast track' pathways so complaints can be appropriately prioritised, whether complaining directly to airlines and airports, or to the Ombuds Scheme. Stricter timeframes for resolution should apply to complaints about incidents that impact a consumer's safety, result in personal injury or property damage.*

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<sup>25</sup> Department, Consultation Paper, 5.

<sup>26</sup> JEC, *Submission to the Aviation Industry Ombuds Scheme – Consultation Paper* (17 October 2024) 16 <<https://jec.org.au/wp-content/uploads/2024/10/24.10.17-Submission-on-Aviation-Industry-Ombuds-Scheme-Consultation-Paper.pdf>>.