

Submission to Aviation Consumer Protections Consultation - Primary Legislation

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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

Recommendation 1 – The regulator be independent of the Department

The proposed regulator should be established independent of the Department, the Aviation Ombuds Office and the associated policy function. In establishing the regulator, there may be benefit in drawing on existing resources and experience in regulating consumer protections, such as within the ACCC.

Recommendation 2 – ACO be governed by a Board comprising an independent Chair and equal numbers of directors with community and industry expertise

The ACO's governing Board should be established comprising an independent Chair and equal numbers of directors with community and industry expertise, including two community directors with lived experience of disability and/or recognised representatives of people with disability.

Recommendation 3 – Rules for the operation of the ACO to be approved by regulator

The ACO's Board should develop rules for the ACO's operation to be approved by the new independent regulator.

Recommendation 4 – ACO to give binding directions to airlines regarding consumers who book through a travel agent

The ACO should be able to give binding directions to airlines regarding how they will deal with consumers who booked through a travel agent, including where the travel agent may have contributed to the subject matter of the consumer's complaint.

Recommendation 5 – Security screening be included in the framework

Security screening should be included as a regulated activity under the framework to the extent a complaint can be brought against an airport and/or any relevant security contractor.

Recommendation 6 – Privacy complaints be included in the framework

Privacy complaints should be included in the framework including where a consumer's access to personal information (ie phone call recordings, passenger profile information) is relevant to the resolution of the complaint.

Recommendation 7 – All passenger airlines that operate in Australia be included

All airlines operating flights to, from and within Australia, and Australian airlines flying internationally should be included as regulated entities under the framework. Where an overseas consumer protection scheme may apply, airlines should provide consumers with information to understand their complaint rights and to choose which scheme to seek redress through.

Recommendation 8 – ACO to work cooperatively with other complaints bodies

The ACO should work cooperatively with other federal, state and territory complaints schemes or processes, including provision of information to consumers about other relevant bodies, cross-referral powers for the ACO to refer matters to other bodies, and scope to jointly investigate emerging and systemic issues with other relevant bodies.

Recommendation 9 – The regulator be granted a full suite of powers

The proposed regulator should be empowered to exercise a full suite of compliance and enforcement powers, which at a minimum should include powers to monitor, investigate, gather information broadly, enforce civil penalty provisions, issue infringement notices, accept and enforce undertakings and seek injunctions.

The regulator's powers should specifically include:

- *gathering information about all five stages of the proposed complaints handling process, including stage 1;*
- *overseeing the complaints handling process of regulated entities to align with best practice; and*
- *reviewing and endorsing airline and airport Customer Service Statements to ensure they are consistent with, and/or further advance, the Charter rights.*

Recommendation 10 – ACO to address and resolve systemic issues

The ACO should be empowered to address and resolve systemic issues that impact consumers in a similar way (even if not all consumers have lodged a complaint). The ACO should refer matters with a broader public impact or systemic issues to the proposed regulator (and where appropriate to the ACCC) to investigate.

Recommendation 11 – Consumers to be able to complain directly to ACO

Consumers should be able to escalate their complaint directly to the ACO in certain circumstances, including where the complaint is of a serious nature, impacts a consumer's safety or otherwise requires an urgent response.

Recommendation 12 – Time limit for making complaints should be 2 years

The time limit for making complaints to the ACO should be 2 years. If the proposed time limit of 12 months is maintained, the ACO should have the discretion to extend time limits in specific circumstances, including where a person lodged their complaint with another body, or to facilitate cross-referrals between complaint bodies.

Recommendation 13 – Costs be levied when a complaint is made with the ACO

Costs should be levied on a regulated entity at the point at which a complaint is made with the ACO to incentivise the early resolution of complaints by airlines and airports.

1. Introduction

The Justice and Equity Centre ('JEC'), formerly the Public Interest Advocacy Centre, welcomes the opportunity to make a submission to the Department of Infrastructure, Transport, Regional Development, Communications and the Arts' Consultation Paper on the primary legislation for the Aviation Consumer Protections framework.

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.

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 for 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 including as a member of the Department's Steering Committee and a co-design partner with People with Disability Australia and the Australian Federation of Disability Organisations on the co-design of the proposed Aviation Disability Standards.

Consumer protections in air travel are of particular importance for people with disability. Where airlines and airports fail to deliver services, people with disability may be disproportionately impacted and experience serious consequences. Through our work we have heard accounts of people with disability who have experienced discrimination, neglect, and abuse in air travel. As we said in our submission to the earlier consultation on the Ombuds Scheme:

Where airlines fail to deliver promised services, the consequences for passengers with disability are particularly serious. People with disability may need to make more extensive preparations than other travellers, to ensure their support needs will be met – for example, by hiring support persons or obtaining relevant advance permissions to carry health equipment. These will often be more challenging and/or costly to rearrange in the event of service failures; and the need to ensure adequate supports are available can mean people with disability have fewer alternative options than other travellers.

Additionally, where services fail, people with disability may be left unsupported and at risk of distress or harm. For example, a passenger who uses a catheter and an ostomy bag, which may require attention and changing every several hours, might plan their trip to allow support staff to assist them at departure and arrival. However, where an airline's flights are delayed and/or a connection is missed, that passenger may be left without support to manage this need, placing them at serious risk.

These issues are particularly acute in relation to disability-specific assistance services. Where an airline fails to provide a promised support, people may be left in a manual wheelchair in which they cannot self-mobilise; without a meet-and-assist service they rely upon to navigate through the airport, and with no means of independently seeking help; or without the necessary equipment to safely de-plane

upon arrival at their destination. The JEC has heard accounts of people with disability who have experienced each of these issues.¹

Recognising this potential for disproportionate impact, the aviation consumer protections framework must be developed in a way that is accessible and inclusive, and so that it specifically responds to the experience of people with disability when travelling by air.

2. Governance arrangements of the framework

The new regulator, the Aviation Ombuds Office ('AOO'), and the associated policy function must be independent from one another given the different objectives guiding each of those functions, and the concern that an unsuitable governance structure may conflict and/or impede the pursuit of those objectives.

We agree with the proposed approach for the policy function to be housed within the Department to provide advice to the Minister,² and for the AOO to be independent of the Department.³ However, we consider the regulator should also be independent of the Department.

The regulator must operate independently of government, recognising that political and departmental interests may not always align with consumer interests. Lack of independence may risk the regulator's operations being restricted or curtailed. We do not consider it would be appropriate for the regulator to be co-located with the AOO – each entity has different objectives, and their roles should remain clearly distinct. Additionally, independence between the regulator and policy function is necessary to ensure both entities are freely able to recommend policy changes.

To ensure the operations of the regulator are motivated by consumer interests and it enjoys broad authority to pursue those interests, the regulator should be an independent statutory authority that acts independently of the Department and the Minister. Independence will strengthen integrity and increase consumer confidence in the regulatory regime.

The Consultation Paper proposes to establish a new regulator, rather than use the existing resources and experience of the Australian Competition and Consumer Commission ('ACCC'). We are concerned that the resources and time required to establish a new regulator could lead to delay, and suggest there would be benefit in drawing on existing resources and specialist experience in regulating consumer protections, such as within the ACCC, at least while the new regulator is being established. An independent regulator within the ACCC structure could focus

¹ JEC, *Submission to the Aviation Industry Ombuds Scheme - Consultation Paper* (17 October 2024) 9 <<https://jec.org.au/wp-content/uploads/2024/10/24.10.17-Submission-on-Aviation-Industry-Ombuds-Scheme-Consultation-Paper.pdf>>; JEC, *Submission to Inquiry into Airline Passenger Protections (Pay on Delay) Bill 2024* (28 August 2024) 4 <<https://jec.org.au/wp-content/uploads/2024/09/2024.08.28-Submission-to-Inquiry-into-Airline-Passenger-Protections-Pay-on-Delay-Bill.pdf>>.

² Transport Group, *Aviation Consumer Protections* (Consultation Paper, September 2025) 13.

³ Transport Group (n 2) 24.

on regulating aviation consumer issues while sharing the ACCC's existing staff, resources and facilities. It would also complement the ACCC's current domestic airline monitoring role.⁴

As we recommended in our submission to the Aviation Industry Ombuds Scheme, the Aviation Consumer Ombudsperson ('ACO') Board should comprise an equal number of directors with community and industry expertise and be led by an independent Chair. Given consumer protections in air travel are of particular importance to people with disability, there should be two community directors with lived experience of disability and/or recognised representatives of people with disability to ensure the perspectives of consumers with disability are represented. The need for the Board to be diverse and include people with lived experience of disability and/or recognised representatives of people with disability should be set out in the primary legislation, or otherwise in the Board's constitution.

We also maintain the view from our earlier submission that it is appropriate for the Board, once constituted, to determine the ACO's operations (ie complaint eligibility, time limits, complaint handling process, etc) through rules. This will enable the ACO to operate flexibly and adapt over time. The new regulator should perform an oversight role in relation to the ACO, including that it should approve the rules set or amended by the Board.

Recommendation 1 – The regulator be independent of the Department

The proposed regulator should be established independent of the Department, the Aviation Ombuds Office and the associated policy function. In establishing the regulator, there may be benefit in drawing on existing resources and experience in regulating consumer protections, such as within the ACCC.

Recommendation 2 – ACO be governed by a Board comprising an independent Chair and equal numbers of directors with community and industry expertise

The ACO's governing Board should be established comprising an independent Chair and equal numbers of directors with community and industry expertise, including two community directors with lived experience of disability and/or recognised representatives of people with disability.

Recommendation 3 – Rules for the operation of the ACO to be approved by regulator

The ACO's Board should develop rules for the ACO's operation to be approved by the new independent regulator.

⁴ Australian Competition & Consumer Commission, 'Domestic Airline Monitoring', *Travel and airports* (Web Page) <<https://www.accc.gov.au/by-industry/travel-and-airports/domestic-airline-monitoring>>.

3. Question 1: Core elements of consumer experience

Does the proposed regulation of airline services, airport services and airport accessibility services cover the core elements of the aviation consumer experience? Are there any missing elements?

The JEC considers the entirety of the consumer experience – from booking a flight, arriving at the airport, checking in, clearing security screening, boarding the flight, arriving at destination, collecting mobility devices and baggage and leaving the airport – should be covered by the regulatory framework. It would be confusing and inefficient for some elements of the consumer experience to be excluded from the ACO's remit – from a consumer's perspective the air travel journey from booking to destination is a whole experience – access to remedies should not depend on the type of 'entity' providing the 'activity', or a strict requirement of a 'direct consumer relationship'. Additionally, it is preferable for this specialised framework to have broad coverage of consumer aviation issues, where other recourse options may be limited or ineffective. The ACO should, as much as possible, offer a one-stop shop for aviation consumer issues.

We agree with the intention for subordinate legislation to provide further detail on the scope of airline services, airport services and airport accessibility services.⁵ For example, car parking could be an airport service *if* it 'relate[s] to the carriage of passengers'.⁶ Without further clarification on the scope of regulated services, interpretative disputes about which services are and are not included will be an ongoing source of uncertainty and dissatisfaction for consumers.

Addressing complaints where travel agents may be liable

The Consultation Paper proposes to exclude travel agents from the framework, noting that a direct consumer relationship includes 'a consumer purchasing an airfare through an intermediary such as a travel agent'.⁷

We are concerned there may be a number of complaints where airlines may try to deflect responsibility if the person has used a travel agent who may have had some role in the problem experienced. For example, where travel agents fail to notify airlines of accessibility assistance required by passengers or to provide relevant documentation regarding mobility devices, batteries or assistance animals and consumers experience a poor outcome or suffer loss as a result.

Currently, if complaints are not resolved with travel agents directly or with the assistance of state consumer protection regulators (ie NSW Fair Trading), consumers have to pursue complaints against travel agents in state tribunals or courts. This can be time-consuming and costly, and may disproportionately affect consumers who prefer to book flights through travel agents – including people who prefer a single point of contact or require assistance with booking travel via websites and apps including people with disability or older people.

⁵ Transport Group (n 2) 10.

⁶ Transport Group (n 2) 28.

⁷ Transport Group (n 2) 26.

In such circumstances, consumers should still have the ability to seek recourse through the regulatory framework and have equal access to consumer protections. To enable this, we agree with the ACCC's view:

While the [ACO] may not be able to make decisions that can bind or direct travel agents, the scheme should be able to give binding directions to airlines regarding how they will deal with consumers who have booked through a travel agent (for example, a direction that the airline provide a remedy directly to consumers).

...The ACCC considers that the [ACO] should be able to...direct an airline to provide the refund directly to the consumer in such circumstances. After reimbursing the consumer, the airline can pursue its own remedies against the travel agent, where the travel agent may have contributed to the problem.⁸

Security screening should be a regulated activity

A consumer's experience of air travel includes all the steps to get to their destination, which includes security screening. A number of issues can affect passengers with disability in the context of airport security screening. Accordingly, security screening is a core element of the aviation consumer experience – it would be artificial to carve out this core element – and it should be included in the regulatory framework.

For example, a passenger may miss a flight due to delays with security screening, or experience distress due to inappropriate or invasive security screening processes. People with disability are sometimes subjected to secondary or alternative security screening measures involving the use of a handheld metal detector, an explosive trace detection test or a frisk search which can delay clearance of security, and can involve passengers being questioned about sensitive personal information. Some passengers may prefer a private room to discuss these matters or prefer to be screened away from public view.

If a passenger experiences poor treatment, they should have the right to pursue remedies under the aviation consumer protections framework against the airport (as the responsible entity) and/or the relevant security screening contractor.

There may be other reasons why a passenger's air travel journey may be impacted by delays in security screening, including the increased risk of cyber security attacks.⁹

For these reasons, regulated activities under the framework should include security screening. We consider this would be viable because: (1) security screening is delivered by, or on behalf of, a proposed regulated entity (ie airport); and (2) there would be no need for a direct consumer relationship (similar to the arrangement for airport accessibility services). In our view, security

⁸ ACCC, *Submission in response to the Aviation Industry Ombuds Scheme consultation* (Submission, October 2024) 11 <https://www.infrastructure.gov.au/sites/default/files/documents/aioa_australian-competition-and-consumer-commission.pdf>.

⁹ See, eg, Maia Davies, Rachel Muller Heyndyk, and Joe Tidy, 'Day of delays at Heathrow after cyber-attack brings disruption' *BBC* (online, 21 September 2025) <<https://www.bbc.com/news/articles/c3drpgv33pxo>>.

screening should be part of the framework to the extent a complaint can be brought against an airport and/or any relevant security screening contractor.

Privacy-related complaints

The Consultation Paper proposes to exclude privacy complaints from the framework. However, there may be instances where privacy issues are relevant to the consumer's complaint eg access to phone recordings between the consumer and airline or access to a passenger information/assistance profile (as proposed in the Aviation White Paper). As such, the ACO should be able to handle particular privacy-related complaints – similar to other ombuds schemes¹⁰ – especially when a consumer's private information is relevant to the resolution of the complaint. This would support the ACO's power to request additional information and documents from regulated entities and facilitate the timely resolution of disputes through the ACO given that pursuing alternate pathways to resolve privacy complaints may cause unnecessary delays.

Recommendation 4 – ACO to give binding directions to airlines regarding consumers who book through a travel agent

The ACO should be able to give binding directions to airlines regarding how they will deal with consumers who booked through a travel agent, including where the travel agent may have contributed to the subject matter of the consumer's complaint.

Recommendation 5 – Security screening be included in the framework

Security screening should be included as a regulated activity under the framework to the extent a complaint can be brought against an airport and/or any relevant security contractor.

Recommendation 6 – Privacy complaints be included in the framework

Privacy complaints should be included in the framework including where a consumer's access to personal information (ie phone call recordings, passenger profile information) is relevant to the resolution of the complaint.

4. Question 2: International flights

Are there any operational or technical considerations regarding international flights that would affect their regulation under the framework?

The regulatory framework should cover airlines providing domestic, as well as inbound and outbound international flights, and Australian airlines flying internationally. This is important for equity of access to consumer protections and to avoid the difficulties consumers face enforcing rights outside of Australia. The Consultation Paper acknowledges, '[a]s a general principle, consumers, whether they are travelling with an Australian or international airline, from a large city or a regional area, should be entitled to the same baseline level of service'.¹¹ Equally, consumers,

¹⁰ 'External dispute resolution schemes' Office of the Australian Information Commissioner (Web Page) <<https://www.oaic.gov.au/privacy/privacy-complaints/external-dispute-resolution-schemes>>.

¹¹ Transport Group (n 2) 14.

regardless of the airline they are travelling with or the location they are travelling to or from, should be entitled to access the same baseline protections.

If the framework were to only apply to international flights by Australian airlines, there could be significant confusion regarding codeshare flights given that Qantas and Virgin each have codeshare agreements with multiple international airlines. Under these agreements, although consumers often book with one airline and the flight is designated under that airline's flight number, another airline may operate the flight itself. Consumers should not be disadvantaged from pursuing remedies under the consumer protection scheme because of airline codeshare agreements and marketing arrangements.

Further, we note the proposed aviation disability standards are expected to be within the remit of the ACO.¹² Those standards will be made under the *Disability Discrimination Act 1992* (Cth), which applies to all domestic and international airlines operating in Australia (regardless of whether the airline is operating an inbound or outbound flight). Accordingly, all airlines operating flights to, from and within Australia should be covered by the Charter and the Ombuds framework from its commencement.

In the event of dual aviation consumer protections schemes in the country of departure and Australia (ie a flight from Vancouver to Brisbane), consumers should have the right to choose the forum for lodging their complaint. Airlines should ensure consumers have sufficient information to understand their rights to make a complaint and to make this decision. Similar to the EU261 scheme, the Australian scheme could exclude complaints from consumers who have already received applicable remedies under an overseas scheme.¹³

Recommendation 7 – All passenger airlines that operate in Australia be included

All airlines operating flights to, from and within Australia, and Australian airlines flying internationally should be included as regulated entities under the framework. Where an overseas consumer protection scheme may apply, airlines should provide consumers with information to understand their complaint rights and to choose which scheme to seek redress through.

5. Question 3: Airport accessibility services

Are there any operational or technical considerations regarding airport accessibility services that would affect their regulation under the framework?

While we are pleased the regulatory framework will encompass all airport accessibility services, we consider that further clarification is required to clarify the scope of the regulated activities that fall under this category.

Additionally, failures in the delivery of accessibility services may give rise to a consumer issue *and* a breach of discrimination law. The ACO will need to work cooperatively with other complaints schemes or processes such as the AHRC and state and territory anti-discrimination bodies to ensure consumers can access consumer law remedies through the ACO as well as

¹² Transport Group (n 2) 17.

¹³ Transport Group (n 2) 15.

discrimination law remedies through other complaints schemes where appropriate. As we recommended in our submission to the Aviation Industry Ombuds Scheme, this should include the provision of information to consumers about other relevant bodies, cross-referral powers for the ACO to refer matters to other bodies, and scope for the ACO to jointly investigate emerging and systemic issues with other relevant bodies.

Recommendation 8 – ACO to work cooperatively with other complaints bodies

The ACO should work cooperatively with other federal, state and territory complaints schemes or processes, including provision of information to consumers about other relevant bodies, cross-referral powers for the ACO to refer matters to other bodies, and scope to jointly investigate emerging and systemic issues with other relevant bodies.

6. Question 6: Role of the new regulator

Is the role of the ACPA as proposed sufficient to protect aviation consumers and lift consumer standards, while not imposing undue regulatory burden and costs on the sector?

The JEC supports the establishment of an independent regulator to monitor, investigate and enforce the consumer protection framework. As noted above in section 2, the new regulator should operate independently of government, so it has broad authority to intervene to pursue the interests of consumers.

The regulator should have broad functions and powers to pursue consumer interests

The JEC broadly supports the functions and powers proposed to be conferred on the independent regulator.

Whether the regulator is established within the ACCC structure (as we propose above), or as a new independent entity, it is essential the chosen regulator be granted a full suite of compliance and enforcement powers.

If the new regulator is established within the ACCC structure, it may be appropriate to consider aligning the regulator's powers with those of the ACCC. We otherwise broadly agree the primary legislation should be drafted to trigger the *Regulatory Powers (Standard Provisions) Act 2014* (Cth), and at a minimum, powers to monitor, investigate, gather information broadly, enforce civil penalty provisions, issue infringement notices, accept and enforce undertakings and seek injunctions.

As part of its information gathering powers, the regulator should have the power to gather data about all five stages of the proposed complaints handling process, including stage 1. As the ACO usually will not have oversight of stage 1 (particularly if the complaint resolves at that stage), the regulator needs to have oversight of this stage to understand the full picture of the types of complaints being made and the outcomes of those complaints, to be able to identify any issues or trends that could be the subject of its regulatory functions.

Additionally, the regulator should oversee the complaints handling process of regulated entities to ensure alignment with best practice (eg Standards Australia's *Guidelines for complaint management in organisations* (AS10002:2022)).

The regulator should also be responsible for reviewing and endorsing airline and airport Customer Service Statements to ensure they are consistent with, and/or further advance, the consumer rights enshrined in the Charter.

The regulator should be adequately funded and resourced

We agree with the intention expressed in the Consultation Paper to establish a strong new enforcement body.¹⁴ While the proposed powers of the regulator appear to be appropriate, the question of whether the role of the regulator will be sufficient to protect aviation consumers and lift consumer standards will turn on the adequacy and sustainability of its funding and resourcing, as well as its ability to be transparent about its activities. To illustrate, the AHRC was granted powers to enforce the positive duty to prevent sexual harassment and sex discrimination in the workplace, however we understand no employers have been prosecuted since these powers came into effect, and secrecy provisions have prevented the AHRC from reporting publicly on its enforcement actions. While we recognise the rationale for recovering the costs of activities carried out under the framework through levies imposed on regulated entities, our concern is the intended funding structure of the regulator could impede its enforcement agenda or result in increased costs for consumers.

Recommendation 9 – The regulator be granted a full suite of powers

The proposed regulator should be empowered to exercise a full suite of compliance and enforcement powers, which at a minimum should include powers to monitor, investigate, gather information broadly, enforce civil penalty provisions, issue infringement notices, accept and enforce undertakings and seek injunctions.

The regulator's powers should specifically include:

- *gathering information about all five stages of the proposed complaints handling process, including stage 1;*
- *overseeing the complaints handling process of regulated entities to align with best practice; and*
- *reviewing and endorsing airline and airport Customer Service Statements to ensure they are consistent with, and/or further advance, the Charter rights.*

¹⁴ Transport Group (n 2) 9.

7. Question 7: Powers and functions of the ACO

Do the proposed functions and powers of the ACO provide sufficient capability to efficiently resolve consumer complaints and improve consumer standards? If not, what should change and why?

The ACO should be able to address and resolve systemic issues

Identification of systemic issues, together with mechanisms to address those issues, is critical to the framework's objective of achieving systemic improvements in the aviation sector.

It is vital the ACO has powers to resolve systemic issues as part its complaint handling functions. Case study 1 in the Consultation Paper indicates only the regulator would investigate systemic breaches and pursue enforcement action to ensure compliance with the Charter. However, in addition to identifying emerging and systemic issues in the provision of aviation services to consumers, the ACO should also be able to address, resolve or facilitate resolution of systemic issues that impact consumers. In this way, the ACO should be specifically empowered to identify, investigate and take action to address systemic issues identified through complaints including by making determinations for remedies to be provided to all consumers affected by the systemic issue (even if not all consumers have lodged a complaint).¹⁵

Additionally, the ACO should refer matters with a broader public impact or systemic issues to the new regulator (or where appropriate to the ACCC) to investigate.¹⁶

The ACO should be able to accept direct complaints in serious or urgent circumstances

The ACO should have discretion to accept complaints directly without complainants being required to first engage with the airline or airport in some circumstances. This includes where the complaint is of a more serious nature, requires a more urgent response, or where other relevant factors apply (eg inaccessibility of the airline or airport's complaint process).

For example, and as we raised in our submission to the Aviation Industry Ombuds Scheme,¹⁷ a passenger whose wheelchair is damaged by an airline may require immediate redress in the form of compensation, repairs and/or a replacement wheelchair. In such urgent circumstances, and if liability for the damage is disputed, a complaint resolution process that requires the complainant to go through a five-stage complaint escalation process would be burdensome and frustrating – the ACO must be able to investigate quickly and provide practical and fair outcomes.

We are concerned the examples in Case Study 8 of the Consultation Paper ignore the serious consequences of damaged mobility devices for people with disability. In those examples, both Mei and Jing's mobility devices had been damaged in transit. This likely caused them significant

¹⁵ See also ACCC's submission and example of how the ACO could address systemic issues, ACCC (n 8) 5; CHOICE, *Submission to the Aviation Industry Ombuds Scheme - Consultation Paper* (October 2024) 9 <<https://www.choice.com.au/-/media/f6cf111ec65244cbbccb4143c40b0c2b.ashx?la=en>>.

¹⁶ Transport Group (n 2) 32.

¹⁷ JEC (n 1) 14-15.

hardship given they would not have been able to use their mobility devices on arrival, and their travel plans may have been impacted.

After making complaints with the airline, Mei and Jing waited 30 days without receiving a satisfactory response. Once Mei lodged a complaint with the ACO, she then had to wait an additional 14 days only for the airline to not respond within this timeframe. Mei then endured an unsuccessful case management process, before finally receiving a determination in her favour which required the airline to reimburse her for repairs to her damaged mobility device. Jing chose to lodge a disability discrimination complaint through the AHRC instead, where the timeframe between lodging the complaint and achieving a resolution may have been even longer. As the AHRC itself acknowledges, 'a very large increase in complaints' and resource constraints has led to significant delays in the actioning of complaints.¹⁸ We have recently been informed that current processing times for allocating complaints to a conciliator can be as long as 14 months. This is not an efficient pathway for seeking compensation for damage to mobility devices which is often highly customised and expensive equipment, and imperative to the person affected.

To further illustrate the reality of these situations:

- When Akii Ngo's customised electric wheelchair was damaged by Qantas during transit, Qantas told Akii it would repair their wheelchair – the repairs took 13 days.¹⁹ Without their wheelchair, Akii reported they were '100 per cent housebound and couldn't do anything without [their] chair'. Akii told Qantas '...they've essentially taken my legs away from me, and they expected me to patiently wait for them to be given back. How is any of this okay?' Even though it was possible for Akii to use a replacement hire wheelchair, the experience of organising a hire chair was stressful, as Qantas kept suggesting chairs that were not suitable for Akii's disabilities.
- A person whose wheelchair was damaged by Virgin Australia was waiting at least five weeks without their wheelchair and incurred \$8,000 for rental equipment.²⁰
- For other people with disability, a replacement hire wheelchair may not be suitable, including because of the risk of developing pressure sores.²¹

These examples demonstrate the need for complaints of this nature to be dealt with urgently. It is not acceptable for people to wait months or years for outcomes to redress damage or loss of mobility devices that has occurred through no fault of their own. The loss of independence and mobility while arranging for mobility devices to be repaired compounds the disadvantage

¹⁸ Australian Human Rights Commission, 'Make a complaint' Complaints (Web Page) <<https://humanrights.gov.au/complaints/make-complaint>>.

¹⁹ Zoe Simmons, 'How a trip home on Qantas left disability advocate Akii Ngo stranded with a broken wheelchair' ABC (online, 16 September 2023) <<https://www.abc.net.au/news/2023-09-16/qantas-damage-wheelchair-akii-ngo-disability-activist-inclusion/102846034>>.

²⁰ Daniel Miles, 'Teacher seeks reimbursement from Virgin Australia over broken wheelchair, ongoing costs' ABC (online, 31 October 2023) <<https://www.abc.net.au/news/2023-10-31/virgin-airline-wheelchair-damage-broken-compensation/103010472>>.

²¹ Emily Alpert Reyes, 'An airline broke an activist's wheelchair. Her death months later amplified calls for change' *Los Angeles Times* (online, 6 Jan 2022) <<https://www.latimes.com/california/story/2022-01-06/la-activist-broken-wheelchair-airlines-death>>; Bethany Dawson, 'A disability activist died from body sores associated with the loss of her \$30,000 wheelchair that was "destroyed" during a United Airlines flight, advocacy group claims' *Business Insider* (online, 7 November 2021) <<https://www.businessinsider.com/disability-activist-died-after-united-airlines-destroyed-30k-wheelchair-2021-11#:~:text=Engracia%20Figuerola%2C%20an%20amputee%20with,which%20led%20to%20her%20death>>.

experienced in ways that compensation alone cannot address, as recognised by the government's agenda to reform inclusion and accessibility for people with disability. This is in addition to the significant out-of-pocket expenses people with disability incur while waiting to receive reimbursement from airlines.

The ACO complaint handling function should be equipped with the powers and resources to investigate and address urgent consumer issues that impact a consumer's safety expeditiously so that consumers can receive compensation or rectification to remedy the impact of the damage to their mobility devices promptly. The Consultation Paper itself acknowledges that the ACO must be able 'to address complaints in a manner which is accessible and responsive to individual circumstances in unusual or unforeseen circumstances' so consumers are 'not unfairly disadvantaged by rigid procedural requirements'.²² Damage to mobility devices must be one of those circumstances.

The ACO should accept complaints with a 2 year time limit

The case studies of Mei and Jing demonstrate that the poor treatment of customers with disability may be both a consumer issue and a breach of discrimination law. The remedies available through the ACO and the AHRC are different and aimed at different ends. Accordingly, a consumer should be able to pursue remedies with both the ACO and the AHRC – it should not be one or the other (noting our above comments about the need for the ACO to work cooperatively with other complaints bodies, including if those bodies consider one is more appropriate to resolve the complaint and the existence of a 'no wrong door' policy).

Relevantly, the AHRC has a 'time limit' of 24 months.²³ Additionally, the Telecommunications Industry Ombudsman and the Australian Financial Complaints Authority have a 2 year time limit. To align with comparable complaints bodies and to achieve consistency among ombuds schemes, we consider the time limit for making a complaint to the ACO should be 2 years.

If the proposed 12 month time limit is maintained, we strongly support the ACO having discretion to extend time limits in some circumstances. These circumstances should include where a person lodged their complaint with another body such as the AHRC; a time limit of 12 months to lodge a complaint with the ACO (as proposed) should be extended so they are not disadvantaged in pursuing their complaint and enforcing their rights under consumer law. Discretionary time limits are also necessary to facilitate appropriate cross-referrals between the ACO and AHRC, as well as other relevant bodies.

The complaints handling process should incentivise resolution of complaints

The Consultation Paper says stage 3 of the complaints handling process, the 'refer back' process, 'would provide an incentive for an airline/airport to resolve a complaint prior to case management by the ACO, given there would be costs involved.'²⁴ Costs should be levied at the

²² Transport Group (n 2) 30.

²³ *Australian Human Rights Commission Act 1986* (Cth) s 46PH(1)(b).

²⁴ Transport Group (n 2) 30.

point at which a complaint is made with the ACO (stage 2), to ensure regulated entities are incentivised to resolve complaints at the earliest stage (stage 1).

Recommendation 10 – ACO to address and resolve systemic issues

The ACO should be empowered to address and resolve systemic issues that impact consumers in a similar way (even if not all consumers have lodged a complaint). The ACO should refer matters with a broader public impact or systemic issues to the proposed regulator (and where appropriate to the ACCC) to investigate.

Recommendation 11 – Consumers to be able to complain directly to ACO

Consumers should be able to escalate their complaint directly to the ACO in certain circumstances, including where the complaint is of a serious nature, impacts a consumer's safety or otherwise requires an urgent response.

Recommendation 12 – Time limit for making complaints should be 2 years

The time limit for making complaints to the ACO should be 2 years. If the proposed time limit of 12 months is maintained, the ACO should have the discretion to extend time limits in specific circumstances, including where a person lodged their complaint with another body, or to facilitate cross-referrals between complaint bodies.

Recommendation 13 – Costs be levied when a complaint is made with the ACO

Costs should be levied on a regulated entity at the point at which a complaint is made with the ACO to incentivise the early resolution of complaints by airlines and airports.