

Submission on the Aviation Consumer Protection Bill Package

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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 – An object of the Act to be aimed at systemic improvements

Clause 3 should be amended to add the following object: ‘to identify systemic issues affecting the experience of consumers in aviation, and achieve systemic improvements in the policies, practices and services of regulated entities’.

Recommendation 2 – A purpose of the Charter to be aimed at systemic improvements

Subclause 20(1) should be amended to add the following purpose: ‘achieving systemic improvements in the policies, practices and services of regulated entities’.

Recommendation 3 – Reframing language to be rights-based for people with disability

Subclauses 10, 20(1)(b) and 20(4)(d) should be reframed to replace language along the lines of ‘preventing discrimination against a person on the ground of a disability of the person’ as follows:

- for subclause 10, see our Recommendation 11;
- replace subclause 20(1)(b) with: ‘promoting equality, accessibility, inclusion and participation for people with disability to access air travel and other related services on an equal basis with others’; and
- replace subclause 20(4)(d) with: ‘the provision of reasonable adjustments (within the meaning of the Disability Discrimination Act 1992)’.

Recommendation 4 – Expressly referring to the handling of ‘disability aids’

Subclauses 11(3) and 20(4)(c) should be amended to expressly refer to the handling and management of ‘disability aids’.

Recommendation 5 – Mandatory establishment of the Charter and the Scheme

Subclauses 20(1) and 23(1) should be amended to require the Minister to establish the Charter and the Aviation Consumer Ombuds Scheme, and ensure there is an approved Charter and Scheme in place at all times.

Recommendation 6 – Exemption of small airports to be confined

Rather than broadly exempting small airports from the Framework, the Government should consider alternate approaches to ensure meaningful participation of small airports in the Framework, including the viability of a tiered membership model to participate in the Aviation Consumer Ombuds Scheme.

Recommendation 7 – Narrowing the exemption power to prioritise people with disability

Subclauses 9(1) and (2) should be amended to prohibit exemptions about:

- *compliance with accessibility-related Charter requirements; and*
- *complaints about airport accessibility services.*

Recommendation 8 – Exemptions affecting accessibility to be time-limited

Subclause 9(4) should be amended to require that exemptions about the following are to be time-limited:

- *compliance with accessibility-related Charter requirements; and*
- *complaints about airport accessibility services.*

Recommendation 9 – Exemptions to expressly consider impact on people with disability

Subclause 9(5)(c) should be amended to state: ‘the impact on consumers, including any particular impacts on consumers with disability’.

Recommendation 10 – The Framework be subject to periodic statutory review

The Bill should include a clause requiring the Framework to be subject to regular evaluation (including public consultation) every three years. The results of each evaluation should be properly considered and implemented.

Recommendation 11 – The definition of ‘accessibility service’ to be inclusive

Accessibility service should be defined as follows: ‘means a service that provides adjustment, including by way of assistance or equipment or other means, to enable a person with disability to access air travel and related services on an equal basis with others.’

Recommendation 12 – The definition of ‘airline service’ to be broad

Subclause 11(3)(g) should be amended to state: ‘a service or facility for an air passenger while on board an aircraft (such as catering, an accessibility service or in-flight information or entertainment’.

Recommendation 13 – Security screening be included in the Framework

The Bill should be amended to ensure security screening is within the scope of the Framework, to the extent it is a service delivered by an airport and/or any relevant security screening contractor.

Recommendation 14 – The definition of ‘airport accessibility service’ to be clarified

Subclause 13(1) should expressly clarify that an ‘airport accessibility service’ may be provided by or on behalf of any scheme member.

Recommendation 15 – Meaning of ‘rights or entitlements’ to be clarified

The Explanatory Memorandum to the Aviation Consumer Protection Bill 2026 should clarify how ‘rights or entitlements’ as used in subclause 17(1) is to be understood. In particular, it should state:

In this context, rights or entitlements are to be understood broadly to include those arising under consumer and/or contract law, as well as rights of access to services as contemplated by the Convention on the Rights of Persons with Disabilities and the Convention on the Rights of the Child.

Recommendation 16 – Requirements for experience of directors of the Board

Subclause 24(3)(d) should be redrafted as follows:

The operator’s constitution provides that:

(i) the board of the operator consists of an equal number of directors with experience representing the interests of consumers and directors with experience in carrying on the kinds of businesses operated by scheme members;

(ii) directors appointed to represent consumer interests are nominated by recognised community organisations; and

(iii) at least two directors appointed to represent consumer interests are persons with lived experience of disability and/or be recognised representatives of people with disability.’

Recommendation 17 – Requirements for majority decisions of the Board

Subclause 24(3) should be amended to require majority decisions of the Board to be made by a majority that includes at least one consumer director and one industry director.

Recommendation 18 – Expressly requiring the Scheme to be accessible to people with disability

Subclause 25(a) should be amended to explicitly state: ‘the accessibility of the Scheme, including to be accessible to, and inclusive of, people with disability’.

The Explanatory Memorandum to the Aviation Consumer Protection Bill 2026 should be amended to add: ‘This consideration requires the active involvement of people with disability in the design of the EDR scheme and testing it with users for accessibility prior to commencing operation.’

Recommendation 19 – Meaning of ‘referral’ to be expressly clarified

Subclause 32(1) should be amended to clarify a ‘referral’:

- *does not of itself prevent the Ombudsperson from continuing to deal with the complaint, unless the complainant expressly agrees otherwise; and*

- *does not limit or affect any right of the complainant to pursue remedies in another forum, in relation to the same facts or circumstances.*

Recommendation 20 – Requirement for consent before referral is made

Subclause 32(1) should be amended to require a complainant’s consent before a referral is made as follows: The Aviation Consumer Ombudsperson may, with the consent of the complainant, refer a matter raised in an eligible complaint to any of the following entities...’

Recommendation 21 – Requirement for Scheme to work cooperatively with other bodies

Clause 32 should include a requirement for the Aviation Consumer Ombuds Scheme to establish and maintain cooperative arrangements with bodies referred to in subsection (1) for the purposes of:

- *facilitating effective referrals;*
- *supporting coordinated or parallel handling of complaints where appropriate;*
- *ensuring complainants are provided with clear, accessible information about options for redress; and*
- *Identifying and responding to systemic issues affecting consumers of air travel.*

Recommendation 22 – Register of scheme members to be publicly available online

Subclause 34(3) should be amended to state: ‘The Aviation Consumer Ombudsperson must ensure that the register is publicly available, including by publishing the register in an accessible form on the Ombudsperson’s website, and that it is kept accurate and up to date.’

Recommendation 23 – Clarifying the circumstances for making direct complaints

The Explanatory Memorandum should be amended to inclusively articulate some types of circumstances in which the Ombudsperson may accept a complaint without requiring a consumer to first attempt resolution with the relevant airline or airport. These circumstances should expressly include situations where the complaint involves serious damage or harm, where urgent redress is required, or where the regulated entity’s complaint processes are inaccessible.

Recommendation 24 – Civil penalties not to apply to complainants for failure to attend

Subclause 37(4) should be amended to ensure the civil penalty and/or civil penalties applies only to scheme members and does not apply to complainants.

Recommendation 25 – Clarifying notice to produce includes responding to a complaint

A legislative note should be added at the end of subclause 39(1) to clarify a notice may require a scheme member to provide a written response to a complaint.

Recommendation 26 – Information produced to be provided to each party

Clause 39 should be amended to require the Ombudsperson to provide information or documents produced to each party to a complaint within seven (7) days of production.

Recommendation 27 – Determinations to adopt a ‘fair and reasonable’ approach

For determinations of complaints, the Bill should be amended to replace merits review principles with a ‘fair and reasonable in all the circumstances’ approach.

Recommendation 28 – Remedies to advance the objects of the Scheme and Framework

Subclause 46(4) should be amended to permit the Ombudsperson to provide remedies that it considers fair and reasonable in all the circumstances, having regard to advancing the objects of the Scheme and the Framework.

Recommendation 29 – Requirements for written reasons for determinations

Subclause 47(2) should be amended to specify that written reasons must:

- *set out the findings on material questions of fact;*
- *refer to the evidence or other material on which the findings are based; and*
- *explain the reasons for the decision.*

Recommendation 30 – Adverse costs protection to be broadened

Subclause 51(5) should be amended to state: ‘The Federal Court must not make an order awarding costs against a complainant in relation to an appeal instituted by another party to the complaint under subsection (1).’

Alternatively, subclause 51(5) should clarify what is meant by a complainant not defending an appeal.

Recommendation 31 – Using improvement notices to achieve the objects of the Act

Subclause 76(1) should be amended to add a third circumstance for when an improvement notice may be given, namely where the Secretary reasonably believes that issuing a notice would achieve the objects of the Act, including to achieve systemic improvements in the policies, practices and services of the regulated entities.

Guidance on the kinds of actions the Secretary may require for systemic improvements should be included as a legislative note or through the Explanatory Memorandum.

Recommendation 32 – Publishing de-identified register of resolutions reached

Subclause 81(2)(d) should be amended to state: ‘eligible complaints, including:

- *the handling of such complaints by regulated entities; and*
- *a de-identified register of resolutions reached through the Aviation Consumer Ombuds Scheme;'*

Recommendation 33 – Publishing information on systemic issues and recommendations

Subclause 81(2) should be amended to add the following category of information that may be required to be published under the rules: identification of emerging trends and systemic issues in the policies, practices and services of regulated entities, together with recommendations to address those issues.

Introduction

The Justice and Equity Centre ('JEC') welcomes the opportunity to make a submission to the inquiry by the Rural and Regional Affairs and Transport Legislation Committee ('Committee') into the Aviation Consumer Protection Bill Package.

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 Aviation Accessibility Steering Committee convened by the Department of Infrastructure, Transport, Regional Development, Communications and the Arts ('Department') and as a co-design partner on that Committee with People with Disability Australia and the Australian Federation of Disability Organisations to co-design the proposed Aviation Disability Standards.

We welcome the Aviation Consumer Protection Framework and, in particular, its recognition of the importance of consumer protections for people with disability. As we said in our submission to the Department's 2025 consultation on the proposed primary legislation:

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

¹ JEC, *Submission on Aviation Consumer Protections – Primary Legislation* (3 October 2025) 3-4 <<https://jec.org.au/wp-content/uploads/jec-publications/17486/25.10.03-Submission-to-Aviation-Consumer-Protections-Consultation-Paper.pdf>>.

Our submission focuses on the Aviation Consumer Protection Bill 2026 ('Bill') and makes targeted and technical recommendations:

- strengthening the overall Aviation Consumer Protection Framework;
- enhancing the definitions of 'key concepts' used in the Bill;
- strengthening the governance arrangements and complaint-handling process of the Aviation Consumer Ombuds Scheme;
- using improvement notices to drive systemic change; and
- supporting a more robust framework for publication of information.

1. Strengthening the overall Framework

1.1 Embedding a focus on 'systemic improvements'

The Aviation Consumer Protection Framework ('Framework') is intended to drive systemic improvements to the consumer air travel experience. This should be explicitly stated as an object of the legislation (at clause 3) and a purpose of the Aviation Consumer Protections Charter ('Charter') (at subclause 20(1)). Embedding this focus on systemic improvement would reinforce and advance the Framework's other objectives, including strengthening consumer protections, improving service standards and reducing disputes.

Recommendation 1 – An object of the Act to be aimed at systemic improvements

Clause 3 should be amended to add the following object: 'to identify systemic issues affecting the experience of consumers in aviation, and achieve systemic improvements in the policies, practices and services of regulated entities'.

Recommendation 2 – A purpose of the Charter to be aimed at systemic improvements

Subclause 20(1) should be amended to add the following purpose: 'achieving systemic improvements in the policies, practices and services of regulated entities'.

1.2 Reframing 'to prevent discrimination'

We welcome the Framework's stated intention to improve the passenger experience for aviation consumers with disability.² In particular, the inclusion of a defined concept of 'accessibility service' and the Charter purpose of 'preventing discrimination against a person on the ground of disability' provide important recognition of accessibility within the regulatory framework.

However, we are concerned the negative framing of 'preventing discrimination' used in those provisions unnecessarily limits what might be considered. By defining 'accessibility service' by reference to adjustments that 'prevent discrimination', the Bill risks importing concepts of discrimination from the *Disability Discrimination Act 1992* (Cth) ('DDA') into the operation of the Framework, with potential unintended consequences. This may, for example require decision-

² See for example, Explanatory Memorandum, Aviation Consumer Protection Bill 2026 (Cth) ('Explanatory Memorandum') [190].

makers to first determine whether conduct amounts to ‘discrimination’ under the DDA before recognising a service as an accessibility service, creating an unnecessary legal threshold.

As discrimination law has developed to carefully balance liability between actors across a range of social settings, its terminology and concepts may not be well-suited to promoting accessibility in the more specific setting of passenger air travel practices. Further, as the Disability Royal Commission observed, the current statutory definitions of disability discrimination in the DDA are complex, difficult to apply, and in need of simplification.³ Replicating or indirectly incorporating those complexities into the Bill risks creating barriers, contrary to the Bill’s consumer-protection objectives.

We therefore recommend references to ‘preventing discrimination against a person on the ground of disability’ be reframed using positive, rights-based language more closely aligned with the Convention on the Rights of Persons with Disabilities (‘CRPD’).⁴ Framing accessibility services around inclusion, participation, independence and equality – rather than prevention of discrimination – would better promote the rights of people with disability.

Recommendation 3 – Reframing language to be rights-based for people with disability

Subclauses 10, 20(1)(b) and 20(4)(d) should be reframed to replace language along the lines of ‘preventing discrimination against a person on the ground of a disability of the person’ as follows:

- *for subclause 10, see our Recommendation 11;*
- *replace subclause 20(1)(b) with: ‘promoting equality, accessibility, inclusion and participation for people with disability to access air travel and other related services on an equal basis with others’; and*
- *replace subclause 20(4)(d) with: ‘the provision of reasonable adjustments (within the meaning of the Disability Discrimination Act 1992)’.*

1.3 Incorporating references to ‘disability aids’

The Bill, in defining the scope of airline services and shaping the requirements of the Charter, refers to the handling of ‘baggage’.⁵ While this may be intended to capture some disability aids, we consider this approach is insufficient.

Disability aids should be expressly identified to ensure they are explicitly and comprehensively included in the scope of the Charter. Doing so would properly reflect the Framework’s stated intention to improve the passenger experience for aviation consumers with disability.⁶ Disability aids are not merely a subset of baggage; they are essential to mobility, independence and

³ *Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability*, ‘Realising the human rights of people with disability’ (Final Report, September 2023) vol 4, 99, 279, 302.

⁴ See *Convention on the Rights of Persons with Disabilities*, opened for signature 30 March 2007, 2515 UNTS 3 (entered into force 3 May 2008), art 2.

⁵ Aviation Consumer Protection Bill 2026 (Cth) sub-cl 11(3)(d) and 20(4)(c)(ii).

⁶ See for example, Explanatory Memorandum [190].

dignity. The consequences of a disability aid being refused carriage, mishandled or lost are fundamentally different, and often far more urgent and severe.

By expressly recognising disability aids within the Bill, the Framework would better acknowledge these realities, reinforce the heightened importance of their proper handling, and ensure the Framework responds proportionately to the impacts experienced by passengers with disability.

Recommendation 4 – Expressly referring to the handling of ‘disability aids’

Subclauses 11(3) and 20(4)(c) should be amended to expressly refer to the handling and management of ‘disability aids’.

1.4 Mandatory establishment of core consumer protections

The Bill provides that the Minister ‘may’ establish the Charter and the Aviation Consumer Ombuds Scheme (‘Scheme’). While we appreciate the Government’s stated policy intentions to do so, it is not clear why it would be necessary for the relevant power to be discretionary. Conversely, framing the establishment of the Charter and the Scheme as subject to ministerial discretion would make it easier for a future government to revoke and/or fail to re-establish them, without direct legislative oversight. This creates an unnecessary and avoidable fragility in the Framework and could undermine certainty for consumers.

To ensure enduring consumer protections, the Bill should *require* the Minister to establish the Charter and the Scheme and ensure there is an approved Charter and Scheme in place at all times.

Recommendation 5 – Mandatory establishment of the Charter and the Scheme

Subclauses 20(1) and 23(1) should be amended to require the Minister to establish the Charter and the Aviation Consumer Ombuds Scheme, and ensure there is an approved Charter and Scheme in place at all times.

1.5 Confining the exemption of small airports

Clause 9 empowers the Minister to exempt classes of regulated entities, or individual regulated entities, from any provisions of the Act, including compliance with Charter requirements and membership of the Scheme. We understand the Government’s intention is to exempt from the Framework small airports, which are commonly located in regional, rural and remote Australia, on the basis of their more limited financial and operational capacity.⁷

While we recognise the rationale for the exemption power being used for this purpose, the breadth of its proposed use raises concerns. As the Productivity Commission has observed, ‘[r]egional aviation directly affects around one third of the Australian population who live outside

⁷ Email from Department of Infrastructure, Transport, Regional Development, Communications, Sport and the Arts, ‘Aviation Consumer Protection legislation introduced into Parliament’ (1 April 2026).

capital cities'.⁸ For many in these communities – particularly people with disability – aviation is not a discretionary convenience but an essential service.

As noted above, and as the Framework recognises, people with disability are disproportionately affected by failures in air travel services. That impact increases on regional routes and at smaller airports, where alternatives are limited or non-existent.⁹

All consumers should be afforded equal protection under the Framework, regardless of where they are travelling. Broad exemptions risk fragmenting the Framework and entrenching uneven protections based on location.

Accordingly, the Government should consider alternate approaches to ensure meaningful participation of small airports within the Framework. For example, we have previously recommended a tiered membership model for the Scheme, to account for variations in the size and operations of regulated entities.¹⁰

In addition, there are several ways the exemption power should be improved to target the prioritisation of passengers with disability:

- Narrowing the power to prohibit exemptions from:
 - compliance with accessibility-related Charter requirements; and
 - complaints about airport accessibility services.
- Requiring any exemptions about compliance with accessibility-related Charter requirements and complaints about airport accessibility services to be time-limited.
- Strengthening subclause 9(5)(c) to require the Minister to expressly consider the impact on people with disability, in addition to the general 'impact on consumers'.

These measures could be used to preserve flexibility for small airports while ensuring the Framework delivers consistent protections for people with disability.

Recommendation 6 – Exemption of small airports to be confined

Rather than broadly exempting small airports from the Framework, the Government should consider alternate approaches to ensure meaningful participation of small airports in the Framework, including the viability of a tiered membership model to participate in the Aviation Consumer Ombuds Scheme.

Recommendation 7 – Narrowing the exemption power to prioritise people with disability

Subclauses 9(1) and (2) should be amended to prohibit exemptions about:

⁸ Productivity Commission, 'Determinants of regional airfares – Call for submissions' (December 2025) 7.
⁹ See for example, People with Disability Australia, *Determinants of Regional Airfares – Submission to the Productivity Commission Inquiry* (March 2026) 4, 5.
¹⁰ JEC, *Submission to the Aviation Industry Ombuds Scheme – Consultation Paper* (17 October 2024) 11 <<https://jec.org.au/wp-content/uploads/jec-publications/14284/24.10.17-Submission-on-Aviation-Industry-Ombuds-Scheme-Consultation-Paper.pdf>>.

- *compliance with accessibility-related Charter requirements; and*
- *complaints about airport accessibility services.*

Recommendation 8 – Exemptions affecting accessibility to be time-limited

Subclause 9(4) should be amended to require that exemptions about the following are to be time-limited:

- *compliance with accessibility-related Charter requirements; and*
- *complaints about airport accessibility services.*

Recommendation 9 – Exemptions to expressly consider impact on people with disability

Subclause 9(5)(c) should be amended to state: ‘the impact on consumers, including any particular impacts on consumers with disability’.

1.6 Introducing a periodic statutory review

The Bill is enabling legislation: it establishes the overarching Framework and associated mechanisms for consumer protection, while deferring the articulation of most substantive rights and obligations to future legislative instruments, most notably the Charter. While the Explanatory Memorandum emphasises that this architecture will ‘enable[] consultation with industry and consumer stakeholders...while maintaining Parliamentary oversight,’¹¹ the practical effect is that core consumer protections remain contingent on subsequent executive action. The deferral of substantive policy to delegated legislation carries well-recognised risks.¹²

That being said, we appreciate the rationale for this approach, including the need for flexibility and responsiveness. Continual developments in airline and airport services, plus susceptibility to global and domestic disruption, have direct implications for consumer protections.

To balance these considerations, we recommend the Bill include a statutory requirement for regular evaluation of the Framework, including meaningful public consultation.

Recommendation 10 – The Framework be subject to periodic statutory review

The Bill should include a clause requiring the Framework to be subject to regular evaluation (including public consultation) every three years. The results of each evaluation should be properly considered and implemented.

¹¹ Explanatory Memorandum [151].

¹² See for example, Senate Standing Committee on Regulations and Ordinances, Parliament of Australia, *Parliamentary Scrutiny of delegated legislation* (Final Report, 3 June 2019), x

2. Enhancing the definitions of ‘key concepts’

2.1 Accessibility service

In addition to our recommendation above at section 1.2 to remove ‘prevent discrimination’ from the definition of ‘accessibility services’, we recommend changing how ‘adjustments’ are described within that definition.

While the Bill currently refers to adjustments being made by way of ‘assistance or equipment’, this formulation is too narrow. Adjustments may take many other forms, including changes to the manner of service delivery or the provision of accessible infrastructure, such as parking and wayfinding.

To function effectively, the definition should acknowledge adjustments could take other forms, in a way that is inclusive, flexible and adaptable.

Recommendation 11 – The definition of ‘accessibility service’ to be inclusive

Accessibility service should be defined as follows: ‘means a service that provides adjustment, including by way of assistance or equipment or other means, to enable a person with disability to access air travel and related services on an equal basis with others.’

2.2 Airline service

To ensure the broad scope of services related to an ‘airline service’ is captured for the purpose of complaint eligibility, subclause 11(3) should expressly include:

- on-board facilities eg toilets; and
- in-flight information or entertainment.

Recommendation 12 – The definition of ‘airline service’ to be broad

Subclause 11(3)(g) should be amended to state: ‘a service or facility for an air passenger while on board an aircraft (such as catering, an accessibility service or in-flight information or entertainment’.

2.3 Airport service

We understand the Government’s intention is not to include security screening complaints in the Framework at commencement. We reiterate our position, as set out in our submission to the Department during the 2025 consultation on the primary legislation, that security screening should be included.¹³

¹³ JEC, *Submission to Aviation Consumer Protections Consultation – Primary Legislation* (3 October 2025) 7-8 <<https://jec.org.au/wp-content/uploads/jec-publications/17486/25.10.03-Submission-to-Aviation-Consumer-Protections-Consultation-Paper.pdf>>.

Airport security screening is widely recognised as one of the most challenging points in a typical air travel journey. A recent report published through a partnership between the Interim Aviation Consumer Ombuds Scheme and the Behavioural Economics Team ('BETA') found that '[f]or all passengers...the journey stage with the highest correlation to overall airport satisfaction is "access to the airport" and "airport security screening processes"'.¹⁴

In our view, the Framework should have broad coverage of consumer aviation issues. Excluding a stage of air travel associated with well-documented problems would materially undermine the Framework's effectiveness.

The exclusion of security screening is particularly difficult to justify given that the Bill already provides a pathway to include it. Security screening is delivered by, or on behalf of, a scheme member, and as with airport accessibility services it could be included in the Bill's ambit notwithstanding it does not require direct payments from consumers.

The Explanatory Memorandum states that subclause 12(1) is 'intended to capture consumer-facing services provided by airport operators that have a sufficient connection with passenger travel by air'.¹⁵ Security screening plainly satisfies this – to access air travel, consumers must pass through security screening.

We are not aware of any compelling policy justification for excluding this significant component of the air travel experience from the Framework. Security screening should be treated as a 'regulated service' to the extent it is a service delivered by an airport and/or any relevant security screening contractor.

Recommendation 13 – Security screening be included in the Framework

The Bill should be amended to ensure security screening is within the scope of the Framework, to the extent it is a service delivered by an airport and/or any relevant security screening contractor.

2.4 Airport accessibility service

The Department's 2025 Aviation Consumer Protections Consultation Paper made clear 'the definition of an airport accessibility service would be geographically limited to accessibility services available at an airport, regardless of whether they are provided by or on behalf of the airport or airline'.¹⁶

To avoid ambiguity and ensure this intent is given full effect, this clarification should be expressly reflected in the text of subclause 13(1).

¹⁴ Department of the Prime Minister and Cabinet, *Preparing for take-off: Surveying Australians' air travel behaviour, experiences and attitudes* (April 2026) 11 <<https://www.pmc.gov.au/beta/projects/preparing-for-take-off>>.

¹⁵ Explanatory Memorandum [100].

¹⁶ Department of Infrastructure, Transport, Regional Development, Communications, Sport and the Arts, *Aviation Consumer Protections: Consultation Paper* (September 2025) 28.

Recommendation 14 – The definition of ‘airport accessibility service’ to be clarified

Subclause 13(1) should expressly clarify that an ‘airport accessibility service’ may be provided by or on behalf of any scheme member.

2.5 Eligible complaint

Subclause 17(1) defines an ‘eligible complaint’ as one that ‘raises an issue of concern relevant to the rights or entitlements of an individual’. While this formulation is beneficially broad, greater clarity would assist both consumers and regulated entities to understand what rights or entitlements are intended to be included.

To avoid uncertainty, we recommend the Explanatory Memorandum expressly clarify the meaning of ‘rights or entitlements’ for the purposes of this provision.

Recommendation 15 – Meaning of ‘rights or entitlements’ to be clarified

The Explanatory Memorandum to the Aviation Consumer Protection Bill 2026 should clarify how ‘rights or entitlements’ as used in subclause 17(1) is to be understood. In particular, it should state:

In this context, rights or entitlements are to be understood broadly to include those arising under consumer and/or contract law, as well as rights of access to services as contemplated by the Convention on the Rights of Persons with Disabilities and the Convention on the Rights of the Child.

3. Aviation Consumer Ombuds Scheme

3.1 Operator requirements

We welcome the proposed governance arrangements recognising the importance of balanced representation between industry and consumer interests, including the requirement (consistent with our earlier recommendation) the Board comprise an equal number of directors with consumer and industry expertise.¹⁷

To ensure directors with consumer expertise are genuinely representative of consumer interests, the operator requirements should require consumer directors be nominated by recognised community organisations. This would strengthen transparency, accountability and confidence in the appointment process.

In addition, the composition of the Board should reflect the Framework’s express intention to improve the passenger experience for aviation consumers with disability, as well the Charter’s purpose of improving accessibility for people with disability. We recommend the legislation require at least two consumer directors with lived experience of disability and/or recognised

¹⁷ JEC, *Submission to the Aviation Industry Ombuds Scheme – Consultation Paper* (17 October 2024) Recommendation 3 <<https://jec.org.au/wp-content/uploads/jec-publications/14284/24.10.17-Submission-on-Aviation-Industry-Ombuds-Scheme-Consultation-Paper.pdf>>.

representatives of people with disability. In our view, this is the minimum required to acknowledge the size and diversity of the disability community. Given the foundational nature of this requirement, it should be mandated in the primary legislation.

We further recommend the Bill be amended to require that Board majority decisions can only be made by a majority that includes at least one consumer director and one industry director. This safeguard would ensure that decisions cannot be made without the participation of both perspectives (such as in circumstances involving the Chair's casting vote, abstentions or absences). As this goes to the core integrity of the Scheme's governance, it should be addressed in the Framework's enabling legislation.

As contemplated by the Bill, it is appropriate for the Board, once constituted, to determine the details of operational rules of the Scheme, enabling flexibility and evolution over time.

Recommendation 16 – Requirements for experience of directors of the Board

Subclause 24(3)(d) should be redrafted as follows:

The operator's constitution provides that:

(i) the board of the operator consists of an equal number of directors with experience representing the interests of consumers and directors with experience in carrying on the kinds of businesses operated by scheme members;

(ii) directors appointed to represent consumer interests are nominated by recognised community organisations; and

(iii) at least two directors appointed to represent consumer interests are persons with lived experience of disability and/or be recognised representatives of people with disability.'

Recommendation 17 – Requirements for majority decisions of the Board

Subclause 24(3) should be amended to require majority decisions of the Board to be made by a majority that includes at least one consumer director and one industry director.

3.2 The need for accessibility

We welcome the inclusion of the six general considerations in clause 25, consistent with our earlier recommendation that the Scheme adopt Treasury's *Benchmarks for Industry-based Customer Dispute Resolution*.¹⁸

However, consideration of 'accessibility' is currently expressed at a very high level. We reiterate our view that this consideration should be explicitly directed to ensuring the Scheme is

¹⁸ JEC, *Submission to the Aviation Industry Ombuds Scheme – Consultation Paper* (17 October 2024) 8 <<https://jec.org.au/wp-content/uploads/jec-publications/14284/24.10.17-Submission-on-Aviation-Industry-Ombuds-Scheme-Consultation-Paper.pdf>>.

'accessible to, and inclusive of, people with disability'. This is particularly important given a core objective of the Framework is to improve the aviation experience for people with disability.

To give meaningful effect to this objective, accessibility must be embedded from the outset. This requires the active involvement of people with disability in the design of the Scheme, and user-testing for accessibility prior to commencing operation.

Recommendation 18 – Expressly requiring the Scheme to be accessible to people with disability

Subclause 25(a) should be amended to explicitly state: 'the accessibility of the Scheme, including to be accessible to, and inclusive of, people with disability'.

The Explanatory Memorandum to the Aviation Consumer Protection Bill 2026 should be amended to add: 'This consideration requires the active involvement of people with disability in the design of the EDR scheme and testing it with users for accessibility prior to commencing operation.'

3.3 Referral to appropriate authorities

We support the proposal to empower the Ombudsperson to refer matters to appropriate authorities. However, several aspects of clause 32 require clarification and strengthening to ensure that referrals enhance consumer protections.

First, it is unclear whether a referral under clause 32 is intended to terminate the complaint before the Scheme, or whether it is intended to operate parallel complaint pathways. In our view, the latter should be clearly established. Particularly for matters involving accessibility failures, which may simultaneously raise consumer protection issues and potential breaches of discrimination law, it is appropriate for complainants to be able to access multiple pathways for redress. In such cases, complainants should be able to pursue consumer-focused remedies through the Scheme (which may, for instance, provide a quicker practical remedy), while also accessing discrimination-based remedies through other forums (which may have more appropriate tools for addressing flow-on effects and underlying social or systemic problems). To avoid uncertainty, the intended meaning and effect of a 'referral' should be expressly clarified in subclause 32(1).

Second, clause 32 does not currently require the Ombudsperson to obtain the complainant's consent before making a referral. The Explanatory Memorandum indicates that referrals may be made where a 'complaint primarily raises issues that fall within the jurisdiction of another regulator or dispute resolution scheme'. If a complaint raises discrimination law issues (eg damage to a disability aid), while a human rights body *may* be more appropriate to consider the matter, the person may only be seeking a swifter, consumer law remedy. To preserve complainant autonomy, the Bill should require the complainant's consent before a referral is made. This safeguard is particularly important if a referral is intended to bring the Ombudsperson's consideration of the complaint to an end. The need for consent would apply even if the Scheme permitted parallel complaints, to avoid a complainant facing any adverse consequences ie complaint processes that require active participation, costs, etc.

Finally, clause 32 should expressly require the Ombudsperson to establish cooperative and proactive working arrangements with other relevant authorities. Such arrangements would support the provision of clear, timely information to complainants about alternative or parallel avenues for redress, and enable efficient, coordinated referral of matters where appropriate. It would also enable these bodies to identify systemic issues across their jurisdictions, such as where the total number of complaints about the same kinds of issue is fragmented across different authorities. This cooperative approach would strengthen the overall consumer protection framework and reduce the risk of consumers being left to navigate complex complaint systems.

Recommendation 19 – Meaning of ‘referral’ to be expressly clarified

Subclause 32(1) should be amended to clarify a ‘referral’:

- *does not of itself prevent the Ombudsperson from continuing to deal with the complaint, unless the complainant expressly agrees otherwise; and*
- *does not limit or affect any right of the complainant to pursue remedies in another forum, in relation to the same facts or circumstances.*

Recommendation 20 – Requirement for consent before referral is made

Subclause 32(1) should be amended to require a complainant’s consent before a referral is made as follows: The Aviation Consumer Ombudsperson may, with the consent of the complainant, refer a matter raised in an eligible complaint to any of the following entities...’

Recommendation 21 – Requirement for Scheme to work cooperatively with other bodies

Clause 32 should include a requirement for the Aviation Consumer Ombuds Scheme to establish and maintain cooperative arrangements with bodies referred to in subsection (1) for the purposes of:

- *facilitating effective referrals;*
- *supporting coordinated or parallel handling of complaints where appropriate;*
- *ensuring complainants are provided with clear, accessible information about options for redress; and*
- *Identifying and responding to systemic issues affecting consumers of air travel.*

3.4 Register of scheme members

The Explanatory Memorandum appropriately recognises the importance of transparency regarding which regulated entities participate in the Scheme.¹⁹ Beyond transparency, a publicly accessible register enables consumers to identify which entities a complaint may be made

¹⁹ Explanatory Memorandum [240].

against. At a minimum, this information should be clearly and readily available on the Scheme's website.

However, the current wording of subclause 34(3), and in particular the phrase 'open for inspection', suggests the register may only be available for inspection upon request, rather than proactively available. To ensure clarity, this provision should be reworded to expressly require open, online publication of the register.

Recommendation 22 – Register of scheme members to be publicly available online

Subclause 34(3) should be amended to state: 'The Aviation Consumer Ombudsperson must ensure that the register is publicly available, including by publishing the register in an accessible form on the Ombudsperson's website, and that it is kept accurate and up to date.'

3.5 Complaining directly to the Scheme

The Explanatory Memorandum notes, '[i]n some circumstances, the ACO may accept a complaint even where the consumer has not first attempted resolution [with] the regulated entity.'²⁰ While we welcome this discretion, the Explanatory Memorandum should clearly articulate a non-exhaustive list of some types of circumstances in which this pathway is intended to operate, to set clear expectations for users of the Scheme and ensure consistent application.

As have previously submitted, there are circumstances in which it would be inappropriate or unreasonable to require a complainant to first engage with an airline or airport:

...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...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.²¹

Recommendation 23 – Clarifying the circumstances for making direct complaints

The Explanatory Memorandum should be amended to inclusively articulate some types of circumstances in which the Ombudsperson may accept a complaint without requiring a consumer to first attempt resolution with the relevant airline or airport. These circumstances should

²⁰ Explanatory Memorandum 7.

²¹ JEC, *Submission to Aviation Consumer Protections Consultation – Primary Legislation* (3 October 2025) 12 <<https://jec.org.au/wp-content/uploads/jec-publications/17486/25.10.03-Submission-to-Aviation-Consumer-Protections-Consultation-Paper.pdf>>.

expressly include situations where the complaint involves serious damage or harm, where urgent redress is required, or where the regulated entity's complaint processes are inaccessible.

3.6 Failure to attend a conciliation conference

The Explanatory Memorandum states that the civil penalty in subclause 37(4) is intended 'to deter non-participation that may undermine the timely and effective resolution of complaints'.²² While we recognise this is a legitimate aim when applied to scheme members, we do not consider it appropriate to extend this sanction to complainants.

Imposing a civil penalty on complainants risks discouraging engagement with the Scheme and undermines its role as an accessible, consumer-centred dispute resolution scheme. This concern may be heightened for disadvantaged consumers, including people with disability, who may face barriers to participating in formal processes. Even where penalties are intended to be used rarely, the potential for their application can have significant chilling effects on these kinds of potential complainants.

Further, subclause 37(3) already provides a proportionate consequence where a complainant fails to attend a conciliation conference, namely that the Ombudsperson may treat the complaint as withdrawn. Applying an additional civil penalty would unfairly result in duplicative sanctions for the same conduct.

Subclause 37(4) should therefore be amended to make clear that the civil penalty applies only to scheme members and does not apply to complainants.

Recommendation 24 – Civil penalties not to apply to complainants for failure to attend

Subclause 37(4) should be amended to ensure the civil penalty and/or civil penalties applies only to scheme members and does not apply to complainants.

3.7 Notice to give information or produce documents

We welcome the Bill conferring on the Ombudsperson the power to issue notices to produce information and documents. However, we suggest several ways to support fair and effective use of the power.

First, the Bill should clarify the power includes the ability to require a scheme member to provide a written response to a complaint. Written responses to complaints assist the complainant and the Ombudsperson to understand the issues in dispute, facilitate more effective conciliation, and ensure parties are adequately prepared. Importantly, it would prompt more considered engagement by scheme members at an early stage, and encourage earlier resolution. Providing complainants with visibility of a scheme member's position (including any proposed defences) would also better equip them to assess the strength of their complaint and may reduce the likelihood of protracted dispute or escalation. This clarification could be through a legislative note to subclause 39(1).

²² Explanatory Memorandum [263].

Second, clause 39 does not expressly provide for parties to receive copies of information or documents produced under a notice, nor does it require timely provision of such material. This omission risks undermining the purposes of the information production power. Clear provision should be made to ensure relevant material is shared with parties promptly.

Recommendation 25 – Clarifying notice to produce includes responding to a complaint

A legislative note should be added at the end of subclause 39(1) to clarify a notice may require a scheme member to provide a written response to a complaint.

Recommendation 26 – Information produced to be provided to each party

Clause 39 should be amended to require the Ombudsperson to provide information or documents produced to each party to a complaint within seven (7) days of production.

3.8 Determinations of complaints

3.8.1 Ombudsperson determinations should be fair and reasonable in the circumstances

Clauses 46 and 48 currently adopt formalistic elements of a merits review style determination process. In our view, a ‘fair and reasonable in all the circumstances’ decision-making approach, as used traditionally in other comparable ombuds schemes, like the Australian Financial Complaints Authority and the Telecommunications Industry Ombudsman, would be better suited to the role and purpose of this Scheme.

Industry ombuds schemes are designed to resolve disputes in a manner that is accessible, informal, timely and responsive to the practical circumstances of consumers. The approach proposed in the Bill is legalistic and technical, and therefore less accessible. In addition, the object of merits review is to determine whether a decision is the ‘correct or preferable’ decision. That inquiry differs from an assessment of whether an outcome is fair and reasonable in all the circumstances – to illustrate, assessing whether a decision is ‘correct’ requires considering whether it is made according to law.²³ This is a much higher and narrower threshold. A broader consideration of the circumstances is more aligned with a consumer-centred approach.

As the Australian and New Zealand Ombuds Association (‘ANZOA’) emphasises, an essential criteria for describing a body as an ombudsman, is its independence and impartiality.²⁴ Therefore, it would be preferable for the Ombudsperson to independently assess and resolve the complaint based on what is fair and reasonable, rather than ‘to stand in the position of the Scheme member’.²⁵ Similarly, deeming the Ombudsperson’s determination to be a decision of the scheme

²³ Attorney-General’s Department, Administrative Review Council, ‘What decisions should be subject to merit review? (1 January 1999) <<https://www.ag.gov.au/legal-system/publications/arc-what-decisions-should-be-subject-merit-review-1999>>.

²⁴ ANZOA, *Essential Criteria for Describing a Body as an Ombudsman* <https://anzoa.com.au/ws/media-library/a855be2567cb4408a38882021e1541b2/anzoa-policy-statement_essential-criteria-for-describing-a-body-as-an-ombudsman_2024-first-issued-in-2010.pdf>.

²⁵ Explanatory Memorandum [309].

member risks obscuring the independence of the Ombudsperson and blurring accountability for decision-making.²⁶

In our view, the traditional ‘fair and reasonable in all the circumstances’ decision-making approach is both preferable and well suited for this Scheme, and can be applied in a manner that preserves the essential character and validity of an ombuds scheme.

Recommendation 27 – Determinations to adopt a ‘fair and reasonable’ approach

For determinations of complaints, the Bill should be amended to replace merits review principles with a ‘fair and reasonable in all the circumstances’ approach.

3.8.2 Remedies

Subclause 46(4) limits the Ombudsperson’s determinations to remedies aimed at placing the complainant, so far as practicable, in a position where the unfairness or unreasonableness no longer exists. However, in our view, remedies under the Scheme should be framed as those that are fair and reasonable and that advance the objects of the Scheme and the Framework, rather than being solely to undo the effects of individual unfairness. For example, if a complaint raises an issue common to all passengers on the same flight, it would be appropriate for the Ombudsperson to direct the scheme member to issue equivalent remedies to all other passengers. This accords with the submissions of ANZOA, that the Scheme should be able to ‘identify, investigate and seek redress in relation to systemic issues’.²⁷

While it is appropriate the Ombudsperson’s role is not punitive, a complaints mechanism that can only restore individual outcomes, without addressing patterns of conduct, undermines the Framework’s broader objective of driving systemic improvements to the industry and protecting consumers. As John McMillan observed, an ombuds scheme is ‘often well-placed to resolve legal issues affecting a large number of people’.²⁸

Recommendation 28 – Remedies to advance the objects of the Scheme and Framework

Subclause 46(4) should be amended to permit the Ombudsperson to provide remedies that it considers fair and reasonable in all the circumstances, having regard to advancing the objects of the Scheme and the Framework.

3.8.3 Reasons

We welcome the requirement for reasons in subclause 47(2) as it promotes transparency and reviewability of the Ombudsperson’s determination. However, the provision does not specify what written reasons must include. Without this guidance, written reasons risk being insufficiently

²⁶ Aviation Consumer Protection Bill 2026 (Cth) sub-cl 48(3).

²⁷ ANZOA, *Aviation Industry Ombudsman Scheme Submission* (10 October 2024) [1.2] [emphasis added] <https://anza.com.au/ws/media-library/422113b29d864f369f0a06466754f4ca/anza-submission_the-aviation-industry-ombuds-scheme_consultation-oct-2024.pdf>.

²⁸ John McMillan, ‘The Ombudsman and the Rule of Law’ (Conference Paper, ANU Public Law Weekend, 6 November 2004) 5 <<https://www.austlii.edu.au/au/journals/AIAdminLawF/2005/1.pdf>>.

detailed and/or inappropriately high level, and may impede appeal rights if an appellant is unable to point to legal error.

Other Commonwealth legislation that uses well-understood and established language specifying requirements for an adequate statement of reasons – such as the *Administrative Decisions (Judicial Review) Act 1977* (Cth) and *Administrative Review Tribunal Act 2024* (Cth) – should be used as a reference point for specifying the required content of reasons.

Recommendation 29 – Requirements for written reasons for determinations

Subclause 47(2) should be amended to specify that written reasons must:

- *set out the findings on material questions of fact;*
- *refer to the evidence or other material on which the findings are based; and*
- *explain the reasons for the decision.*

3.9 Appeals to the Federal court

The Explanatory Memorandum explains that subclause 51(5) ‘ensures that complainants are not discouraged from accessing the complaint resolution framework due to the risk of adverse cost orders.’ We welcome this protective policy intent. However, as currently drafted, subclause 51(5) does not give that intent full effect.

The protection does not go far enough – operating only where a complainant *elects not* to defend an appeal. This leaves complainants exposed to adverse costs in circumstances where a scheme member appeals a determination made in the complainant’s favour, and the complainant seeks to defend that outcome. Rather, complainants should receive the benefit of the protection *whenever* a scheme member institutes an appeal of the Ombudsperson’s determination. This would ensure complainants are not having to choose between defending a favourable outcome and risking significant financial risk.

If subclause 51(5) is not amended in this way then, at a minimum, the meaning and operation of the phrase ‘does not defend an appeal’ must be clarified. As drafted, it gives rise to substantial uncertainty, including whether:

- a complainant would be required to file consent orders conceding the appeal;
- the Federal Court would nonetheless proceed to determine the appeal in the absence of the complainant’s participation; and/or
- the Ombudsperson would participate as a respondent in such proceedings.

Clarification would ensure the provision does not inadvertently undermine complainants’ confidence in accessing the Scheme.

Recommendation 30 – Adverse costs protection to be broadened

Subclause 51(5) should be amended to state: ‘The Federal Court must not make an order awarding costs against a complainant in relation to an appeal instituted by another party to the complaint under subsection (1).’

Alternatively, subclause 51(5) should clarify what is meant by a complainant not defending an appeal.

4. Using improvement notices to drive systemic change

Clause 76 empowers the Secretary to issue an improvement notice where a regulated entity is contravening, or is likely to contravene, the Act. Properly framed, this provision is well placed to operate as a mechanism for compelling systemic improvements across the aviation industry, rather than being confined to responding only to discrete incidents or conduct.

In our view, clause 76 should support the use of improvement notices to require action addressing the policies, practices and service models of regulated entities where those arrangements give rise to systemic consumer issues.

To effectively use improvement notices for this purpose, it would be beneficial to provide guidance on the kinds of actions that may be required. This could include, for example, changes to internal policies or procedures, enhancements to staff training programs, or reforms to contracting with third parties. Such examples could be included as a legislative note to subclause 76(2), or clarified through the Explanatory Memorandum, to signal Parliament’s intention that clause 76 is to function as a proactive tool for systemic compliance and prevention.

Recommendation 31 – Using improvement notices to achieve the objects of the Act

Subclause 76(1) should be amended to add a third circumstance for when an improvement notice may be given, namely where the Secretary reasonably believes that issuing a notice would achieve the objects of the Act, including to achieve systemic improvements in the policies, practices and services of the regulated entities.

Guidance on the kinds of actions the Secretary may require for systemic improvements should be included as a legislative note or through the Explanatory Memorandum.

5. Publication of information

We welcome clause 81, which establishes a framework for the publication of information by a range of persons and entities. Meaningful publication is essential to transparency and accountability, and to drive continuous improvement across the aviation industry.

To serve this purpose effectively, publication must be both broad and detailed, capturing all aspects of the Framework. Specifically, in relation to the Scheme, we have previously emphasised that publication should include:

- **Detailed complaints data:** this data should be reported at regular intervals and should include:
 - the number of complaints made to the Ombuds Scheme, including the number of complaints referred by the Ombuds Scheme to a scheme member to resolve through internal dispute resolution (stage 2);
 - the number of complaints resolved through the Ombuds Scheme (including at stages 2 and 3);
 - in relation to individual complaints made to the Ombuds Scheme:
 - demographics of complainant, including identifiers of disadvantage;
 - nature of complaint:
 - the scheme member(s) against which the complaint was made;
 - issue(s) raised in the complaint eg delay, cancellation, baggage, mobility equipment, injury, security screening, etc;
 - any systemic issues or trends;
 - outcome of complaint;
 - time taken to resolve complaint (in hours);
 - current caseload including the age and status of open complaints;
 - analysis of industry behaviour based on complaints data;
 - comparative complaint data; and
 - any other comparable data reported by AFCA in its Datacube.
- **Case studies (stages 2 and 3):** the Ombuds Scheme should publish case studies on select complaints, describing the process of the parties reaching a resolution and the agreed outcome. As a body intended to be informal and accessible, case studies would empower consumers to make complaints.
- **De-identified register of resolutions reached through case management (stage 3):** given a significant proportion of complaints will be resolved through the case management process (ie conciliation, shuttle negotiation, mediation or recommending an outcome), a de-identified register would promote transparency and accountability, and allow consumers to better understand

the kinds of issues they could complain to the Ombuds Scheme about and the kinds of outcomes they could achieve.

- **Determinations made by the Ombudsperson (stage 3):** published determinations will provide transparency about the Ombuds Scheme's decision-making approach, as well as aid in consistent decision-making of the Ombuds Scheme (even if determinations are not treated as precedent). It will also demonstrate accountability to consumers for the conduct of airlines and airports. Determinations should identify the scheme member against which the complaint is made, but not the complainant or any other party to the complaint. Importantly, determinations should include detailed written reasons for the decision reached. For any determinations not published (eg in accordance with any rules governing the Ombuds Scheme's decision-making process), the Ombuds Scheme should be required to report on the number of determinations not published by reason of that provision of the rules.²⁹

We further consider it essential that the ACPA reports publicly on its regulatory activities, including its use of regulatory tools and overall compliance trends across the aviation sector (including compliance with the Charter). Critically, the ACPA should report on its identification of emerging trends and systemic issues in the policies, practices and services of regulated entities, together with recommendations to address those issues.

All published material should be made available in accessible formats, to ensure transparency is meaningful for all consumers.

Having regard to the structure of clause 81, we therefore recommend the inclusion of additional categories of information that may be required to be published under the rules.

Recommendation 32 – Publishing de-identified register of resolutions reached

Subclause 81(2)(d) should be amended to state: 'eligible complaints, including:

- *the handling of such complaints by regulated entities; and*
- *a de-identified register of resolutions reached through the Aviation Consumer Ombuds Scheme;'*

Recommendation 33 – Publishing information on systemic issues and recommendations

Subclause 81(2) should be amended to add the following category of information that may be required to be published under the rules: identification of emerging trends and systemic issues in the policies, practices and services of regulated entities, together with recommendations to address those issues.

²⁹ JEC, *Submission to the Aviation Industry Ombuds Scheme – Consultation Paper* (17 October 2024) 18-19 <<https://jec.org.au/wp-content/uploads/jec-publications/14284/24.10.17-Submission-on-Aviation-Industry-Ombuds-Scheme-Consultation-Paper.pdf>>.

6. Interaction between the Scheme and the *Civil Aviation (Carriers' Liability) Act*

We consider the provisions providing the *Civil Aviation (Carriers' Liability) Act 1959* (Cth) ('CACL Act') prevail to the extent of inconsistency (subclause 8(2)) are appropriate given existing obligations under the CACL Act and international conventions.

We note, however, the Government's commitment in the 2024 Aviation White Paper to consult in 2025 on amendments to the CACL Act to increase the maximum compensation entitlement for passengers whose wheelchairs or other disability aids are damaged or lost by domestic airlines.³⁰ This would enable people who rely on disability aids to claim more substantial compensation when needed. We welcome and await the Government's commitment to consult on increasing the maximum compensation entitlements for wheelchair damage under the CACL Act.

³⁰ Australian Government, Aviation White Paper: Towards 2050 (August 2024) 62 <<https://www.infrastructure.gov.au/sites/default/files/documents/awp-aviation-white-paper.pdf>>; Australian Government, Aviation Customer Rights Charter: Consultation Paper (December 2024) 11.