

Aviation Consumer Protections: primary legislation consultation

Submission to the Department of Infrastructure,
Transport, Regional Development,
Communications, Sport and the Arts

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**Australian
Human Rights
Commission**

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About the Australian Human Rights Commission

Our vision is an Australian society where human rights are respected, promoted and protected and where every person is equal in dignity and rights.

The Commission's key functions include:

- **Access to justice:** We help people to resolve complaints of discrimination and human rights breaches through our investigation and conciliation services.
- **Fairer laws, policies and practices:** We review existing and proposed laws, policies and practices and provide expert advice on how they can better protect people's human rights. We help organisations to protect human rights in their work. We publish reports on human rights problems and how to fix them.
- **Education and understanding:** We promote understanding, acceptance and public discussion of human rights. We deliver workplace and community human rights education and training.
- **Compliance:** We are the regulator for positive duty laws requiring employers and others to address sexual harassment, sex discrimination and other unlawful conduct.

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Overview

Summary

The introduction of an Aviation Consumer Protection Framework is an important and positive step towards addressing and eliminating systemic barriers and issues faced by aviation consumers, including people with disability. The Commission made two prior submissions on this topic, which remain relevant:

- Aviation Industry Ombuds Scheme consultation (October 2024)
- Aviation Customer Rights Charter consultation (February 2025)

It is vital that the human rights of aviation consumers are upheld and protected across the consumer protection framework and in practice.

The Commission broadly supports the scope of the Consumer Protection Framework primary legislation. This submission provides feedback on the scope of regulated entities, the definitions of accessibility services, potential regulatory overlap, and the need for requirements to respond to urgent matters where a person's human rights may be restricted.

The Commission remains committed and available to working collaboratively with government on the design and implementation of the legislation to ensure the rights of consumers are upheld and to address any regulatory overlap and interaction with anti-discrimination legislation.

Recommendations

The Commission makes the following recommendations.

Recommendations

1. Security services should be a regulated activity under the Consumer Protection Framework.
2. Accessibility services should be defined broadly in the primary legislation, in consultation with people with disability and other users of accessibility services.
3. The Consumer Protection Framework should seek to minimise regulatory overlap by clearly designating the Ombudsperson's main jurisdiction.
4. The Consumer Protection Framework should include a legislated requirement for procedural accommodations to be provided to enable access to justice on an equal basis with others.
5. The Consumer Protection Framework should require airlines, airports and the Aviation Consumer Ombudsperson to prioritise and rapidly resolve

Overview

complaints of an urgent nature, including circumstances where delays could restrict human rights.

Consumer Protection Framework

Recommendations are made on the scope of the application of the Framework and key definitions. Further clarity is needed on duplication and overlap between the Ombudsperson and the Commission's complaints jurisdiction.

Human rights obligations and principles

The Commission acknowledges the Australian government's commitment to considering how the Consumer Protection Framework (Framework) should be informed by Australia's international legal obligations, including the United Nations *Convention on the Rights of Persons with Disabilities* (CRPD). It is essential that the human rights of consumers are upheld and protected in the Framework, in both the primary and subordinate legislation, and in practice. This will complement existing anti-discrimination obligations contained in federal discrimination law.

The Department should refer to the Commission's October 2024 submission to the Aviation Ombuds Scheme consultation for general guidance on the application of the CRPD in the context of air travel.¹ The CRPD creates a positive obligation on States Parties to provide accessibility measures and to address the systemic barriers experienced by people with disability as a group or collective.² These obligations apply to all levels of government and across all policy and services areas.³

The following human rights principles should guide and be embedded in the design and implementation of the Framework:

- Respect for the inherent dignity and worth of all people.⁴
- Equality and non-discrimination:
 - All people must be treated equally and free from discrimination. For people with disability, this includes the provision of reasonable accommodations or individualised supports to ensure they can participate in air travel on an equal basis with others.⁵
- Accessibility:
 - All people must be able to access environments, information and communications, facilities, and services on an equal basis with others, including transportation, and universal design should be promoted in the development of standards and guidelines.⁶
- Access to justice:
 - All people should have access to effective complaint mechanisms and remedy for mistreatment, rights violations and/or service failures.⁷
- Protection from interference with privacy:

- All people have a right to privacy and this applies to any personal data collected during booking, travel and other activities related to air travel.⁸

Scope of regulated entities (consultation question 1)

The Framework should provide protection to consumers across the whole-of-journey air travel experience. The consultation paper proposes to include third parties providing a service on behalf of an airline or airport, but not security screening services.

The Commission's experience in handling complaints about alleged discrimination is that discrimination can and is experienced at different points of the whole-of-journey experience, including interactions with security and other third-party companies used by airports and airlines.⁹ The Commission believes that security officials and services should be within scope of the Framework, with the ability to be held to minimum standards, including treating people without discrimination of any kind, such as treating people with respect, dignity, and meeting accessibility requirements and providing necessary adjustments. This leaves room to tailor the expectations placed on security officials and services, in recognition of their unique operating environment, the additional regulatory requirements imposed on these services, and the important responsibilities they are charged with.

The result of excluding security services could otherwise be that customers continue to face barriers and lack protections at some points across the whole-of-journey.

Recommendation 1: Security services should be a regulated activity under the Consumer Protection Framework.

Defining accessibility services (consultation question 3)

The Commission supports the carve out of airport accessibility services as a regulated activity that does not require a direct consumer relationship. The consultation paper, however, limits accessibility services to airports. The Commission considers this should be expanded to airlines too.

The consultation paper proposes to use Rules to 'clarify or reduce the types of services included as airport accessibility services',¹⁰ with the intent of ensuring the definition keeps up to date with changes in the aviation sector. The Commission cautions against the use of Rules as there is a risk that this could narrow the definition and scope of services over time, reducing the protections for people with accessibility needs. This could inadvertently narrow the scope and be vulnerable to being unduly influenced by industry interests or political views.

Accessibility services should retain the ability to be responsive to individual requirements of the consumer and not defined in an overly prescriptive manner. The Commission suggests accessibility services should be defined broadly in the primary legislation to encompass the widest range of services allowing room for innovation, such as new technologies, and improvements to be captured within the definition over time.

The definition of accessibility services should be developed in consultation with the disability community, which could also inform the development of guidance materials by the Aviation Consumer Ombudsperson to provide further clarity where required.

Recommendation 2: Accessibility services should be defined broadly in the primary legislation, in consultation with people with disability and other users of accessibility services.

Addressing regulatory overlap (consultation questions 6, 7)

The Commission is broadly supportive of the establishment of the Aviation Consumer Ombudsperson and the introduction of the Aviation Consumer Protection Authority. However, there remains a very high potential for regulatory duplication or overlap with the Commission's anti-discrimination jurisdiction.

Elements similar to those proposed for the Framework and Charter, across the whole aviation journey for people with disability, are also being considered for inclusion in the forthcoming Aviation Disability Standards. The Standards will most likely provide greater specificity around accessibility and non-discrimination obligations than what is proposed to be included in the Charter, but there will be some degree of overlap.

The consultation paper proposes that the Aviation Consumer Protection Authority could have a broader role in relation to compliance with Aviation Disability Standards, and that the Aviation Consumer Ombudsperson could have regard to matters outside the Consumer Protection Charter, such as the Aviation Disability Standards where it is the most appropriate body to do so or refer matters to another body (such as the Commission).

While the consultation paper states that the Framework does not intend to create duplication,¹¹ it is difficult to assess whether this objective will be achieved while the Disability Aviation Standards are still under development and without further clarity on the draft legislation.

Greater attention should be given to how potential overlap and duplication will be addressed within the broader regulatory framework prior to the introduction of the legislation. The Commission has continuously raised the need to minimise regulatory overlap, an issue that remains unresolved.

The consultation paper does not differentiate between complaints alleging unlawful discrimination under federal discrimination law and those made under the Framework, neither does it discuss which complaint pathway would be most appropriate in certain circumstances. Greater clarity is needed in relation to this and on how any overlap between different complaint jurisdictions will be appropriately handled. This will ensure complainants can receive the most appropriate remedy and outcome based on the circumstances, as well as benefit respondents.

The Commission supports a 'no wrong door' approach with referrals between organisations to the body best placed to investigate and resolve the complaint. Further clarity is required regarding the circumstances in which the Aviation Consumer Ombudsman would refer a complaint to the Commission, and vice versa. It should be noted that the Commission has limitations on what information it can share with other bodies to ensure the confidentiality of personal information it acquires.¹² This should be considered in relation to referral pathways and information sharing arrangements.

It is also unclear in the consultation paper whether there will be mechanisms to prevent a person from pursuing a complaint in multiple jurisdictions when they have been unsatisfied with an outcome. This is needed to prevent unnecessary duplication between complaint handling agencies and to minimise airlines, airports and service providers having to respond to complaints in multiple jurisdictions. Further clarity is also required regarding the definition of a 'closed' complaint and whether this means a complaint has been withdrawn, not accepted or resolved. If dual (or multiple) pathways are established, the Commission recommends there should be a prohibition in the legislation on the double handling of complaints to avoid unnecessary duplication, taking guidance from the *Fair Work Act 2009* (Cth).¹³

The proposal for the development of a Framework for Cooperation and Coordination is a welcome complementary initiative to support efficient and effective regulation, however further detail is required as to the mechanisms being considered, and how these will be provided for in the legislation. An effective regulatory framework should include appropriate mechanisms to identify pervasive or systemic compliance issues so that the appropriate body can take any necessary action. However, the Framework will need to give regard to any legal restrictions other regulatory bodies operate under such as the Commission's information sharing limitations, and consent from complainants.

Recommendation 3: The Consumer Protection Framework should seek to minimise regulatory overlap by clearly designating the Ombudsperson's main jurisdiction.

Accessible complaint handling processes

While the consultation paper refers to the need for accessible complaint handling services, there is a lack of detail about what this means and looks like.

Accessible complaint processes should seek to be responsive to a range of access barriers by considering universal design principles, while also being inherently flexible so they can accommodate the needs and interests of the individual seeking to access the service.

It is critical that procedural adjustments be provided to complainants so that people with disability can access justice on an equal basis with others. This requirement should be legislated and included in any guidance developed by the Aviation Consumer Ombudsperson. It should apply to the Aviation Consumer Ombudsperson as well as airlines and airport complaint processes.

Recommendation 4: The Consumer Protection Framework should include a legislated requirement for procedural accommodations to be provided to enable access to justice on an equal basis with others.

Complaint handling for urgent matters (consultation question 7)

The Framework should provide clear expectations in relation to complaints of an urgent nature. These details are likely to be covered by the Consumer Protections Charter, but are also relevant to the Aviation Ombudsperson's complaint handling processes and timeframes.

Complaints of an urgent nature should be subject to different expectations for timely resolution. This should not be left vague or fully up to the discretion of airlines or airports.

The complaint timeframes outlined in the consultation paper and the example in case study 8 of the consultation paper¹⁴ translate to an individual with a damaged mobility device having to wait a minimum of 44 days to have a matter resolved if the airlines are not responsive or cooperative. This projected timeframe is *prior* to the complaint going to case management with the Aviation Consumer Ombudsperson, which would likely create additional delays in resolution.

Although the consultation paper proposes that the Aviation Consumer Ombudsperson could accept complaints outside specified timeframes, circumstances that risk restricting the enjoyment of human rights of consumers should give rise to expedited resolution pathways.

The Framework should be clear that airlines, airports and the Aviation Consumer Ombudsperson (where involved) should prioritise and rapidly resolve complaints where delay in resolving the complaint could:

- unreasonably restrict personal mobility and/or independence (e.g. damage to a mobility device)
- create an unmet support need (e.g. loss of essential assistive technology or disability supports)
- impact a person's physical or mental health and safety (e.g. loss or damage to medical equipment/devices, health and/or disability related consumables, medications, etc)
- create a risk to life (e.g. loss or damage to medical or disability related equipment or devices)
- cause harm for any other reason based on the circumstances.

Consideration should be given to the most appropriate options to ensure these complaints are resolved in a timely manner. This may include assigning timeframes, requiring airlines and airports to have escalation and priority complaint pathways, and/or setting clear expectations through guidance materials where further clarity is required beyond the legislation. Regardless of the approach, this should be built into the design of complaint handling processes and within the Framework more explicitly, including the Charter.

This will provide clarity for consumers and more consistent complaint handling processes across airlines and airports, allowing for a more seamless consumer experience and ensuring that the rights and dignity of consumers are protected and upheld.

Recommendation 5: The Consumer Protection Framework should require airlines, airports and the Aviation Consumer Ombudsperson to prioritise and rapidly resolve complaints of an urgent nature, including circumstances where delays could restrict human rights.

Endnotes

- ¹ Australian Human Rights Commission, submission to the Department of Infrastructure, Transport, Regional Development, Communications and the Arts, *Aviation Industry Ombuds Scheme Consultation* (17 October 2024) 3-4
- ² See *United Nations Convention on the Rights of Persons with Disabilities, opened for signature 30 March 2007, 2515 UNTS 3 (entered into force 3 May 2008)* arts 4, 9 ('CRPD').
- ³ *Ibid* art 4(1)(c), 4(5).
- ⁴ See *Universal Declaration of Human Rights, GA Res 217A (III), UN GAOR, UN Doc A/810 (10 December 1948)* art 1; *CRPD* (n 1) art 3(a).
- ⁵ See *United Nations International Covenant on Civil and Political Rights, GA 2200A (XXI) (23 March 1976, adopted 16 December 1966)* art 2(1); *International Covenant on Economic, Social and Cultural Rights, opened for signature 16 December 1966, GA RES 2200A (XXI) (entered into force 3 January 1976)* art 2(2); *CRPD* (n 1) arts 3(b), 5, 12; *United Nations Convention on All Forms of Discrimination Against Women, opened for signature 18 December 1979, 1249 UNTS 13 (entered into force 3 September 1981)* arts 2, 3, 4, 15; *International Convention on the Elimination of All Forms of Racial Discrimination, opened for signature 21 December 1965, GA Res 2106 (XX) (entered into force 4 January 1969)* arts 1, 2, 4, 5; *United Nations Convention on the Rights of the Child, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990)* art 2; *United Nations Declaration on the Rights of Indigenous Peoples, 61st sess, Agenda Item 68, UN Doc A/RES/61/295 (2 October 2007, adopted 13 September 2007)* arts 1, 2, 15.
- ⁶ See *CRPD* (n 1) arts 4(1)(f), 9.
- ⁷ See *Universal Declaration of Human Rights, GA Res 217A (III), UN GAOR, UN Doc A/810 (10 December 1948)* art 8; *United Nations International Covenant on Civil and Political Rights, GA 2200A (XXI) (23 March 1976, adopted 16 December 1966)* art 2(3); *CRPD* (n 1) art 13.
- ⁸ See *Universal Declaration of Human Rights, GA Res 217A (III), UN GAOR, UN Doc A/810 (10 December 1948)* art 12; *United Nations International Covenant on Civil and Political Rights, GA 2200A (XXI) (23 March 1976, adopted 16 December 1966)* art 17; *CRPD* (n 1) art 22.
- ⁹ See, for example < <https://www.abc.net.au/news/2024-01-23/adelaide-airport-graeme-innes-disability-discrimination-dispute/103375068>>
- ¹⁰ Department of Infrastructure, Transport, Regional Development, Communications, Sport and the Arts (Cth), *Aviation Consumer Protections* (Consultation Paper, September 2025) 28.
- ¹¹ *Ibid* 23.
- ¹² See *Australian Human Rights Commission Act 1986* (Cth) s 49.

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- ¹³ See *Fair Work Act 2009* (Cth) ss 725, 734.
- ¹⁴ Department of Infrastructure, Transport, Regional Development, Communications, Sport and the Arts (Cth), *Aviation Consumer Protections* (Consultation Paper, September 2025)33.