

# Australian Frequent Flyer submission to the Aviation Green Paper

29 November 2023

Australian Frequent Flyer (AFF) welcomes the opportunity to provide a submission on the Aviation Green Paper.

AFF is a community of frequent flyers. Our submission is based entirely on feedback from our members, and is made on behalf of our roughly 60,000 members who have a vast amount of experience dealing with airlines in Australia as customers.

We would specifically like to provide feedback on three of the questions raised in Chapter 3 regarding consumer protections for the Australian flying public.

Overwhelmingly, AFF members believe that current consumer protections for airline customers in Australia are inadequate.

They would like to see the Airline Customer Advocate replaced by an independent ombudsman with real teeth. They also strongly support the creation of a European-style compensation scheme for airline customers who are affected by significant delays or cancellations, bumped off overbooked flights or involuntarily downgraded.

All of the discussion and feedback from AFF members is available on our online forum: <https://www.australianfrequentflyer.com.au/community/threads/wed-like-your-feedback-on-australian-aviation-policy.111525/>

Below is a summary of the feedback from our community of frequent flyers on the following three questions raised in the Aviation Green Paper:

1. Should the Australian Government look to revise current consumer protection arrangements and, if so, through existing or new mechanisms?
2. Would an expanded remit for the Airline Customer Advocate to educate customers on their legal entitlements be useful?
3. Would policies pursued in other jurisdictions – such as a Passenger Bill of Rights or a stronger ombudsman model – deliver benefits to Australia's aviation sector?

## **Should the Australian Government look to revise current consumer protection arrangements and, if so, through existing or new mechanisms?**

The AFF community strongly supports changes to current consumer protections through new mechanisms, as the current mechanisms are failing consumers.

Over recent years, there have been countless posts on our forum from Australian travellers who have received poor treatment from airlines and been unable to get a resolution.

There are two key ways that AFF members would like the Australian government to improve consumer protections for airline passengers:

1. Introduce an independent airline ombudsman, to replace the Airline Customer Advocate, that can make legally binding decisions
2. Introduce a European-style scheme similar to “EU261” that provides minimum standards of treatment, and mandated compensation for significant flight disruptions

This is one of the many comments on our forum about the need to replace the Airline Customer Advocate with an independent ombudsman:

You can't expect that an oversight body which is owned by the companies themselves would provide effective results to the consumers. Industry self-regulation overall works poorly in Australia. The body needs to be fully independent of the companies / organisations it oversees.

This could be formed as an ombudsman with deep industry knowledge and hosted by the ACCC. Instead of recommendations, the ACCC (ombudsman) provides determinations which are binding and enforceable.

This is another comment:

I don't know why they bother with the Airline Customer Advocate - it has no power and is complicated and bureaucratic. The easy answer is to simply adopt every line from EU261, just as the UK did on leaving the EU by creating UK261. It will be easy for the airlines to administer because they are all familiar with it. And then the Airline Customer Advocate could be terminated completely because AU261 would do the job by law!

Not a single frequent flyer provided feedback expressing support for keeping the existing Airline Customer Advocate model.

There have been a lot of comments on our forum about difficulties in getting complaints with Australian airlines resolved. Currently, one of the only ways to escalate a complaint that isn't resolved by the Airline Customer Advocate is to take an airline to court or a state-based tribunal. Some AFF members have even resorted to this in recent years out of desperation, but this often comes with significant financial risk to the consumer and can be time-consuming. An independent and effective airline ombudsman would help a lot with this.

## **Would an expanded remit for the Airline Customer Advocate to educate customers on their legal entitlements be useful?**

We would of course like customers to be better educated on their legal entitlements. But this responsibility should go to an independent ombudsman, and not the Airline Customer Advocate.

Airlines themselves should also be required to provide clear information to customers about their legal entitlements when their travel is disrupted – something that doesn't always seem to be happening at present.

In 2021, CHOICE gave the Airline Customer Advocate a "Shonky Award" because it "is not able to genuinely help most people".

Although some AFF members have been able to resolve complaints through the Airline Customer Advocate over the past decade, our members overwhelmingly believe this organisation needs to be completely replaced – rather than just its remit expanded.

The Airline Customer Advocate's [own annual report](#) states that it was able to resolve less than half (43%) of the complaints it received in 2022. Just 24% of complaints relating to Qantas were resolved to the satisfaction of the customer last year, with an average time to finalise complaints of 110 days.

This is what one AFF member had to say about their experience with using the Airline Customer Advocate.

The effectiveness is absolutely useless. I have tried to use them a few times - first instance, they just forwarded my complaint back to the airline (without chasing it up), and the second time they didn't even respond to my complaint.

It appears it is staffed by one or two team members, who don't have the capacity or empowerment to do anything. The entity is an absolute farce, paid for by the airlines to avoid a proper oversight.

This is the feedback of a second member:

Airlines having a dedicated complaints process and escalation would be great. I 'complained' to Qantas multiple times, but could only do it via form or through the service consultant I was speaking to (and complaining about). If I did the form I'd get a case no. and if I did it through a consultant I would just get told "someone would get back to me".

Best I would get is a proforma email saying "Sorry, you had a bad experience. Oh well." No way to escalate or actually get a resolution, and when I'd respond or file a follow up complaint I'd get ignored. Raised a complaint with the ACA [Airline Customer Advocate] in Jan, got told a month later they were waiting to hear from the Airline, and in July they closed my case without telling me because Qantas told them to. I asked to have it reviewed/reopened but still haven't heard anything.

A third member wrote:

I tried to use them a couple of times, and a) it was painful, and b) I received responses that were arrogant, and unhelpful.

## **Would policies pursued in other jurisdictions – such as a Passenger Bill of Rights or a stronger ombudsman model – deliver benefits to Australia’s aviation sector?**

Almost every AFF member who provided feedback on the Green Paper indicated that they strongly support the introduction of a model similar to “EU261” in Australia. (Some people on our forum have dubbed the concept “AU261”.)

EU261 works well in Europe as it provides a real incentive for airlines to run a reliable operation and treat their customers better.

In summary, we believe Australia needs regulations that require airlines to:

- Provide monetary compensation to passengers who are affected by delayed or cancelled flights, and are not offered a replacement flight that gets them to their destination within a reasonable time (e.g. within 3-4 hours of the scheduled arrival time), unless the disruption was caused by extraordinary, unforeseen circumstances
- Provide monetary compensation to passengers who are involuntarily bumped off overbooked flights
- Provide fair and defined compensation to passengers who are involuntarily downgraded to a lower cabin than originally booked (currently, no Australian airline publishes a publicly available policy explaining how they refund customers for involuntary downgrades)
- Provide minimum standards of treatment in the event of irregular operations, including clear communication during delays/cancellations and information in plain English that passengers can access about their legal rights.

Here is a selection of comments on the AFF forum about the potential introduction of European-style air passenger protections in Australia. These comments summarise the feedback from the frequent flyer community:

### **Comment #1:**

An "AU261" would likely go a long way towards fixing many of the problems currently existing in Australian commercial aviation. As long as there is some kind of oversight mechanism that can break through airline attempts at stonewalling and avoiding paying the compensation.

### **Comment #2:**

Absolutely - especially the duty of care sections (must provide meals, accommodation and transport) and the right to choose a refund or rebooking (customer's choice to be fully refunded within 7 days OR to be rebooked/rerouted to their destination or back to departure point - again at customer's choice, and can be on another airline or even a high speed train in UK/EU).

These sections are often overlooked as the focus of discussion is always on the compensation payouts, but EU261 provides much more than that, including refunds for downgrades and bumping/overbooking.

#### Comment #3:

On the topic of an "AU261" I think this would absolutely go a long way in better aligning the incentives of airlines to do the right thing by their customers. Late flights, cancelled flights and downgrades should be a rare occurrence, not a free tool airlines can use without consequence. The airlines will argue it will make flights more expensive - the European aviation market begs to differ.

Next time you read a horror story on here of someone getting to the airport and being mistreated by their airline, look up the applicable law in Europe for that scenario. My experience is that more often than not, the customer would have been entitled to significant protection or compensation had they been in Europe and not Australia.

#### Comment #4:

We are long overdue in Australia to have a compensation system such as they have in the EU and the US where compensation must be paid by law not the situation we have where we are totally at the mercy of the airlines. In what other industry or business can you sell a product that down the track you cannot or will not provide as per the contract and then hold on to the customers money, and that's legal. We don't need half measures or a government whitewash that sells out the consumers.

#### Comment #5:

The adoption of consumer rights / protection as per the EU must be the base. Anything less is showing disregard for consumers

Most AFF members support adopting the European Union model in its entirety. However, some noted that some European airlines often try to avoid paying compensation by claiming a cancellation is due to "extraordinary" reasons, even when this is not really the case. They would therefore like any compensation scheme to be designed in a way that prevents airlines from "gaming" the system to avoid providing customers with their legal entitlements.

#### One person wrote:

Unfortunately a bit of strong wind or rain in London and BA will deny EU261 compensation due to weather being out of their control, even if there was another underlying reason for the delay or cancellation. Some people take them to MCOL (UK county court claim) to get paid, and BA will usually offer a 75% out of court settlement, but most don't bother taking it that far. Hopefully the Australian equivalent (if created) will be stronger in that area because in practice EU261 is actually quite easy for airlines to avoid paying the compensation.

One member also noted that it should be easy for consumers to enforce their rights (which is perhaps where an ombudsman could play a role):

A requirement to accompany the introduction of any sort of consumer protections should be a simplified process to enforce rights.

As a customer we don't want to be forced to consider jurisdiction, or have to pay for lawyers. We want a one-stop forum or tribunal that is empowered to hear these claims in a manner accessible to the general public. No lawyers, no fussing whether it has to be a Administrative Tribunal, or arguments it has to go to a federal court because it's international, etc.

Some airlines have argued that such measures would be expensive, and that they would be forced to pass on the costs to consumers in the form of higher airfares. However, even if this slightly adds to the cost of airfares, it would be worth it as Australian consumers would be far better protected and passengers often bear real monetary costs resulting from significant flight disruptions. In any case, airlines would only need to pay out significant penalties if they are not operating reliable schedules.

As one AFF member noted:

Of course, airlines will claim these will raise fares due to the cost of compliance. But without a cost for non compliance, I fear customers will continue to be disrespected.

In response to this point, another member commented:

Equally of course, if the airlines fully comply, there should be zero extra cost to them. It's only when they breach the compliance. In other words, they should have zero room to even suggest that the fares should increase because of this type of regulation. They have a completely free way out of the added expenses: run your show professionally and act well.

In their feedback, several AFF members also noted that the current cancellation rate on busy domestic routes such as Melbourne-Sydney seems very high. Some have questioned whether major airlines may be hoarding lucrative slots by selling more flights than they intend to operate.

Overall, the vast majority of AFF members strongly support an air passenger compensation scheme in Australia. Only a small number of AFF members commented that they believe more competition in the Australian aviation market would be a better incentive for airlines to act in their customers' interests more.

This was one such comment:

A charter like the EU may be a good thing but AFAIC the Australian aviation sector works quite well. The issues lie with the airlines in so far as they (QF/VA, etc) can to cut costs to the bone and that is nearly in every area from baggage handling to non existent customer service to playing chess on aircraft loads so that flights are cancelled so that full planes can fly. And thats a corporate prerogative. customers voting with their feet (I mean seat) is about the only option - and thats where competition MAY make a difference...

Another AFF member wrote:

The biggest issue is targeting lack of competition. This starts with telling the Government to get their fingers out of accepting perks for anti-competition corruption policies with Qantas by denying more planes to come into Australia. We need to open up more international and domestic slots and lower the barrier to entry for other airlines.

This will increase competition for international and domestic routes, more competition means airlines will need to drop prices or improve services otherwise they will lose market share.