

CHOICE



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

Aviation Green Paper

November 2023

About Us

CHOICE

CHOICE is the leading consumer advocacy group in Australia. CHOICE is independent, not-for-profit and member-funded. Our mission is simple: we work for fair, just and safe markets that meet the needs of Australian consumers. We do that through our independent testing, advocacy and journalism.

To find out more about CHOICE's work visit www.choice.com.au/campaigns

Consumers' Federation of Australia

The Consumers' Federation of Australia (CFA) is the peak body for Australia's consumer movement. We work to support consumer advocates and representatives to connect and be more impactful. CFA's members include a diverse range of consumer organisations, including most major national consumer organisations. Our vision is a thriving consumer movement that advances the diverse interests of consumers.

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“I still cannot believe that I can get a refund for a faulty kettle but not for a faulty airline service...”¹

¹ Respondent to CHOICE 2023 Travel Survey

Introduction

CHOICE & the Consumers' Federation Australia (CFA) welcome the opportunity to contribute to the Aviation Green Paper.

Flying is an essential service for many Australians. Flying connects regional communities, provides access to medical services, unites family and friends for important occasions and helps Australians see more of their country. However, recent years have revealed a number of weaknesses in consumer protection within the aviation sector.

Airlines make it very hard for consumers to access rights and remedies. Consumers have shared with us that they regularly struggle to obtain refunds or compensation when their flights are delayed or cancelled. This often results in passengers being left out of pocket or left with credits that they are unable to use. Furthermore, consumers feel they lack the appropriate avenues to complain about their experiences and receive a remedy.

We have heard countless stories of people going to extraordinary lengths to work around cancelled and delayed flights, including driving across the country to bring family members to connecting flights to make it in time for weddings and tours. Some are informed of the delay too late to make other arrangements and miss important occasions like funerals and holidays, as well as family emergencies. Some were able to receive refunds or compensation, but many were not.

Other concentrated markets with essential services and large numbers of complaints – such as telecommunications, banking, insurance and superannuation – have industry funded independent ombuds schemes, with mandatory participation required by regulation. These schemes are crucial to ensure consumers are treated fairly and can access their rights. They also reduce the burden on regulators and promote competition by identifying and reporting on systemic issues and complaints data. It is time for these benefits to be extended to the aviation and travel markets. The current Airline Customer Advocate model is broken and cannot be fixed.

Effective complaints handling in the aviation market will also be supported by the introduction of minimum consumer protection standards. Currently, consumer rights are largely determined by each airline's terms and conditions, which can result in inconsistent and often unsatisfactory outcomes for consumers. This approach also makes it harder for consumers to understand their rights. Legislating new airline specific consumer protections, including minimum rights to compensation for delayed and cancelled flights, will ensure a universal baseline in protections. If properly designed, these minimum protections can also create incentives for airlines to run their services more effectively and efficiently, promoting competition, trust and confidence.

Consumers want and need improved protections in the aviation sector. Consumer confidence has been severely eroded by the ongoing lack of protections. Restoring consumer confidence and trust in the industry is critical to its growth and will benefit the community and the economy in the lead up to 2050.

Recommendations

The Aviation White Paper should outline a plan to implement the following reforms to improve consumer protections:

1. Establish a new independent travel and tourism industry ombudsman
2. Implement minimum consumer protections for airlines that include:
 - a. Minimum compensation arrangements for delayed or cancelled flights
 - b. Clearer rights to refunds
 - c. Minimum requirements for travel vouchers and credits
 - d. Minimum requirements for customer service
 - e. Mandated information standards
3. Introduce a ban on unfair trading
4. Introduce penalties for when consumer guarantees are not met

The consumer experience of the aviation industry

CHOICE & CFA have been advocating for reform to the aviation sector for many years. In July 2021, CHOICE produced a report on consumer issues in the travel and tourism sector.² This report was informed by the responses of over 4,000 community members and revealed a number of key problems faced by consumers in the aviation sector. These include:

- **Inconsistent and often unsatisfactory rights for consumers**, largely determined by the terms and conditions of individual operators; and
- **Difficulties when consumers try to understand or exercise their rights to receive a remedy**. This can be due to delays and challenges contacting airlines due to poor customer service or complaints practices, or complex agency arrangements. The ineffectiveness of the Airline Customer Advocate as an external dispute resolution function also contributes to consumers' problems in this market.

In October 2023, CHOICE conducted another survey and received 8947 responses from supporters about their experiences with the aviation industry in Australia over the last 12 months. Supporters were asked about cancelled and delayed flights, their experiences with the Airline Customer Advocate and whether they support measures to improve the sector such as the establishment of a travel and tourism ombuds scheme and minimum consumer protections.

CHOICE's 2023 survey revealed that consumers are facing similar problems today as they did back in 2021.³ People are feeling frustrated as flights continue to be delayed and cancelled, often without reason or sufficient warning, derailing plans and inconveniencing travellers. Many consumers are unable to achieve satisfactory refunds or compensation when their flight is delayed or cancelled and have no viable avenue for complaints. One supporter shared a sentiment that we read throughout many responses:

“There are costs for consumers beyond the cost of flights and accommodation where a flight is delayed. It can impact on caring responsibilities and other personal commitments which can have significant consequences if you can't rapidly make new arrangements...”

² CHOICE, 2021, 'Consumer Protection for Australian Travellers: A plan for clarity, consistency and fairness', <https://www.choice.com.au/consumer-advocacy/policy-submissions/2021/july/report-on-fairer-consumer-protections-for-australian-travellers>

³ CHOICE, October 2023, Travel Survey

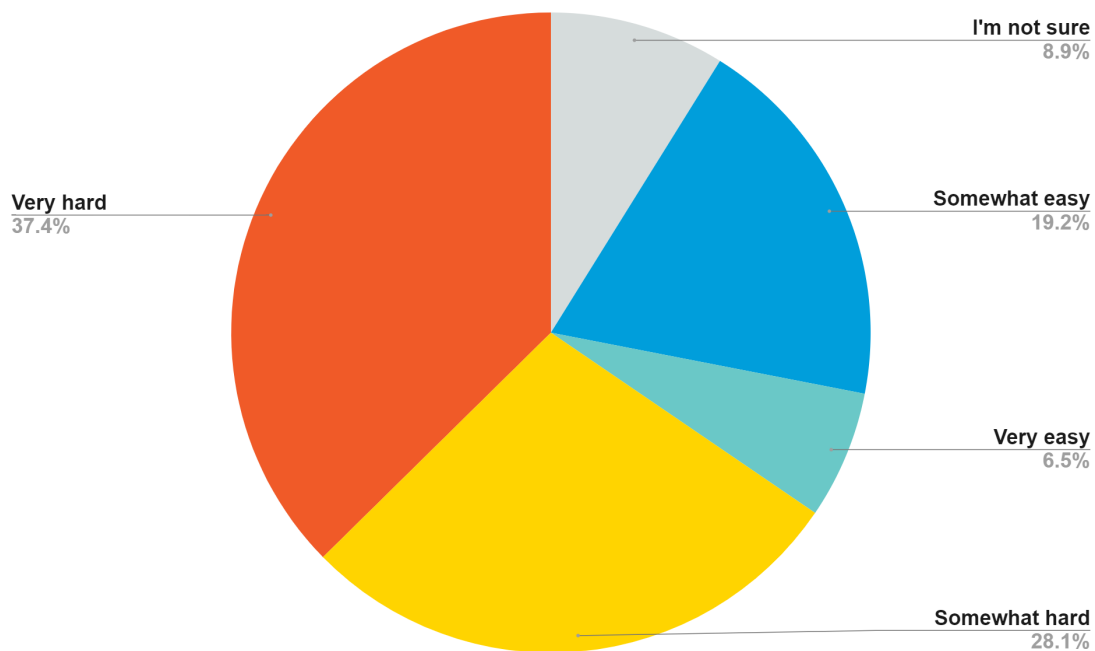
Cancelled and delayed flights continue to significantly affect travellers

40% of survey respondents to CHOICE’s 2023 travel survey had their flight cancelled or delayed in the last 12 months.⁴ For those who had their flight cancelled, 97% said that the airline cancelled the flight⁵ and 64% said no reason given for the cancellation.⁶ Cancelled flights have a huge impact on people travelling for work, leisure and important occasions, compounding the stress that many are already facing. One survey respondent shared their experience with us:

“Jetstar cancelled the first 3 flights of the day (we were on the first flight) meaning we missed the start of the funeral we were attending. We were going to cancel the trip entirely but felt it was almost impossible to (get) any meaningful compensation.”

For those who had their flight cancelled, many had significant trouble accessing refunds. When asked how easy or difficult they found the overall cancellation and refund process to navigate, 65% of respondents reported that they had found it somewhat or very hard.⁷

How easy or difficult did you find the overall cancellation and refund process to navigate?



⁴ CHOICE, October 2023, Travel Survey (n=8946)

⁵ CHOICE, October 2023, Travel Survey (n=1602)

⁶ CHOICE, October 2023, Travel Survey (n=1563)

⁷ CHOICE, October 2023, Travel Survey (n=1579)

Survey respondents shared their frustrations with us:

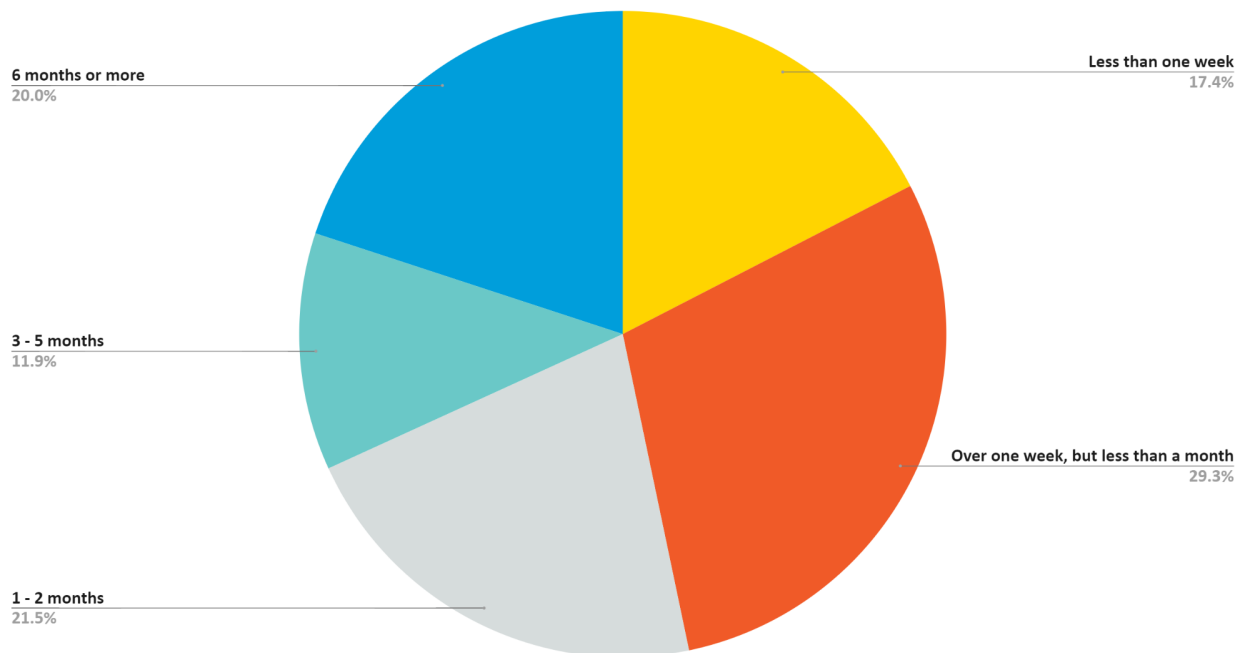
“Airlines are VERY difficult to contact and when you do speak to someone they appear to be working off a script and have no authority to actually help. Frustrating!”

“It needs to be easier to communicate with a representative from the airlines. My experience has been that I have not been able to have anyone answer my telephone inquiry. How can you access a refund if you cannot speak with someone from the airline.”

In almost all cases, the airline was responsible for cancelling the flight. Yet, respondents to our survey shared that they still had to formally request a refund or other remedy after the cancellation – and often continued to chase it. With this barrier in place, many consumers do not even try to request a refund to begin with and are left out of pocket for the cancellation.

For those who did pursue a refund, voucher or other resolution, 47% received it within a month⁸. For others, the wait time was significantly longer – 1 in 5 survey respondents that pursued a refund, voucher or other resolution **had to wait over 6 months to receive a resolution.**⁹

How long did you have to wait to get a refund, voucher or other resolution?



⁸ CHOICE, October 2023, Travel Survey (n=396)

⁹ Ibid

Survey respondents shared their stories with us:

“Qantas cancelled my flight for no reason while I was on the way to the airport and tried to reschedule me on one the next day. I had to travel that day so had to book on Jetstar (which Qantas was unable to arrange) at a much higher cost. It took 7 months to be refunded my points (I booked using points) and I still haven’t been refunded the additional money. Airlines in Australia don’t have any real consequences for delays or cancellations like in Europe so they have no incentive...”

“Jetstar owes me money from a cancelled flight from 2021. Still trying to get a refund. Not fair, I had to save a long time for my trip to Uluru.”

“...We booked special seats on a Qantas Flight to Cairns and paid \$160 each way for them as I have a leg problem and need to straighten it out. When we boarded the aircraft we were assigned cramped seats nowhere near as roomy as the ones we booked. It took over 12 months of complaint emails and buck passing by Qantas until we got a refund!”¹⁰

Many consumers expect compensation in the form of meals and accommodation when a flight is delayed. But for 89% of respondents to CHOICE’s survey, no accommodation or meal voucher was offered when their flight was delayed.¹¹

Consumers are paying the price for cancelled and delayed flights

Plans cancelled, events missed and holidays cut short – cancelled and delayed flights take a huge toll on people who rely on air travel to get to where they need to be. This stress is compounded when airlines make it difficult for consumers to access refunds and compensation, leaving many people out of pocket. We heard this from many survey respondents:

“...I specifically booked a more expensive, earlier flight, because the later flight would get in after the last shuttle bus left for the day. Then they cancelled that flight and put me on the later flight I didn’t want, leaving me having not got what I had paid extra for, and \$200 out of pocket for a taxi, and going through the hassle of arranging a refund for the shuttle bus booking. And now with the news about Qantas selling tickets for flights that had already been cancelled, I’m left wondering if that earlier flight was ever going to fly at all...”

“...We paid extra to not have a stop over in Sydney. Rescheduled flights were then cancelled via text message in Sydney for 24hrs. We have two children under 8yrs so

¹⁰ Further supporter responses regarding refunds can be found at appendix 3

¹¹ CHOICE, October 2023, Travel Survey (n=1941)

accommodation was necessary. Unintended Money spent (sic) on taxi fares, food and accommodation. In (sic) total we lost four days of our holiday. Tried to extend our holiday for three days to make up time lost and we were charged (a) cancellation fee. Spend an accumulation of 10hrs in trying to be reimbursed. Virgin eventually paid us \$700 however still out of pocket by \$500.”

“The airline cancelled the flight at the last minute, I was already at the airport. They provided another flight but it was (the) next day mid afternoon. We were out of pocket for accommodation in Sydney (we were flying out of Melbourne) and accommodation in Melbourne overnight. When I queried why compensation was not provided they said they don't do it if the flight is cancelled in the home city. We were not prepared to pay exorbitant taxi fares from airport to home and (the) next day from home to airport.”

“Our flight delay bumped out our drive home time. We should have stayed overnight as we had a 4 1/2 hour drive home from the airport after arriving at midnight, in hindsight we made a bad dangerous choice to continue to drive home as to our original plan. Another consideration airlines fail to pay any attention to (is) the inconvenience to their customers who buy flight times for a reason.”

“My delayed flight was the first of three flights I was meant to take that day. It meant that I had (sic) to book another flight for 24 hours later, book accommodation and eat out.”¹²

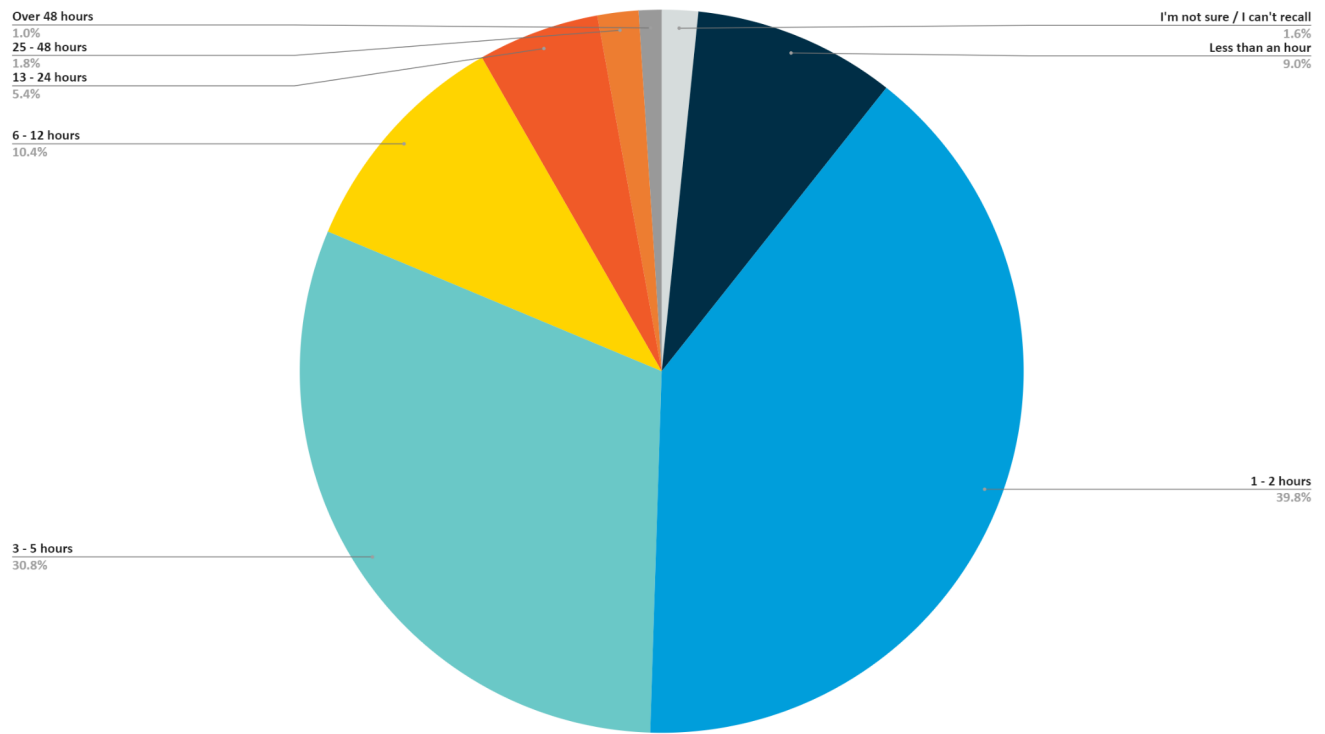
In the European Union, when your flight is delayed by more than 3 hours you are entitled to compensation.¹³ In Australia, there are no minimum standards to ensure consumers receive compensation for delayed flights. In our recent survey, almost 50% of respondents experienced a delay of over 3 hours in duration¹⁴, but whether they were eligible to receive even a meal voucher would depend on the terms and conditions of the ticket they booked.

¹² Further supporter responses regarding cancelled & delayed flights can be found at appendix 1 & 2

¹³ Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91 (Text with EEA relevance) - Commission Statement. Accessed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX%3A32004R0261>

¹⁴ CHOICE, October 2023, Travel Survey (n=1970)

How long was your flight delayed by?



Consumers charged additional fees to access refunds

For those who were able to access a refund, some reported being charged a fee to do so. For almost 7% of respondents the fee charged was as much as \$50¹⁵. For almost 5% of people, the fee was between \$50-\$100, and for a small group, 3%, the fee charged was more than \$200.¹⁶

Consumers should not be charged for making changes to their bookings or attempting to access refunds when their flight is cancelled. Refunds and compensation should instead be a requirement of airlines when a flight is delayed or cancelled. There should be minimum standards to determine what a person is entitled to and this remedy should be proactively offered to the consumer affected. It should not come at an additional cost.

¹⁵ CHOICE, October 2023, Travel Survey (n=233)

¹⁶ *ibid*

Consumers reluctant to make a complaint to the airline

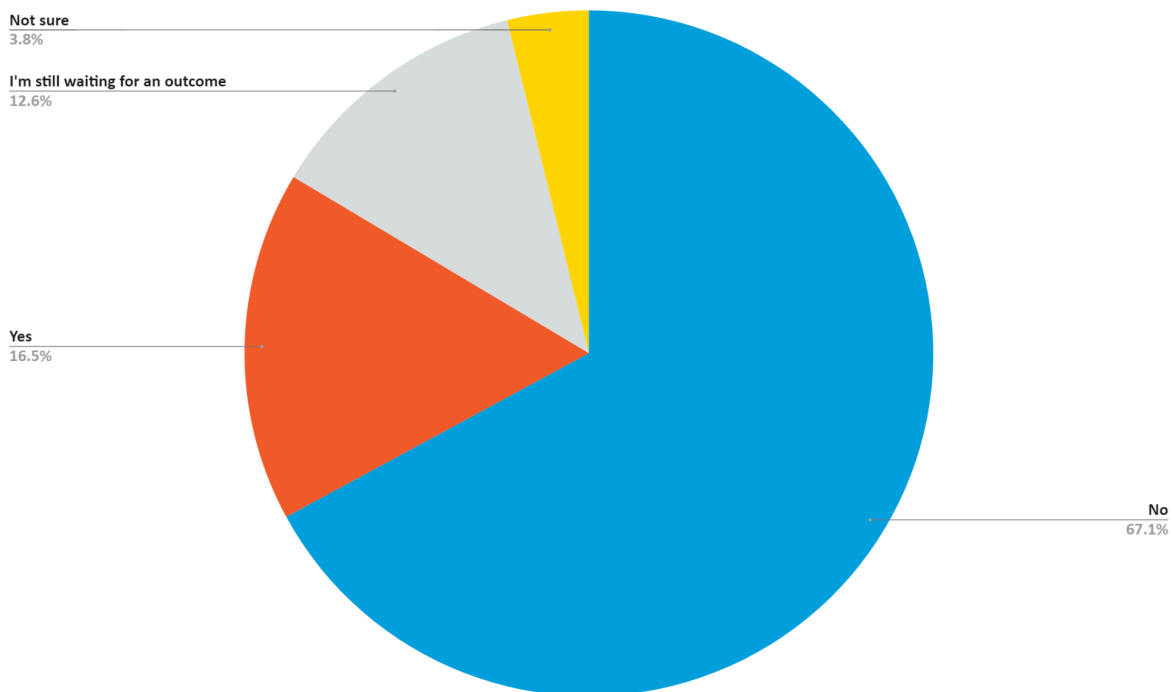
When CHOICE asked supporters if they had made a complaint to the airline, 73% told us they had not.¹⁷ Of those that had, 67% were not able to obtain a satisfactory outcome from the airline.¹⁸ While further research would be required to confirm the reasons why, it seems likely that many people think there would be little likelihood of a positive outcome from complaining.

“complaining to airlines is almost impossible as the way to do so is obscure and getting a meaningful reply very difficult.”

“It was very hard to get to the right person to deal with our complaint and give us our refund.”

“...Lodged the complaint in late August and still waiting on a resolution.”¹⁹

Were you able to obtain a satisfactory outcome from the airline?



¹⁷ CHOICE, October 2023, Travel Survey (n=3568)

¹⁸ CHOICE, October 2023, Travel Survey (n=969)

¹⁹ Further supporter responses regarding making complaints can be found at appendix 4

The Airline Customer Advocate is not an effective mechanism for handling complaints

When a consumer is not able to achieve a satisfactory outcome by complaining to the airline, their next step is to go to the Airline Customer Advocate (ACA). The ACA is very limited in what it can do. It is sponsored by Qantas, Jetstar, Virgin Australia and Rex and reports to a committee made up of representatives from those airlines. CHOICE awarded the ACA a Shonky award in 2021 for delivering poor service and doing little more than forwarding the complaint to the airline.²⁰

The ACA received 6918 complaints in 2022, according to the AFR,²¹ 4000 of which were about Qantas and only 1286 were deemed eligible. This represents a 102% increase in complaints on the previous year, with complaints about flight delays and cancellations, refund requests, fees and charges and COVID-19 impacts listed as the biggest areas of customer dissatisfaction.

The ACA can only act as an intermediary between the complainant and the airline – it does not have the power to make determinations or resolve outcomes on behalf of the customer. On top of that, a complaint is only eligible when it has met the following criteria, according to the ACA website:

- *Is your complaint about a participating airline?*
- *Is your complaint about the airline's services? Your complaint must be about one of the services listed.*
- *Have you already tried to resolve your complaint directly with the airline concerned? You must have followed the complaints process set out in the applicable airline's Customer Charter, sought a review of the response, and allowed for the timeframes specified in the Customer Charter.*
- *Does your complaint relate to an event or circumstances that occurred within the last 12 months?*²²

According to the ACA, 88% of Qantas and 72% of Jetstar complaints were deemed 'ineligible'²³, likely leaving consumers disheartened, disappointed, without compensation and nowhere else to turn. Consumers are clearly unhappy with this arrangement, with the ACA 2022 annual report painting an alarming picture of consumer sentiment towards the service:

²⁰ Shonkys 2021, Airline Customer Advocate, accessed at:

<https://www.choice.com.au/shonky-awards/hall-of-shame/shonkys-2021/airline-customer-advocate>

²¹ Australian Financial Review, Ayesha de Kretser, August 2023, 'Qantas complaints in a league of their own, unpublished data shows'

²² Airline Customer Advocate, Eligibility, accessed at:

<https://www.airlinecustomeradvocate.com.au/General/Eligibility.aspx>

²³ Airline Customer Advocate, 2022 Annual Report, accessed at:

<https://www.airlinecustomeradvocate.com.au/General/AnnualReports.aspx>

- 59% of complainants disagreed or strongly disagreed that their complaint was managed in a timely way
- 53% of complainants disagreed or strongly disagreed that the ACA was independent in their interactions
- 57% of complainants disagreed or strongly disagreed that they were treated fairly, with respect and honesty²⁴

CHOICE asked supporters in our recent 2023 travel survey if they had made a complaint to the ACA and **56% responded that they had not as they were not aware of the ACA to begin with**. A further 33% did not make a complaint as they didn't think it would make a difference.²⁵ Of the people who did make a complaint to the ACA, almost **63% reported that they were unable to obtain a satisfactory outcome** and 22% were still waiting for an outcome. Only 12% were able to achieve a satisfactory outcome through the ACA.²⁶

Survey respondents shared their experiences about the ACA:

"I have previously submitted complaints to the Airline Customer Advocate. Their reply is to sort it out with the airline. They are worse than useless (sic) and should be replaced with an independent body that can fine the airlines if they treat their customers like dirt."

"The Airline Customer Advocate? never replied and the only help was via my travel agent who was communicating well and resolved (sic) the issue..."

"The Airline Customer Advocate is a PR screen for the airlines. It is not an ombudsman and yet so many travellers turn to it in desperation hoping it will resolve their disputes. It should be shut down and a properly independent ombudsman appointed."

"Airline Customer Advocate are ineffectual and do not appear to be independent. Qantas have no customer care. Web sites are confusing to navigate. Phone systems are confusing to navigate. There is no accountability..."

The ACA says that customers should receive a response from the airline within 20 business days of the complaint being made to the ACA. Yet the average complaint finalisation timeframe was reported as 46 business days, with Qantas recording a huge 110 day average timeframe.²⁷

Consumers should have access to an independent ombuds scheme to handle complaints and disputes independently, fairly and in a timely manner.

²⁴ ibid

²⁵ CHOICE, October 2023, Travel Survey (n=3584)

²⁶ CHOICE, October 2023, Travel Survey (n=91)

²⁷ Airline Customer Advocate, 2022 Annual Report, accessed at: <https://www.airlinecustomeradvocate.com.au/General/AnnualReports.aspx>

Policy recommendations to improve consumer protections

Consumers regularly struggle to receive a remedy when their flights are cancelled and delayed and do not have a satisfactory avenue for resolving their complaints. As a result, many people are left out of pocket or are provided with credits that they cannot use. Introducing consumer protections, an independent ombuds scheme and making changes to the Australian Consumer Law, will help to restore consumer confidence and trust in the aviation sector. We encourage the Government to include the following recommendations in the Aviation White Paper.

CHOICE & CFA recommend that an agency with expertise in consumer protection should be responsible for implementing the below reforms. We recommend that the Treasury is resourced to lead the implementation of these reforms.

Establish a new travel and tourism industry ombuds scheme

96% of survey respondents think Australia should introduce an independent aviation ombudsman.²⁸

Consumers need to be able to access a free, independent and fair ombuds scheme that has the power to handle complaints and make binding determinations. Currently, there is no such scheme in place that is able to provide satisfactory outcomes for consumers in the aviation or tourism sector.

In 2014, the Productivity Commission noted that it was appropriate to have an industry ombuds scheme, where the following criteria are met:

- Essential services are involved
- The market is characterised by large firms and limited competition, thus creating a significant power imbalance
- There is significant asymmetry of information, such that consumers would have difficulty asserting their rights
- There are a large number of disputes²⁹

This criteria was repeated in the 2017 Productivity Commission inquiry into consumer law and enforcement.³⁰

²⁸ CHOICE, October 2023, Travel Survey (n=8946)

²⁹ Productivity Commission Inquiry report, 2014, Access to justice arrangements, accessed at: <https://www.pc.gov.au/inquiries/completed/access-justice/report>

³⁰ Productivity Commission Research Report, 2017, Consumer Law Enforcement and Administration, accessed at: <https://www.pc.gov.au/inquiries/completed/consumer-law/report>

The aviation sector meets each of the above criteria.

We strongly recommend the Federal Government introduce a travel and tourism industry ombuds scheme, similar to the Telecommunications Industry Ombudsman or the Australian Financial Complaints Authority. All airlines, along with large travel and tourism suppliers, large travel agents and large intermediary companies should be required to participate in the industry ombuds scheme. Smaller travel and tourism businesses should be able to opt in to the scheme. The ombudsman should:

- a) be governed by a board that includes equal numbers of consumer and industry representatives and an independent chair;
- b) be responsible for investigating complaints against travel and tourism businesses;
- c) have the power to issue determinations and decisions that businesses are obliged to act on; and
- d) be required to comply with the Benchmarks for Industry-based Customer Dispute Resolution Schemes.

Respondents to CHOICE's survey overwhelmingly agree that Australia should introduce an ombuds scheme. One supporter reflected on how the existence of such a scheme could have helped them and their fellow passengers resolve a dispute with Jetstar:

"My Jetstar online booking account (which had a pin number) was accessed by someone without my knowledge. They cancelled my flight and asked for a credit voucher which was used. Throughout this ordeal (sic), Jetstar just ignored me... I was one of many customers this happened to. We had no one to turn to for help. I believe if there had of been an airlines ombudsman at the time we could have turned to for help and lodged a complaint, our (sic) complaints would have been dealt with in a prompt, and efficient manner, and less stressful, without having to take legal action against Jetstar."

An ombuds scheme has the power to consider not only what is compliant but also what is fair and reasonable in the context of the complaint. This helps promote improvements over time, and also ensures complaints are resolved in a way that meets community expectations. An ombuds scheme would also greatly reduce the need for people to rely on action by regulators to resolve their complaints or initiate their own legal action.

There is also a significant cost attributed to negative customer experiences. In 2014 Ernst & Young conducted a survey showing that poor customer service could impact \$40 billion in spending or \$720 for every negative customer experience.³¹ An effective mechanism for

³¹ Smart Company, 2014, 'Australian Businesses losing \$720 per negative customer experience: EY report', accessed at: <https://www.smartcompany.com.au/marketing/australian-businesses-losing-720-per-negative-customer-experience-ey-report/>

handling complaints, such as an ombuds scheme, would likely financially benefit the aviation sector.

Ombuds schemes can also drive improvements in markets as they can provide information and data about the performance of industries and businesses and identify systemic problems, which can then be resolved for everyone affected (not just the complainant) and referred to the regulator for compliance or enforcement. This mechanism can also support competition and drive service improvements by encouraging firms to compete on factors that can lead to complaints.

An ombuds scheme could also have the ability to handle complaints relating to disability and accessibility issues. The Public Transport Ombudsman in Victoria plays an active role in relation to disability by investigating individual complaints about accessibility and also considering broader issues around accessibility through a system issues process.³²

Recommendation 1

Establish a new travel and tourism industry ombuds scheme

Implement minimum consumer protections for airlines

99% of respondents think that Australia's laws should be changed to make it easier to access refunds or compensation when a flight is delayed or cancelled.³³

Australians need, and overwhelmingly support, an easier way to access refunds and compensation. Minimum consumer protections for airlines in Australia would ensure that people are covered and adequately reimbursed when their flight is delayed or cancelled, recognising the stress, inconvenience and financial cost that a delay or cancellation has on travellers.

We note the Green Paper raises the idea of a Charter of Rights. We are concerned that this contemplates something aspirational without the weight of the law behind it, and that it would not provide strong rights for consumers. Accordingly, we propose that minimum consumer protections should be introduced through legislation or legislative instrument, rather than an industry code or charter.

³² Public Transport Ombudsman, Accessibility of public transport, accessed at: <https://www.ptovic.com.au/improving-pt/accessibility>

³³ CHOICE, October 2023, Travel Survey (n=8946)

People with disabilities would also benefit from minimum consumer protections to cover, for example, compensation for damaged mobility devices, a common issue for people with disabilities that can have huge consequences for the people affected.³⁴

As highlighted in previous submissions, CHOICE & CFA propose that new minimum consumer protections should include the following elements:

Minimum compensation arrangements for delayed or cancelled flights. This could be similar to arrangements in Europe where consumers have clear rights to compensation when flights are cancelled or delayed. We have included more details on how this could work below.

Clearer rights to refunds. This should include the right for consumers to choose to receive a refund or credit/voucher if the service cannot be provided due to circumstances outside the control of the business and consumer. The protections should also extend to ensuring any fees deducted from a refund must be limited to the business's reasonable costs and there should be additional refund rights for consumers experiencing financial hardship.

Minimum requirements for travel vouchers and credits. This should include prohibitions on expiry dates for flight credits that were received for cancellations that were outside the consumer's control, and an obligation on the airline to convert credits to cash after a certain amount of time.

Minimum requirements for customer service. This should include requirements to manage high-demand times using consumer friendly methods, like call back services.

Mandated information standards. This should include a mandatory information standard on the information that must be provided to consumers at the time they make a travel purchase. This should include what refund a consumer will receive if a business is unable to provide a service, information on how to lodge a complaint and, for travel agents and intermediaries, a breakdown of fees and commissions.

New Australian laws could echo the EU compensation scheme

In February 2004, the European Union established a compensation scheme to determine the minimum rights a passenger is entitled to when their flight is cancelled, delayed or they are denied boarding against their will.³⁵

³⁴ ABC News, 'How a trip home on Qantas left disability advocate Akii Ngo stranded with a broken Wheelchair', September 2023, accessed at:

<https://www.abc.net.au/news/2023-09-16/qantas-damage-wheelchair-akii-ngo-disability-activist-inclusion/102846034>

³⁵ Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91 (Text with EEA relevance) - Commission Statement. Accessed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX%3A32004R0261>

The European scheme stipulates the right to compensation, the right to reimbursement or re-routing, the right to care and the right to redress. It also outlines rights for people with reduced mobility or special needs, further compensation and an obligation to inform passengers of their rights.

If you were to fly within, arrive or depart from the EU, you would be eligible for minimum protections under EU regulations.³⁶ If your flight, for example, was delayed more than 3 hours you would be entitled to compensation in the form of:

- A. EUR 250 for all flights of 1500 kilometres or less;
- B. EUR 400 for all intra-Community flights of more than 1500 kilometres, and for all other flights between 1500 and 3500 kilometres;
- C. EUR 600 for all flights not falling under (a) or (b).

In determining the distance, the basis shall be the last destination at which the denial of boarding or cancellation will delay the passenger's arrival after the scheduled time.³⁷

Australian airlines offer reimbursement for expenses incurred due to delays or cancellations in certain circumstances, but this is determined by individual airline policies and terms and conditions. Consumers often must also chase the progress of any payment. In contrast, the European system for compensation is determined by a standard set of rules and the process for claiming payment is streamlined.

Recommendation 2

Implement minimum consumer protections for airlines

Make improvements to the Australian Consumer Law

More general improvements to the Australian Consumer Law will also support consumer protection in the airline sector. In particular, we highlight the following reforms:

Ban unfair trading practices

The Federal Government is currently consulting on options to amend the Australian Consumer Law to introduce a ban on unfair trading practices. The Government should introduce legislation to introduce this ban, with a blacklist prohibiting certain practices. We see significant benefits for airline customers from this kind of provision in relation to customer service and complaints

³⁶ This law applies to flights within the EU, arriving and departing from the EU that were operated by an EU or non-EU airline. The only exception is if your flight arrives from outside the EU, on a non-EU airline.

³⁷ Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91 (Text with EEA relevance) - Commission Statement. Accessed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX%3A32004R0261>

handling. Such a provision would ensure airlines cannot discourage complaints or consumers from obtaining remedies by making the processes difficult to use or inaccessible.

A ban on unfair trading could also assist with the valuing and devaluing of loyalty reward programs. Airlines such as Qantas and Virgin are able to change the value of frequent flyer points whenever they decide, regardless of the value the points had when the consumer initially accumulated or purchased them. Unilateral unfair changes to the value of points in a frequent flyer scheme could be captured by a ban on unfair trading practices.

Penalties for consumer guarantees

The Australian Consumer Law contains certain consumer guarantees including, most relevantly for airlines, that services must be provided with due care and skill and must be provided on time. However, currently there are no penalties for non-compliance and the regulators – the ACCC or the relevant state fair trading agency – do not have the power to enforce them. Introducing penalties and ensuring regulators can enforce consumer guarantees would ensure airlines and other businesses have stronger incentives to comply with existing requirements.

Recommendation 3

Introduce a ban on unfair trading practices

Recommendation 4

Introduce penalties for when consumer guarantees are not met

Appendix

1. Experiences with cancelled flights

“Flight cancelled 5 hours prior due to wet weather in Sydney. Qantas would not take a call from our agent (who tried for hours) so we could not reschedule. We were told to drive to Coffs Harbour in the hope we could “talk our way onto the only flight that would get us to Sydney (in order to connect to our early morning flight to New Zealand). In the end my sister with zero notice had to drive us to Sydney (5-6 hours) stay the night on our floor and borrow clothes and drive our car back to south west rocks (5-6 hours through a city she was unfamiliar with). She had only just arrived from Perth and was tired. Unless she did that we were going to miss our flight to Auckland to start our NZ tour. Very unimpressed. Cost us fuel and extra accommodation (sic) costs for my sister who was kind enough to do what she did with no notice at all.”

“...Noticed that we were late boarding, and then the plane was taken away. No advice given by the airline. At the same time, my husband who was supposed to pick me up at my destination was being taken by ambulance with a heart attack. Eventually, after 4 hours waiting at the gate, we were advised that the flight was cancelled. Only 1 staff member there to allocate accommodation to a plane load of passengers. We were offered accommodation and a small meal voucher. The flight happened the next day, with the same single staff member in charge of check in for the whole flight. By the time I arrived back home, my husband was in surgery having a pacemaker fitted. We were lucky he did not die.”

“Our flight with Jetstar on 22/11/2022 was delayed twice... before it was eventually cancelled. Our flight was a connecting flight from Sydney to Phuket via Melbourne. They pulled aside everyone who was travelling to Phuket and told us our leg had been cancelled. However, everyone going to Melbourne from Sydney was able to board the flight. We were at the boarding gate about to board when we were told our flight had been cancelled after waiting 6hrs for our flight to be called. We had to make alternative arrangements to get to Phuket in order to make it to our destination on time (we were on a trip that began the next day). We were refunded for our return flight from Jetstar but were not reimbursed by Jetstar or travel insurance for our out of pocket travel expenses we incurred (sic) as a result (an alternative flight which cost \$1500 out of pocket and overnight accommodation) despite being promised we would be reimbursed accommodation (by) Jetstar.”

“Initially we were told that the flight was delayed by three hours. After 2 hours waiting the flight was cancelled at 8pm in Alice Springs on a Friday night. We were offered taxi vouchers which we later found out had expired 7 months prior. We were not offered any support or pay for hotel accommodation.”

“Airline cancelled flight, saying the next available flight would be 5 days later. However, no accommodation compensation was offered. No other flights service that town so my company had to charter a shuttle at a cost of \$800 for two people, to get us to the next closest airport (5 hour drive away).”

2. Experiences with delayed flights

“We booked a flight a day earlier than needed in order to avoid missing a cruise. We were then (predictably, our destination driver said) delayed for over an hour arriving in Darwin at midnight and getting to our hotel (Mantra on the Esplanade) after 12.30am (baggage unloading delays). Reception closed at midnight, so we were left in the lobby until nearly 2 in order to get into our booked room.”

“10hrs stuck in a wheel chair at Brisbane Domestic Airport in pain... Virgin said flight delayed and we waited from morning until mid afternoon Virgin finally announced that flight was cancelled and we could re-book a Virgin flight the time taken to do this made going home in a taxi futile as we would have to fork out \$70-00 have arrived home we would only have time to have a drink and it would be time to get into taxi for return to Airport with the plane delayed we finally arrived at our destination at 12 midnight Virgin excuse laid (sic) blame on Air Traffic Control shortages and a total of approx 15hrs is a long time for a disabled (person) to sit in wheel chair...”

“This particular cancellation made a very difficult day trip to Sydney - traumatic. First leg was delayed. I was notified at 3.30 am and had no further sleep after that. Return leg was cancelled as I was approaching the boarding gate. I was out of pocket \$1200 to get home. I advised the airline, they have not responded. This was in April 2023. “

“A Qantas regional airline flight from a NSW rural city direct to Brisbane was delayed for many hours then changed to a flight which had to go via Sydney and a change of flight north. This resulted in a further wait in Sydney. No explanation or apologies made by Qantas.”

“Our Jetstar flight from Townsville to Melbourne, was delayed so long, that we arrived in Melbourne after midnight. Hence our town car service charged us a lot more and rightly so. Pity the poor people on that flight that were relying on public transport at 1am. They also had the incorrect flight details on the baggage carousel and luckily for us another person told us which carousel to go to, as we had already been standing at the wrong carousel for a half an hour. There was three Jetstar flight(s) arriving from different destinations and all arriving late.”

“The delay resulted in missing connecting flight, therefore changed ongoing schedule via different airlines and luggage going missing, arrived a week later.”

3. Experiences accessing refunds

“My experience was breaking my leg and being told I had to buy another seat as I was in plaster and would require my leg to be elevated, so I did. The seat they gave me was behind the bulkhead and the arm was fixed, therefore I was unable to elevate my leg. The additional seat cost \$700+ and I was told that they would refund/credit same. This did not happen. When I followed up, I was going to purchase a new flight with my credit, I was told that as the credit was not used within a 2 year period I then forfeit my claim on these monies. I wasn't told about any time limit being imposed. Not happy Qantas.”

“I made contact with Qantas 25th August 2023 and after 1.5 hours on the phone, supposedly, arrangements were made for my credits to be refunded to my bank account. This was to take 6 weeks. This (is) now 56 days ..8 weeks and I'm still waiting.”

“We paid the pack for extra leg room, a meal and was in row 1 on original booking. Was put to the back of the plane in rescheduled flight. No meal, no extra leg room and no one to complain to as they flew us in Qantas plane. Much preferred that but the front row and meal was paid for. No refund was forthcoming.”

“Received a text on the morning of the flight saying it was cancelled. Click here for other option. When I did it said we have no other options. Click here for a refund. When I did it said we would have to call and actually said the phone delays were long. Paid \$1000 for 2 x one way tickets from MEL to SYD. Had to drive from Avalon to Tullamarine. Didn't follow up the refund just resolved never to book with JQ again.”

“I was bumped off my business seat as they had cancelled an earlier flight and combined two. with a delay to the second. I had to chase up the refund for the cost/points of seat.”

“I had many discussions with Qantas over 4 months to get a refund for a cancelled flight to Vanuatu booked in February 2020. After two denials of refunds... I have been able to achieve a refund last week - the 100.000 FFP and \$4,600 that I had used to pay for the flights. I did not push for interest to be paid - I was grateful that we had finally found some end to this unfortunate situation...”

“Qantas 'deemed' our tickets to be non-refundable when flights were cancelled due to Covid. This should not be legal. The customer should be given a refund if a service cannot be provided that is not the fault of the customer.”

4. Experiences making complaints

“It is almost impossible to contact Qantas to ask for help or complain about cancelled and delayed flights. We live in a rural area and there are few flights out. For the past 18 months Qantas has cancelled flights without reason and lets us know via a text message, often only 60-30 minutes before it is due to leave. We were often on our way to the airport or already there. We have no choice but to wait for the later flight which Qantas puts us on. My husband has lost \$1300 after cancelling a return flight to Darwin. There was no refund even though he cancelled his flight at least three months before he was to fly and he was only allowed a credit which expired before he was able to use it and he was not allowed to use a part of his credit to pay for my flight. “

“Spent a total of 20 hrs 35 minutes on hold and speaking to staff over 6 calls. Longest 6 hrs 27 minutes. ACA said they cant help till Qantas has tried to fix, Qantas did not return my emails or web site complaint so according to ACA they never have to get involved. (eventually they did)”

“I purchased a flight (Per-Melb-Honolulu) leaving at 8am which had a 2hr 5min layover in Melbourne, however only two weeks later Jetstar emailed me to say they could not honour that flight (I assume due to a 5-10min change in the first flight meaning the lay over time in Melbourne was less than 2hrs). They then put me on a flight leaving Perth at 1am, with a consequent 9 hour layover in Melbourne. While I understand that these schedule changes happen, and I am not annoyed about that, I do believe that token efforts should be given to compensate for the significant inconvenience and, at a bare minimum, I should have been refunded the price difference between the flight I originally booked and the flight they moved me to. As the replacement flight was a 'midnight horror', it was around \$100 less than the flight I had originally booked. However when I contacted the airline to request a complimentary lounge pass, at a minimum, to help us address the inconvenience of the lost night's sleep and the excessive layover time, (not to mention the lower value of the replacement flight) they refused to even offer that as a bare minimum. It feels like bait and switch behaviour to me, to sell a flight at once price, then switch the passenger to a cheaper flight with no refund of the fare difference. If I wanted to move to a higher priced fare, they would charge me an arm and a leg for that, but the situation doesn't happen in reverse. I followed up with their complaints department but am reluctant to lodge a complaint with the ACA out of concern that they will cancel my flight entirely in response. And given alternative flights are now far more expensive, I have to just accept it.”

“... In July 2022 I had a flight cancelled at short notice, was left to find my own alternative flights and missed some events that were the reason I was flying. I was promised a refund at the time and in subsequent given apologies and further promises, but it still hasn't been paid. Contact with the airline's complaints service was completely unproductive. There needs to be an (sic) independent umpire!”