



Dear Director

The Regional Aviation Association of Australia (RAAA) welcomes the opportunity to provide a submission in response to the Department Infrastructure, Transport, Regional Development, Communication and the Arts Aviation Industry Ombuds Scheme Consultation.

The RAAA acknowledges the Government's plan to:

- Establish an Australian Aviation Ombuds Scheme so as to improve outcomes for the travelling public by clarifying and upholding the rights of aviation customers and,
- Establish an independent mechanism to resolve customer complaints about the aviation industry. In the future, the ombuds scheme will also incorporate the functions of the existing Aircraft Noise Ombudsman (ANO), which is currently established within Airservices Australia. This will increase the independence of the ANO.

About RAAA

The Regional Aviation Association of Australia (RAAA) is a not-for-profit organisation formed in 1980 to protect, represent and promote the combined interests of its regional aviation organisations across Australia.

Airline members include Alliance, Airnorth, Nexus, Rex, Skytrans, Sharp Airlines, Skippers, and Link Airways. Other members include airports, engineering and flight training companies, finance and insurance companies and government entities. RAAA's members operate successful and growing businesses providing employment and economic sustainability within regional and remote areas of Australia.

The RAAA has approximately 125 members who together directly employ over 10,000 people, many in regional areas. On an annual basis, the RAAA's Air Operator Certificate (AOC) members jointly turnover more than \$1.5 billion, carry well more than 2 million passengers and move over 23 million kilograms of freight. Our regional airport members also provide and manage critical infrastructure across Australia. [1]

The RAAA's AOC members provide critical connectivity services between regional communities and city centres which enable those living in remote and regional locations to access services such as healthcare and education. It also facilitates the delivery of services to regional communities including emergency medical or disaster relief services, transport of FIFO workers and the delivery of cargo and mail. Given the geography of Australia and the proportion of Australians residing in remote or regional locations, the regional aviation sector is vital to ensuring Australians can access the services they need. Moreover, as the Aviation White Paper (AWP) states, access to aviation services in remote communities supports Closing the Gap targets.

In addition, regional aviation is critical to the Australian economy, acting as an enabler to the mining, oil and gas, construction, manufacturing and higher education industries. More than 60,000 Australians work more than 350km from their usual place of residence, with many workers in the mining, oil and gas industries working in very remote areas. The AWP notes that there are already limited services available on regional routes and decreasing competition on those routes, and that while 278 regional aerodromes were serviced in Australia in 1984, only 163 were serviced in 2021.

The regional aviation sector was severely impacted by COVID-19. Australia's largest regional operator, Rex, has recently gone into administration and prior to this Bonza collapsed. Since the 1990s more than 20 regional airlines in Australia have collapsed. Many regional routes in Australia are operated on an unprofitable basis or require Government subsidies. The market for operators providing only regional services (flights that involve at least one regional city) [2] is small, with the AWP noting that Qantas Group (including Jetstar and Qantaslink) operate 67.1% of the regional flights and Virgin operate 26%. The largest "regional operator", Rex, operates only 4.4% and it can be inferred the remaining regional operators service less than 3% of the market. [3]

It is in this context that the RAAA makes submissions with respect to the proposals regarding the Aviation Industry Ombuds Scheme.

Regional Aviation and the Proposed Ombuds Scheme

The RAAA acknowledges that the issues around passenger consumer rights, and in particular flight delays and cancellations, can be highly emotive and frustrating for members of the travelling public who are directly affected. However, delays and cancellations are often the result of unavoidable safety issues and the problems which arise when servicing remote locations.

It is important to note that an Aviation Industry Ombuds Scheme, if it were to apply to regional airlines, has the potential to impact regional and remote communities across Australia and the regional airline operators who provide vital services to them in seriously adverse ways.

In the circumstances, the RAAA submits that given the following factors, that operators who operate predominantly on regional routes be excluded from any ombuds scheme:

[1] <https://raaa.com.au/>

[2] Defined as cities that are not Adelaide, Brisbane, Canberra, Melbourne, Sydney, Gold Coast and Perth. Aviation White Paper: Towards 2025 (AWP), 2024, p69

[3] Bureau of Infrastructure and Transport Research Economics (BITRE), unpublished data, cited in AWP, 2024, p69

1. The operating conditions of regional airlines are materially different to those of airlines operating between capital cities. Many regional airlines operate aircraft into remote locations where there are no back up aircraft or crew available, and no engineering services available. Many regional routes are serviced by a very limited flight schedule meaning passengers cannot easily be transferred to alternate flights to avoid delays. In these circumstances, regional operators face a significantly higher burden in attempting to ensure flights are not delayed, whilst also ensuring flights are operated safely. By way of example, it is readily apparent that an airline operating a Cessna Conquest between Darwin and a remote community with 6 passengers on board, or a Metroliner out of Brisbane to Armidale with 19 passengers on board, is conducting a fundamentally different service than an airline operating regular scheduled services between Sydney and Melbourne.
2. The consequences of destabilising events are vastly magnified when they occur in regional and remote locations, with the result that there is less ability for operators to mitigate or avoid cancellations or delays in those locations in many instances.
3. Given the high costs associated with operating regional routes, the lower or inconsistent demand on some routes and the size of businesses operating regional flights, regional airlines are more sensitive to any additional per passenger costs.
4. Regional operators already face significant challenges compared to other airlines in Australia. Regional airlines are suffering more acutely from pilot and engineer shortages, the regulatory burden on regional operators is more costly as a proportion of overall profit, passenger volumes are less predictable and often lower fleet numbers mean less economies of scale.
5. Regional operators provide critical services and connectivity which should be fostered and supported by the Federal Government.
6. The failure of regional operators can have a significant effect on the connectivity of regional locations within Australia. This can be seen with the recent example of Rex. Although Rex continues to operate there is the potential for a significant number of routes to be disconnected from Australia's aviation network if Rex ceases to operate.
7. Regional operators often have very limited customer service staff and do not employ in house legal departments meaning the management of claims via an Aviation Industry Ombuds Scheme would be disproportionately burdensome.

There is a real risk that if costs are increased on some regional routes, including by imposing costs associated with flight cancellations or delays, that regional airlines will either stop servicing the routes or even cease to be able to operate at all.

While the Federal Government has stated it has identified an issue in Australia with respect to refunds for cancelled or delayed flights, the RAAA is not aware of any such issue having been identified in the regional sector. Given the factors outlined above, and the importance of preserving and supporting the regional aviation industry in Australia, the RAAA submits that any Aviation Sector Ombuds Scheme or Passenger Rights Charter should not apply to regional airlines or general aviation operators.

To exclude regional operators will not deprive consumers who have purchased tickets for carriage on regional flights of a benefit. There is an existing regime under the Australian Consumer Law which will continue to apply and which ensures consumers are adequately protected.

Other Factors Affecting Delays or Cancellations in Regional Aviation

As stated above, the RAAA's primary submission is that regional aviation should be exempted from any such scheme. The inclusion of regional airlines in the proposed scheme would result in an unfair burden on regional operators, whose ability to mitigate the effects of unexpected events is limited by the factors below.

There are numerous reasons for flight delays and flight cancellations by regional airlines in Australia. These can be stand-alone factors or, in some instances, a combination of factors that ultimately result in major flight delays or flight cancellations.

Weather

The safe carriage of a flight is very much dependent on the prevailing weather conditions at the departing aerodrome location, the flight route to be flown and at the destination aerodrome. Adverse weather outcomes are generally flight planned when possible, however the changeability of weather as a natural phenomenon cannot be fully predicted or accounted for. It is well recognised both internationally and in Australia that weather is one of the highest contributing factors to flight delays and flight cancellations.

Of the many adverse weather conditions wind is the most dynamic and potentially the most impactful on the safe operation of an aircraft. All aircraft are required to take off and land into the wind. Aerodrome runway directions are generally designed and orientated for known historic wind conditions at a specific location.

At all aerodrome locations the seasonal wind conditions, and the operational impact they potentially have are now well known. For example, Sydney Kingsford Smith International airport predominantly operates its two parallel runways in a range of 'operational modes' to optimise the greatest number of arrivals and departures simultaneously. It is well known that at certain times of year the dominant north-south wind orientation can shift to an east-west orientation which then necessitates the active (or in use) runway to be changed to single runway operations.

The net impact is effectively a halving of the runway capacity. At peak operating times this means that the 'acceptance rate' for the aerodrome is halved. This is not something that any airline operator can change or influence and is very much out of their control and can have a flow on effect for regional routes.

Weather conditions also vary dramatically around the country from location to location and from season to season. For example, cooler southern state temperatures contribute to fog delays and the wet season in northern Australia impacts through torrential rain and cyclones. As is widely reported Australia has been experiencing more regular and more significant weather events in recent years.

Regional airlines, which tend to operate smaller aircraft into more remote airports, face an increased burden of responding to weather conditions than larger airlines which operate larger aircraft between capital cities.

Where weather conditions prevent safe operation of aircraft, flights cannot operate and need to be cancelled or delayed. This is entirely outside the control of the airline.

Air Traffic Control (Airservices Australia)

Airservices Australia (Airservices) is the Government owned organisation that solely provides air traffic control services across 11-percent of the world's airspace, including over mainland Australia.[4]

Airservices provides this service to airlines and other airspace users 24/7. Most airline activities occur in Class A and Class C airspace where the conduct of a flight is actively managed and coordinated by Airservices' air traffic controllers.

The aviation industry has emerged from the operational paralysis of COVID, and operational capacity has grown rapidly over the last couple of years as the industry has recovered. Today both international and domestic air travel has reached or exceeded pre-COVID levels. This has presented challenges for Airservices as they have grappled with staff shortages and numerous service delivery unavailabilities.

These have been the topic of intense discussion by the Rural and Regional Affairs and Transport (RRAT) committee and those appearing before it. Airservices have openly admitted that they need to improve their service delivery. In Airservices' own Australian Aviation Network Overview - January 2024, and at recent Senate Estimate hearings, Airservices stated that one in eight flight delays can be directly attributed to Airservices.[5][6]

Subsequently, airspace congestion, particularly at peak travel times, across all major Australian airports continues to present challenges for both Airservices and airlines alike. Airservices has sought to actively recruit more air traffic controllers and have publicly stated that they now anticipate continual service delivery improvement over the months ahead.

Airservices has also implemented and continues to evolve an active Ground Delay Program (GDP) that seeks to better manage arrivals and departures at many of the major airports. In short, the GDP effectively means airlines are given an exact time window when they can depart or arrive. This is actively managed daily via the airports' slot management (booking) system. So, while an airline may schedule a flight for a particular arrival or departure time ultimately this can be affected by factors like network congestion or weather events described previously.[7]

Enroute air traffic volumes and constrained airport traffic capacity can also require an airline to slow down in flight to delay the arrival time and better sequence the airline traffic into the arrival aerodrome. Most of us have experienced the inflight announcement from a pilot stating 'due to congestion air traffic control have asked us to slow down'. Once again this is not something that an airline has any ability to change or influence.

RAAA member airlines also must conform with both the GDP and airport slot systems. Additionally, they can be adversely impacted by the delays that may eventuate in the broader system. This can be further exacerbated by the low volume or number of flights that are scheduled into regional areas.

For example, some regional airlines only operate one or two services a day or week into or out of a regional aerodrome or remote community. Appropriately they will be as flexible and accommodating with their passengers' needs as much as they possibly can, however many regional flights 'hub' through larger regional cities or major city airports and the regional airline can be impacted by the late arrival of passengers onboard other in-bound flights. When this occurs, it is outside the influence of our members airlines' operations as they can be very much constrained by the operations of the other larger airlines and airport capacity constraints.

[4] <https://www.airservicesaustralia.com/>

[5] <https://www.airservicesaustralia.com/wp-content/uploads/2024/02/Australian-Aviation-Network-Overview-January-2024.pdf>

[6] <https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;db=COMMITTEES;id=committees%2Festimate%2F27704%2F0003;query=id%3A%22committees%2Festimate%2F27704%2F0000%22>

[7] <https://www.airservicesaustralia.com/about-us/our-services/air-traffic-flow-management/>

Airservices has expressly recognised that regional aviation faces its own unique challenges [8] and given the difficulties faced by airlines operating in these remote locations, the inclusion of regional airlines in the Ombuds Scheme would impose an unfair burden on those operators by imposing liability on them in circumstances where the operating conditions will sometimes make delays and cancellations unavoidable.



Airport Infrastructure

There are many factors that relate directly to an aerodrome, its infrastructure and the daily operations that can contribute to flight delays. Some of these include.

- Planned runway and taxi-way maintenance works
- Unplanned runway pavement failures requiring immediate repair
- Aerobridge mechanical failures or other gate issues
- Foreign Object Debris (FOD) on runways and/or taxiways
- Airport security screening delays
- Baggage handling delays or equipment breakdowns
- Ground handling services provider delays/issues
- Booking systems/computer outages
- Fuel supply, refuelling delays and distribution infrastructure issues

Passenger Management Issues

- Passenger late check-ins and no shows
- Passengers fail to board
- Disruptive passengers
- Medical emergencies landside and airside
- Terminal issues with security/ fire alarms evacuations

[8] <https://www.airservicesaustralia.com/airservices-comitted-to-rural-and-regional-australia/>

Other Airline Operational Issues

- Skills shortages and training challenges post-COVID
- Pilot, Licenced Aircraft Maintenance Engineers (LAME), cabin crew and ground handling staff shortages
- Aircraft serviceability and maintenance issues

These issues are particularly relevant to regional airlines who operate to remote airports which usually have a single runway and limited other services.



The Unique Position of Regional Aviation

Given the particular difficulties faced by regional operators outlined above, the inclusion of airlines who operate on regional routes in the Ombuds Scheme would impose an undue burden on those operators.

This significant cost burden would not be remedied by excluding liability where the delay or cancellation is beyond the operator's control. That is because regional operators would still need to incur the costs of participating in the Ombuds Scheme process, compiling evidence to prove that particular delays or cancellations were outside of its control, the potential costs of payouts to passengers where those administering the scheme do not accept the airline did not cause the delay as well as potentially contributing to the funding of the Ombuds Scheme.

These additional cost burdens should not be imposed on a sector of the industry which is vital to the connectivity of regional Australia and which is made up of many small operators who are particularly sensitive to increased costs.

International Experience of Similar Consumer Compensation Schemes

International experience of similar schemes that have been included in a passenger or consumer rights system like an Aviation Industry Ombuds scheme are well documented and are useful to demonstrate the risks to the regional aviation sector.

In the United States, Canada and across Europe it has been demonstrated that the implementation of such passenger's rights protection schemes does not actually address or resolve the key factors that can affect flight delays or flight cancellations. While airlines are the public facing entities of aviation, they only have ability to influence some but not all of the contributing factors for flight delays or flight cancellations.

In some jurisdictions the implementation of similar schemes has had the detrimental effect of increasing the price of airline tickets to compensate for the real or potential need to pay fixed price or strict liability compensation to affected passengers. Alternatively, the cost impact to an airline operator may be absorbed in their operational expenses but this can lead to reduced service levels or fewer flights. The implementation of these types of schemes have been particularly difficult for regional airline operators.

One example is the introduction of EU261 in Europe. The European Commission (EC) reviewed the impacts of EU261, and the review recognised that the scheme generally leads to the cost being passed through to consumers in higher ticket prices. This is due to an airline having to factor in the potential for multiple compensation claims across their operations. An ERA Study into EC261 described the regulation as, 'an existential threat to regional carriers as a group' and found that it imposed double the cost per passenger on regional carriers than airlines operating between capital cities, resulting in cancelled routes, reduced safety margins and reduced opportunities for new services.[9]

Any reduction in routes in Australia could have critical consequences for some of our most isolated locations.

Proactive Steps Already Underway In The Regional Aviation Sector

On-Time Performance (OTP)

Australian airlines, including regional operators, are more than ever intensely focussed on their On-Time Performance (OTP). It is good business practice and integral to customer service and satisfaction outcomes that airline operators strive for the highest levels of OTP. Recent statistics from the Bureau of Infrastructure, Transport and Region Economics (BITRE) reflect the ongoing improvements in OTP by Australian airline operators as the post-Covid recovery has continued. For example, for April 2024, on time performance over all routes operated by participating airlines (Hinterland, Jetstar, Qantas, QantasLink, Rex Airlines, Skytrans, Virgin Australia and Virgin Australia Regional Airlines) averaged 79.2 per cent for on time arrivals and 79.9 per cent for on time departures. The cancellation rate for the month was 2.3 per cent. The equivalent figures for April 2023 were 71.8 per cent for on time arrivals, 71.2 per cent for on time departures and 3.9 per cent for cancellations. [10]

The financial costs to an airline for any flight delays or flight cancellations can be considerable. These costs can include having to reschedule flights, rebook passengers on alternate flights, accommodate

[9]https://www.eraa.org/system/files/era_eu261_study_brochure_final_version_26sep.pdf

[10] https://www.bitre.gov.au/statistics/aviation/otp_month

passengers, as well as their own operational costs associated with having both aircraft and flight crew out of position within their own networks. These are all undesirable for all parties and the airlines are highly motivated to avoid such scenarios caused by delays.

Data Sharing

Recently there has been a specific focus on improving operational performance across all the aviation industry. Airlines, airports, aviation industry peak bodies, like the RAAA, Airservices and the Civil Aviation Safety Authority (CASA) now meet regularly to share data including specific operational performance data with the explicit aim of improving OTP and customer service levels while maintaining a laser-like focus on aviation safety. Through several fora and industry roundtables there is a heightened level of awareness and application in trying to ensure that the aviation system continues to work and evolve to meet the growth challenges. This in turn delivers positive economic outcomes for Australian business including trade and tourism.

This is also being informed by overseas experience and where appropriate adopting best practice approaches from our aviation industry counterparts overseas.



Conclusion

Regional aviation provides critical services in Australia. Many routes are serviced by small operators, operating small aircraft, in circumstances where the operator has a very limited ability to control flight cancellations or delays. The AWP does not refer to any instances where an operator of this kind has not adequately dealt with flight cancellations or delays either by providing refunds or rescheduling the flight. Requiring regional operators who service these routes to participate in the proposed Aviation Industry Ombuds Scheme will be burdensome and has the potential to reduce the ability of operators to service particular routes.

The question of which airlines will be required to participate in the Aviation Industry Ombuds Scheme needs to be well considered in the context of the problem that it is trying to address. This includes looking very closely at other overseas jurisdictions and their experience in running such schemes and the potential for unintended consequences or unfavourable outcomes from such a scheme.

Safety must also remain the industry's number one priority. Any new scheme must not threaten or compromise the world-class safety culture of the Australian aviation industry. There is a real risk that safety could be undermined by factors that put pressure on an operator to avoid a financial penalty as part of their day-to-day operational decision making.

The imposition of any additional cost burdens on regional airlines raises a real possibility of adverse impacts for communities in regional and remote locations across Australia. Any new scheme should consider the type of airline operation and the locations they are operating to, so as to protect the services provided to regional and remote communities across Australia. This should involve excluding regional operators and may also require excluding certain airline operators or locations from the proposed scheme.

The RAAA submits that given all the factors above, any Aviation Industry Ombuds Scheme should not apply to operators who operate predominantly on regional routes. Any Aviation Industry Ombuds Scheme needs to focus only on specific issues that it is intended to address and not be a catch-all approach that then has a range of unintended consequences for regional aviation organisations.

In the event that the Department does not accept this submission and intends to include regional operators in the proposed scheme, the RAAA requests the opportunity to make further submissions on the matters identified in the Call for Submissions, the proposed Passenger Rights Charter and changes to disability requirements.

I can be available to discuss this submission with the Department in more detail if it would be of assistance.

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