

2 December 2021

Committee Secretariat
Transport and Infrastructure Committee
Parliament Buildings
Wellington

By email: tia@parliament.govt.nz

SUBMISSION on Civil Aviation Bill

1. Introduction

Thank you for the opportunity to make a submission on the Civil Aviation Bill. This submission is from Consumer NZ, an independent, non-profit organisation dedicated to advocating on behalf of New Zealand consumers. Consumer NZ has a reputation for being fair, impartial and providing comprehensive consumer information and advice.

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We would appreciate the opportunity to speak to our submission.

2. General comments

Consumer NZ is concerned the Civil Aviation Bill (Bill) does not provide adequate protections for consumers whose flights are cancelled or delayed. As stated in our previous submission, we consider airline passenger rights should better reflect consumer protection provisions available to EU consumers. Consumer detriment because of disruption to air travel caused by Covid-19 has highlighted the importance of including such protections and we are disappointed these issues have not been adequately addressed by the Bill.

We are also disappointed to see the Bill does not include the new regulation-making powers proposed in the exposure draft bill that would prescribe requirements for the disclosure of information about passengers' rights. Consumer awareness of the CAA and Montreal Convention is low. Also, the intersection of international obligations and domestic law is confusing, inconsistent across jurisdictions and explanatory information is difficult to access for both consumers and airline staff. As a result, consumers are often misinformed of their rights by airlines. We therefore consider these provisions should be reinstated in the Bill.

Finally, we support proposed changes to the CAA to clarify the Disputes Tribunal's jurisdiction to hear compensation claims.

Our comments on specific clauses of the Bill are set out below.

3. Specific comments on the Bill

3.1 Liability of carrier in respect of delay

In the last two years, we have received hundreds of complaints from consumers about airlines' refusals to provide refunds for flight cancellations due to Covid-19. In a small number of cases, we were able to help consumers obtain refunds on compassionate grounds, under fare rules, or under EU or US travel rules.

However, in most cases, consumers had to settle for credits. This was the case even if the passenger didn't want to fly again, couldn't use all their credits (due to their high value), had moved overseas so had no use for a travel credit with a New Zealand airline, or needed the money to help them through the financial pressures brought about by the pandemic.

Many of the credits provided to consumers for cancelled flights are due to expire in January 2023. If consumers haven't used their credits by then, airlines will have profited but provided nothing in return. We think this is fundamentally wrong and needs to be addressed.

In the EU passengers are entitled to refunds, regardless of the reason the flight is cancelled. US rules also require airlines operating there to provide refunds in these situations. In fact, US lawmakers have said it would be "manifestly unfair" for an airline to fail to provide the flight for which it had been paid and then refuse to refund the passenger. We agree and would like to see our laws changed to ensure this can no longer happen.

Perversely, in the initial stages of the Covid pandemic when thousands of flights were cancelled, some foreign consumers travelling overseas on New Zealand airlines were provided refunds but New Zealand consumers booked on the same flights were initially denied refunds. New Zealand consumers were quite appropriately outraged at the situation and at the airlines' misinterpretation of the rules.

We also think consumers should be entitled to better protections in the case of delays.

However, we are concerned the Bill, as currently drafted, will not adequately address these problems and will continue to result in significant consumer detriment.

Clause 275 of the Bill essentially allows carriers to avoid liability for damages where delay is caused by something outside the airline's control such as bad weather, pandemic or government order. However, clause 275(3) states the section does not limit or affect the liability of a carrier under any other enactment. Therefore, if a consumer has a right to compensation under the Consumer Guarantees Act (CGA), the consumer will be able to make a claim against the airline under the CGA.

Although the addition of clause 275(3) may be beneficial for consumers, we think it is confusing and makes the legislation even more difficult to navigate. The CAA states the airline is not liable for delay due to reasons outside its control, but under the CGA, the consumer may be entitled to a refund.

In our view, it would be preferable to amend the CAA to allow consumers to choose between a replacement flight and refund if their flight is cancelled for any reason. We do not think consumers should have to take the airline to the Disputes Tribunal to enforce their rights under the CGA. We therefore urge the Committee to reconsider the inclusion of more comprehensive consumer protection provisions in the CAA.

In our previous submission, we recommended airline passenger rights better reflect consumer protection provisions in EU regulations and require:

- replacement flights or refunds (at the passenger's choice) in all cases of cancellation by the airline
- refunds (on request) for flights delayed by more than five hours
- set levels of compensation in cases of cancellation and delay of more than three hours caused by circumstances within the airline's control
- set levels of assistance offered for cancellation and delay beyond the airline's control. Airlines should be required to provide water or other refreshments after a delay of one hour and food after a delay of three hours.

These requirements would ensure passengers are provided for when unforeseen cancellations occur, encourage airlines to avoid delays (for example, offering available seats on earlier as well as later flights if bad weather is approaching) and discourage airlines from cancelling flights due to factors within their control.

3.2 Avoidance of liability

Clause 277 of the bill allows carriers to avoid liability for damages if:

- the carrier took all necessary measures to avoid the damage, or
- it was not possible for the carrier to have taken those measures.

As mentioned in our previous submission, we consider this clause is very broad and the limitations on liability need to be more narrowly defined. We are also concerned the section allows airlines to avoid paying damages in cases of mechanical failure.

We recommend clause 277 specify that an airline is liable for damages in cases of mechanical failure.

3.3 Limitation of actions

Under clauses 263 and 284 of the Bill, a consumer must bring an action within 2 years of the date of their flight. For domestic flights, this may be extended to 6 years with the leave of the court or Disputes Tribunal.

However, as stated in our previous submission, we consider the default position under clause 284 should be that an action must be brought within 6 years. This would better reflect the time limit under the Limitation Act. Also, complaints to our office have shown that airlines sometimes fail to respond to consumers' issues in a timely manner. This has been exacerbated by Covid. Therefore, a 2-year time limit will not always be sufficient for consumers to bring an action.

3.4 Jurisdiction of Disputes Tribunal

As stated in our previous submission, we support the proposed amendments that make it clear the Disputes Tribunal has jurisdiction over claims for lost, delayed and damaged baggage and delayed or cancelled flights.

We've received complaints about airlines (particularly Jetstar) cancelling flights for reasons within their control, but only offering credits to affected passengers. In these cases, consumers may find it difficult to enforce their rights to compensation so it will be useful for them to be able to make a claim at the Disputes Tribunal.

It will also be useful for consumers to be able to take claims to the Disputes Tribunal in other circumstances. However, sometimes consumers have difficulty finding the name and address of a person from the airline to identify in their forms when filing a claim. We therefore recommend the CAA requires each airline to list this information in their conditions of carriage and/or terms and conditions.

3.5 Informing passengers of their rights

In our previous submission, we expressed strong support for clause 330(1)(e) of the exposure draft of the Bill, providing for regulations setting out airlines' requirements to inform passengers about their consumer rights. We are disappointed to see these provisions have not been carried across to the Bill.

Consumer awareness of the CAA and Montreal Convention is low. Complaints we've received also show consumers may not always be informed of their rights when their flights are cancelled or delayed.

The disclosure regulations that were included in the exposure draft of the Bill would help address this issue. As noted in our previous submission, EU airlines are subject to the following disclosure rules:

A printed or electronic notice informing a customer of their air passenger rights must be clearly displayed at the airline check-in desk, at check-in kiosks and online. If customers are denied boarding, the flight was cancelled, they experienced a delay of more than two hours at departure or they arrived with a long delay at their final destination, the airline must give them written notice setting out the rules for compensation and assistance.

We recommend similar obligations apply here. We strongly support a requirement for airlines to provide standardised written notification in plain English, outlining passengers' rights in the event of delays. Information should be provided for both domestic and international flights.

Thank you for the opportunity to make a submission. If you require any further information, please do not hesitate to contact me.

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