



WORLDWIDE AIR TRANSPORT CONFERENCE (ATCONF)

SIXTH MEETING

Montréal, 18 to 22 March 2013

Agenda Item 2: Examination of key issues and related regulatory framework
Agenda Item 2.3: Consumer protection

THE AUSTRALIAN CONSUMER PROTECTION FRAMEWORK

(Presented by Australia)

1. INTRODUCTION

1.1 Australian aviation consumers are protected by a legal framework applicable to all consumer transactions known as the Australian Consumer Law (ACL). This framework provides baseline protections for air passengers while ensuring air passengers are free to choose aviation products with ticket conditions and service level standards that are appropriate to their needs. This approach facilitates cheap fares and a vibrant aviation industry that serves the needs of Australians well. Australia does not see a need for additional aviation specific regulation for consumer protection at this time.

2. AUSTRALIAN CONSUMER PROTECTION FRAMEWORK

2.1 Australia is a signatory to the 1999 Montreal Convention which provides protections for international travellers in relation to passenger death/injury, damage to baggage, and delays. Domestic flights are covered by a separate framework based on the Warsaw Convention (with higher liability caps).

2.2 Other aspects of the conditions of carriage are regulated by the ACL which applies to all standard form consumer contracts. The ACL contains a range of measures which protect consumers, including consumers in the aviation context. The ACL prevents businesses from engaging in misleading or deceptive conduct; making false or misleading representations; engaging in 'unconscionable conduct'; and conducting 'bait advertising' (e.g. if fares are advertised at a particular price, the airline must make available a 'reasonable' number of tickets at that price).

2.3 The ACL also voids terms in a standard form consumer contract that are 'unfair'. A term is considered unfair where the term would cause a significant imbalance in the parties' rights and

obligations arising under the contract and is not reasonably necessary to protect the legitimate interests of the party who would be advantaged by the term and would cause detriment.

2.4 'Component pricing' is also prevented by ACL provisions. This means businesses (including airlines) who advertise fares comprising a range of separate components must also advertise a single price fare (where it can be calculated) that is 'at least as prominent' as the most prominently displayed component of the price.

2.5 There is rigorous enforcement of consumer laws in Australia by Government bodies. At a national level, the Australian Competition and Consumer Commission has responsibility for enforcing the ACL. At the local level state and territory consumer protection authorities have responsibility for enforcing the ACL within their respective territories. Under the ACL a court can impose a range of sanctions against a business which contravenes the ACL including criminal and civil penalties, in addition the court can impose other orders which require the business to cease the conduct and provide redress to consumers. Individual consumers can take their own private legal action against a business for contraventions of the consumer laws. This strong regulatory regime has led to increased compliance by businesses with consumer law and has facilitated greater consumer protection.

2.6 The ACL consumer guarantee provisions provides remedies for consumers if a business fails to provide a service or does not deliver that service with appropriate due care and skill. When a business fails to provide a consumer guarantee consumers are entitled to either a refund for the cost of the service or the business must fix the problem and resupply the service to the consumer. The consumer guarantee provisions also can provide a consumer with a right to compensation when they have incurred costs in addition to the business not delivering a service as promised particularly when the loss incurred by the consumer was reasonably foreseeable.

2.7 Australia recognises that airlines should take action to ensure consumers are fully informed about the precise nature of the product they are purchasing. Australian airlines have worked with the Australian Government to introduce 'Customer Charters' that outline each airline's service commitments and complaint handling procedure. This provides greater transparency for customers when choosing between airlines and the various fare types on offer. Travellers can distinguish between the levels of service to be provided during times of delay, cancellation, etc., and can factor that in to the ticket cost and the possible need for additional insurance products.

2.8 Australia also recognises the importance of an accessible complaints handling scheme. Australian airlines have worked with the Australian Government to establish an 'Airline Customer Advocate', which is an independent complaints handling body, funded by participating airlines, that acts as a facilitator between passengers and airlines to resolve complaints within 20 days. It is an alternative option available to any customer who has been unable to resolve a complaint directly with an airline. If customers are not satisfied with the outcome, the consumer can still take action under the ACL.

2.9 The implementation of Customer Charters and the Airlines Customer Advocate has been achieved without government regulation.

2.10 This framework empowers consumers to choose and pay for the aviation products they want (and not pay for the products they do not want) on issues such as flexibility, baggage and response to delays, within a context that is fundamentally fair, transparent and equitable. It also ensures airlines respond promptly to concerns that are raised by the public, and ensures that complaints that are unresolved by airlines can be subjected to an accessible dispute resolution process.

2.11 This regulatory framework also fosters a strong aviation industry that meets the needs of Australians, who can access cheap fares: the domestic real best discount air fare index for February 2013 recorded a 37 per cent decrease compared to February 2004. The Australian industry also has a strong record of on time performance: the long term average for domestic airline on time performance over all reported routes is 83.8 per cent for on time departures and 82.4 per cent for on time arrivals. The rate of cancellation averages 1.3 per cent.

3. CONCLUSION

3.1 The Conference is invited to note how Australia's consumer protection framework applies to air travellers. Australia considers that it provides strong protections for consumers who can also benefit from a wide choice of products. Australia does not consider that aviation specific regulation of the type implemented in other jurisdictions is necessary in the Australian context.

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