



**CHARTING A NEW FRONTIER:
AVIATION CONSUMER
PROTECTION NEEDS
TODAY AND BEYOND**

INTERNATIONAL WEBINAR

**A NEW ORDER FOR CONSUMER
PROTECTION
OF AIRLINE PASSENGERS**

Sothi Rachagan

THIS PRESENTATION



1. MAVCOM's significant achievements
2. Protecting the vulnerable
3. Passenger data protection
4. Cancellations and refunds
5. Enforcing the Consumer Protection Act 1999

MAVCOM'S CONSUMER PROTECTION ACHIEVEMENTS



CHARTING A NEW FRONTIER:
**AVIATION CONSUMER
PROTECTION NEEDS
TODAY AND BEYOND**

TWIN PEAKS REGULATION

Very significant achievements

- Malaysia first to develop mandatory Consumer Code for minimum service level and standards, including for persons with disability
- ADR claims may be made within 1 year from date of incident – KPI - 90% of complaints resolved within 30 days
- Applicable to all incoming and outgoing flights
- Website & App for complaints & tracking number
- App for flight information
- Quarterly and Annual reports with comparative data on airline and airport performance
- 12694 complaints processed since inception to 30 April 2022
- Audited by KPMG in 2018 and 2019

Need to benchmark with other ADR schemes and collate user profile data to determine if the vulnerable are adequately served.

PROTECTING THE VULNERABLE



CHARTING A NEW FRONTIER:
**AVIATION CONSUMER
PROTECTION NEEDS
TODAY AND BEYOND**

DISABILITIES ACT 2008

Consumer Protection Code adopts definition in Disabilities Act 2008

- **s.16.** It shall be the responsibility and obligation of the private sector ...
 - (c) to undertake steps, measures or actions required to be taken by it in such form or manner as may be provided for under any other written law or otherwise relating to persons with disabilities.
- “Communication” includes languages, display of text, Braille, tactile communication, large print, signal, accessible multimedia as well as written, audio, plain-language, human-reader and augmentative and alternative modes, means and formats of communication, **including accessible information and communication technology;**

ISO 22458:2022 Vulnerable Consumers

- MAVCOM participates in Department of Standards Malaysia effort to adopt ISO 22458:2022 Consumer vulnerability — Requirements and guidelines for the design and delivery of inclusive service.
- ISO 22458:2022 defines consumer vulnerability as state in which an individual can be placed at risk of harm during their interaction with a service provider due to the presence of personal, situational and market environmental factors.

ISO/IEC 40500: 2012

Information technology — W3C Web Content Accessibility Guidelines (WCAG) 2.0

- Last reviewed and confirmed in 2019. Therefore, this version remains current.
- Following guidelines in ISO/IEC 40500:2012 will make content accessible to a wider range of people with disabilities, including blindness and low vision, deafness and hearing loss, learning disabilities, cognitive limitations, limited movement, speech disabilities, photo-sensitivity and combinations of these. It will also often make Web content more usable to users in general.

MAVCOM needs to issue Airline Industry Practice Guidelines

DATA PROTECTION ACT 2010

Airlines collect vast amounts of passenger data

- Malaysian government has stipulated ISO/IEC 27001 Information Security Management Systems as the minimum information security standard for all Critical National Information Infrastructure (CNII) sectors including transportation.
- ISO 27001 is the main standard, which companies can get certified against. ISO 27002:2022 is a supporting standard.
- Annex A of ISO 27001 provides list of security controls but does not explain how they can be implemented.
- ISO 27002 lists the same controls and provides guidance on how they could be implemented. The guidance in ISO 27002 is not mandatory.

MAVCOM to monitor compliance and encourage certification

CANCELLATIONS AND REFUNDS



CHARTING A NEW FRONTIER:
**AVIATION CONSUMER
PROTECTION NEEDS
TODAY AND BEYOND**

‘Cancellations’

Cancellations can occur for reasons beyond the control of the airline: security, bad weather, lack of crew or pilot, mechanical issues, a computer glitch, air traffic restrictions and strikes.

If it is unsafe to fly a plane, it should never be allowed to.

Cancellations also occur because the airline considers that the number of passengers booked for the flight is not sufficient to make the flight economically viable.

Numerous options are offered to attract customers and then switch them to a merged flight. These are pre-planned cancellations undertaken to receive advance payment, with the intention of cancellation, or recklessly without certainty of the flight being offered.

MAVCOM’s rules require airlines to offer **a choice** between a **full refund** within 30 days or **re-routing** under comparable transport conditions. This does not deter planned cancellations: airlines are willing to cancel a flight and make the refunds.



Airlines Industry Consumer Protection Act 1999

Section 2 (1): CPA applies in respect of all goods and services that are offered or supplied to consumers in trade.

Exemptions are in 2 (2):

Airlines industry is not exempted from the the CPA 1999..

Exemption for airlines industry is in section 99 (1)(ca):

The Tribunal for Consumer Claims has no jurisdiction in respect of any claims which may be lodged by a consumer relating to aviation service as defined in the Malaysian Aviation Commission Act 2015.

CPA 1999 Offences

Parts II, III and IIIA of CPA 1999 specify offenses relating to:

- Misleading and deceptive conduct, false representation and unfair practice
- Safety of goods and services
- Unfair contract terms

Pre-planned cancellation is an offence under the CPA 1999:

- misleading and deceptive conduct (s 9 CPA).
- bait advertising (s 13 CPA).
- accepting payment without intending to supply (CPA s 16).



ACCC action against airlines



CHARTING A NEW FRONTIER:
**AVIATION CONSUMER
PROTECTION NEEDS
TODAY AND BEYOND**

2019

ACCC accepted court-enforceable undertakings from Jetstar, Tigerair, Qantas and Virgin Australia.

Each committed to:

- review refund policies, compliance programmes, websites, policies and procedures, and booking systems
- review consumer complaints made during the specified time period and offer refunds or other remedies to consumers who were entitled to these remedies originally but did not receive them.
- contact affected persons and offer a remedy in accordance with their rights under the Australian Consumer Law.
- create an Australian Consumer Law page on their websites to provide a clear and concise statement of passengers' consumer guarantee rights and the steps they can take to seek a remedy where the airline's flights are significantly delayed.

Who can bring an action?

MAVCOM does not have the power to institute an action for criminal breaches of the CPA.

That is the responsibility of the Ministry of Domestic Trade and Consumer Affairs.

MAVCOM needs to collaborate with the Ministry for implementation of CPA 1999 in the airlines industry.



References

Sothi Rachagan & Shivani Sothi Rachagan

Access to Justice: Addressing Consumer Redress in Malaysia
Contribution to the 3rd Session of the Intergovernmental Group of
Experts on Consumer Protection Law and Policy, UNCTAD, Geneva,
Switzerland. 9 and 10 July 2018.

Sothi Rachagan

Flight cancellations: refund means returning customers' money, The
Vibes. 21 Oct 2020.



Thank You

srachagan@gmail.com



CHARTING A NEW FRONTIER:
**AVIATION CONSUMER
PROTECTION NEEDS
TODAY AND BEYOND**