



**UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.**

Issued by the Department of Transportation
On the Twenty-Ninth Day of October, 2009

**Jetstar Airways Pty Limited
ABN 33 069 720 243**

**Violations of 49 U.S.C. § 41705
and 14 CFR Part 382**

Served: October 29, 2009

Docket OST-2009-0001

CONSENT ORDER

This order concerns violations by Jetstar Airways Pty Limited ABN 33 069 720 243¹ (Jetstar), a foreign air carrier subsidiary of Qantas Airways, of the requirements of 14 CFR Part 382 (Part 382), with respect to the filing of an annual report detailing disability-related complaints that Jetstar received from passengers in calendar year 2007. Part 382 implements the Air Carrier Access Act (ACAA), 49 U.S.C. § 41705, and violations of Part 382 also violate the ACAA. This order directs Jetstar to cease and desist from future similar violations of Part 382 and the ACAA and assesses the carrier \$30,000 in civil penalties.

Under section 382.70, covered carriers (i.e. U.S. and foreign air carriers operating passenger service to, from and within the United States with at least one aircraft having a design capacity of more than 60 passenger seats) must, among other things, submit an annual report to the U.S. Department of Transportation (Department) summarizing the disability-related complaints that they received the prior calendar year.² The annual

¹ The Australian Business Number (ABN) is a unique numeric identifier issued to entities conducting business in Australia by the Australian Tax Office primarily for administering tax matters such as the imposition of the Goods and Services Tax and for dealings with other government departments.

² In addition, the rule requires a carrier to record complaints that it receives alleging discrimination or inadequate accessibility on the basis of a disability. The complaints are to be categorized according to

report to the Department is due each year on the last Monday in January. The first annual report covering calendar year 2004 was due to the Department on January 24, 2005, the second report covering calendar year 2005 was due on January 30, 2006, the third report covering calendar year 2006 was due on January 29, 2007, the fourth report covering calendar year 2007 was due on January 28, 2008, and the fifth report covering calendar year 2008 was due on January 26, 2009.

To comply with 49 U.S.C. § 41705, which requires, among other things, that the Secretary of Transportation “regularly review all complaints received by air carriers alleging discrimination on the basis of disability . . . and report annually to Congress on the results of such review,” and to ensure that consumers can compare the overall disability complaints filed against particular carriers, the Office of the Assistant General Counsel for Aviation Enforcement and Proceedings (Enforcement Office) is committed to ensuring that carriers file disability-related reports as required. To this end, the Enforcement Office has made efforts to ensure compliance with section 382.70, including providing carriers and carrier associations information about the disability reporting requirements and posting a copy of the disability reporting rule on its Aviation Consumer Protection Division’s website.

Jetstar, an Australian low-cost airline, began operating to and from the United States on December 26, 2006. Jetstar operates aircraft with a designed seating capacity of more than 60 seats between Sydney, Australia and Honolulu, HI and between Melbourne, Australia and Honolulu, HI. While the Department’s records indicate that Jetstar timely submitted its report detailing disability-related complaints received from passengers for calendar year 2008,³ Jetstar did not submit its report for calendar year 2007 until January 23, 2009, approximately one year late. Therefore, Jetstar violated section 382.70 and the ACAA when it did not submit its report detailing disability-related complaints that it received in calendar year 2007 on flights originating or terminating in the United States in a timely manner.⁴

In explanation and mitigation, Jetstar notes that 2007 was essentially the first year for which Jetstar owed a report of disability-related complaints.⁵ Jetstar explains that as a new entrant to the U.S. market, its failure to file the report for 2007 was a one-time administrative oversight. Jetstar states that it has now implemented procedures to ensure the timely filing of future reports.

the passenger’s type of disability and the nature of the complaint. The rule also requires that covered carriers retain a copy of each disability-related complaint that the carrier receives and a record of the action taken on the complaint for three years.

³ Jetstar submitted its report detailing disability-related complaints for calendar year 2008 on January 22, 2009.

⁴ Since Jetstar operated to and from the United States for the last 6 days of 2006, it should have also filed a disability-related complaint report for that year by January 29, 2007. It did not; however, because of the short period of time in question and the action being taken here, separate action will not be taken regarding the required 2006 report.

⁵ Jetstar’s 2006 U.S. operations – two round-trip flights -- were minimal. See the discussion in the preceding footnote.

We view seriously Jetstar's failure to submit its report on time as required by section 382.70. Accordingly, after carefully considering all the facts in this case, including those set forth above, the Enforcement Office believes that enforcement action is warranted. By this order, the Department finds that Jetstar failed to timely submit its report detailing the disability-related complaints that it received in calendar year 2007 in violation of 14 CFR Part 382 and 49 U.S.C. § 41705.

In order to avoid litigation, Jetstar Airways Pty Limited ABN 33 069 720 243 has agreed to settle this matter with the Enforcement Office and enter into this consent order directing Jetstar Airways Pty Limited ABN 33 069 720 243 to cease and desist from future similar violations of Part 382 and 49 U.S.C. § 41705, and assessing \$30,000 in compromise of potential civil penalties otherwise due and payable with one-half paid within 30 days of the issuance of the order and the rest payable if Jetstar Airways Pty Limited ABN 33 069 720 243 violates the order's provisions. We believe that this assessment is appropriate and serves the public interest. It represents an adequate deterrent to future noncompliance with the Department's reporting requirements by Jetstar Airways Pty Limited ABN 33 069 720 243, as well as by other domestic and foreign air carriers.

This order is issued under the authority contained in 49 CFR 1.57a and 14 CFR 385.15.

ACCORDINGLY,

1. Based on the above discussion, we approve this settlement and the provisions of this order as being in the public interest;
2. We find that Jetstar Airways Pty Limited ABN 33 069 720 243 has violated 14 CFR 382.70 by failing to submit its annual report by January 28, 2008, to the Department of Transportation summarizing the disability-related complaints that it received the prior calendar year;
3. We find that by engaging in the conduct and violations described in ordering paragraph 2 above, Jetstar Airways Pty Limited ABN 33 069 720 243 also violated 49 U.S.C. § 41705;
4. Jetstar Airways Pty Limited ABN 33 069 720 243, and all other entities owned or controlled by Jetstar Airways Pty Limited ABN 33 069 720 243, its successors and assignees are ordered to cease and desist from further violations of 14 CFR 382.70 and 49 U.S.C. § 41705;
5. Jetstar Airways Pty Limited ABN 33 069 720 243 is assessed \$30,000 in compromise of civil penalties that might otherwise be assessed for the violations found in ordering paragraphs 2 and 3 above. Of the total assessed penalty amount, \$15,000 shall be due and payable within 30 days of the issuance of this order. The remaining \$15,000 will become due and payable if Jetstar Airways Pty Limited

ABN 33 069 720 243 violates this order's cease and desist provisions within one year following the date of issuance of this order, or fails to comply with the payment provision of this order, in which case the entire unpaid portion of the civil penalty shall become due and payable immediately; and

6. Payment shall be made by wire transfer through the Federal Reserve Communications System, commonly known as "Fed Wire," to the account of the U.S. Treasury in accordance with the attached instructions. Failure to pay the penalty as ordered will subject Jetstar Airways Pty Limited ABN 33 069 720 243 to the assessment of interest, penalty and collection charges under the Debt Collection Act.

This order will become a final order of the Department 10 days after its service date unless a timely petition for review is filed or the Department takes review on its own motion.

BY:

ROSALIND A. KNAPP
Deputy General Counsel

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