

16 October 2024

Department of Infrastructure, Transport,  
Regional Development, Communications and the Arts  
GPO Box 594  
CANBERRA ACT 2601

**Re: Submission on Establishing the Aviation Industry Ombuds Scheme**

1. Air New Zealand welcomes the opportunity to respond to the Aviation Industry Ombuds Scheme (**Ombuds Scheme**) Consultation Paper released by the Department of Infrastructure, Transport, Regional Development, Communications and the Arts (the **Department**).
2. Air New Zealand is the largest domestic and international airline in New Zealand, providing both passenger and cargo transport services across 30 international ports including nine Australian destinations. As a business we operate in 17 different global jurisdictions in any one day and pride ourselves on maintaining the highest standards of customer service.
3. Given the complexity of the global aviation system, we appreciate guidance from the Department that the Ombuds Scheme will focus on delivering consistent and coherent rules, with structures and governance arrangements proportionate to the problems identified. In this way delivering cost effective, equitable, and timely solutions for all parties involved.
4. As an international airline in Australia, we have not previously been involved directly in the Airline Customer Advocate scheme. Nevertheless, we take our obligations to comply with all applicable laws and international treaties very seriously. This includes, where applicable Australian Consumer Law (**ACL**) - which we are pleased to see will remain the legal basis of the proposed Ombuds Scheme.
5. In preparation of this submission, Air New Zealand worked with the Board of Airline Representatives of Australia Inc (BARA), Airlines for Australia and New Zealand (A4ANZ), and the International Air Transport Association (IATA) to align on key responses. We draw from their submissions in our response to the consultation questions in Annex 1 below.

Ngā mihi nui,



Kiri Hannifin  
Chief Corporate Affairs & Sustainability Officer  
Air New Zealand

## Annex 1 Consultation Questions

### Design of the Ombuds Scheme

1. Air New Zealand supports IATA's position that an appropriately designed Ombuds Scheme is not one that simply seeks to impose fines, but rather one that educates and informs consumers about their rights and responsibilities under ACL. Indeed, it is critical that the scheme strikes the right balance between protecting consumers and the future competitiveness of the aviation sector.
2. Air New Zealand supports the Department consulting with industry to design an Ombuds Scheme which meets the Benchmarks for Industry-Based Consumer Dispute Resolution as outlined by the Australian Treasury – ensuring that any Ombuds Scheme operates in a way that is accessible, independent, fair, accountable, efficient and effective.<sup>1</sup>
3. In designing the proposed Ombuds Scheme, it is the airline's view that the Department would have regard to the multi-jurisdictional nature of the international aviation sector, and critically, the International Civil Aviation Organisation's (ICAO) Core Principles on Consumer Protection, which state that national customer protection regimes should *reflect the principle of proportionality*.<sup>2</sup> That is to say that any Ombuds Scheme designed for the Australian aviation sector must be right sized for the problem the Government is trying to solve.
4. The consultation paper notes that the Ombuds Scheme will have a role in educating customers about their consumer rights and informing them about the conduct and performance of airlines and airports. It is the airline's view that the same should apply to the Department educating customers on what their responsibilities are when travelling and to provide recommendations on how to reduce risk by purchasing travel insurance and/or flexible fares.
5. Air New Zealand supports this educative role and recognises that to deliver this function the ombudsperson may require specific powers relating to the collection, analysis, and publication of data. In designing these powers, it is the airline's view that the Department has regard to existing processes for the collection, analysis, and reporting of data relating to the performance of airlines, such as through the Bureau of Infrastructure and Transport Research Economics (BITRE) and the ACCC - both to avoid duplication and an increase in the reporting burden on airlines.

### Membership of the Ombuds Scheme

6. Air New Zealand supports the Government's determination that both airlines and airports be members of the Ombuds Scheme – recognising the critical role that both airlines and airports play in the aviation ecosystem, and consumers' experiences of air travel.
7. We would further welcome consideration of including Airservices Australia in the Ombuds Scheme as it relates to consumer issues. Indeed, all stakeholders that are attributable to delays, misinformation,

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<sup>1</sup> Australian Government. 2015. Benchmarks for Industry-based Customer Dispute Resolution. At: [https://treasury.gov.au/sites/default/files/2019-03/benchmarks\\_ind\\_cust\\_dispute\\_reso.pdf](https://treasury.gov.au/sites/default/files/2019-03/benchmarks_ind_cust_dispute_reso.pdf)

<sup>2</sup> ICAO. 2023. Economic Development - ICAO Core Principles on Consumer Protection. At: <https://www.icao.int/sustainability/Documents/ConsumerProtection/CorePrinciplesBrochure.pdf>

or cancellations in the aviation eco-system should be considered within scope – including travel agents. We welcome further engagement on how this may work in practice.

8. Before any Ombuds Scheme is implemented, the airline would ask that the Department undertake further work to fully understand both the legal complexities of such a scheme and the expected net benefit. The airline supports the Department's plans to undertake regulatory impact analysis and close scrutiny of any decision to apply the scheme to international airlines, particularly the application of any interim Ombuds Scheme.
9. When developing the Ombuds Scheme, it would be advisable for the the Department to consider its adherence with international air service treaties including the Montreal and Chicago Conventions and to adhere to ICAO's Good Regulatory Practices.<sup>3</sup> The goal of the Montreal Convention is to clearly establish airline liability in the case of death or injury to passengers, as well as in cases of delay, damage or loss of baggage and cargo. It was introduced to simplify a patchwork of global liability regimes which often led to unfairness, confusion and complexity in determining which regime covers a particular passenger or cargo itinerary. Any major divergence from the Montreal Convention for the Ombuds Scheme would compromise ICAO's goal to simplify the global regulatory framework for aviation and make it more difficult for airlines to operate globally.
10. As Air New Zealand operates in 17 different jurisdictions it is important that there is clarity for our customers as to which rights apply and where – customers bringing multiple claims in different jurisdictions leads to complexity and additional cost for both parties. Given the Single Economic Market in place between Australia and New Zealand it's important that there are clear jurisdictional parameters in place. The Chicago Convention 1944, sets out that passenger rights regimes should only apply to events occurring within the territory of the legislating State (i.e. Australia) or outside the territory with respect to aircraft registered there (i.e. in Australia) and therefore should only apply to flights departing Australia, so as to avoid any conflict with laws and practices of third countries.

### **Complaint Handling**

11. Air New Zealand supports IATA's response that for a complaint to be considered by the Ombuds Scheme, it is crucial that there are clear parameters about what complaints will be accepted by the ombudsperson. Should the parameters not be clearly outlined or be too broad, there is a risk that the Ombuds Scheme will be overwhelmed by complaints from consumers who have not followed due process or allowed airlines with enough time to resolve the issue.
12. Without limiting possible eligibility criteria, Air New Zealand considers that parameters could include:
  - a. *Complainant* – the complaint should be brought by the person named on the ticket or a person authorised on that person's behalf. We support IATA's suggestion that care needs to be taken when allowing third parties to file on a passenger's behalf to avoid the creation of offshoot companies which operate on a "no win, no fee" basis and profit at the expense of consumers, airlines and regulators.

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<sup>3</sup> ICAO 2024 - Available at: [https://www.icao.int/sustainability/Pages/regulatory\\_practices.aspx](https://www.icao.int/sustainability/Pages/regulatory_practices.aspx)

- b. *Ground of complaint founded and that no sufficient resolution provided to date* – the complaint should be scrutinised in the first instance by the Ombudsperson to ensure it remains a valid claim and one which has not been resolved in accordance with relevant laws.
  - c. *Complaint lodged against correct party* – the aviation ecosystem is incredibly complex, meaning that fault can often be attributed to the wrong party (for example, there may be a difference between the ticketing and operating carrier). We would ask that the Ombuds Scheme undertake a review of the complaint in the first instance to confirm that the claim is bought against the correct party.
13. We support the approach set out in the UK Aviation Alternative Dispute Resolution scheme that to be eligible to make a complaint against an airline/airport/travel agent a customer must have already complained to that airline/airport/travel agent directly in writing and either received a final written response (otherwise known as a ‘deadlock letter’) or given the airline/airport eight weeks to respond to the dispute – Air New Zealand considers this to be a fair timeframe and process.
14. The airline further supports best practice guidelines to enable complaints to be processed in an efficient manner and ensure the currency of complaints being filed. An extended or lack of time limit imposed, has the potential for significant ongoing financial burdens and risk for airlines.
15. Air New Zealand acknowledges that there are already robust processes in place in Australia for complaints relating to breaches of privacy and human rights complaints. Air New Zealand is of the view that complaints which touch on these matters should continue to be dealt with these bodies and should be excluded from the Ombuds Scheme.

### **Guidance and Reporting**

16. Air New Zealand supports A4ANZ’s submission that the Ombuds Scheme publish annual reports to ensure accountability and transparency. Like annual reports produced by other industry ombuds schemes in Australia, and other complaint-handling schemes internationally, we would suggest that the Ombuds Scheme’s annual reports include data and analysis related to complaint volumes, escalation and resolution rates, and complaint processing times – as well as analysis of any trends or systemic issues observed by the Ombuds Scheme that may need to be addressed with industry or policy change.
17. In producing these annual reports, it would be advisable that the Ombuds Scheme have regard to procedural fairness. Air New Zealand welcomes the Government’s acknowledgement that, consistent with the common law legal principle of procedural fairness, members of the Ombuds Scheme are provided with a reasonable opportunity to respond to any information that may adversely impact them, before the information is published. We note that at least two weeks to directly address or respond to any data or information should be provided, before the information is published.

### **Funding Arrangements**

18. We acknowledge that the Government will conduct more detailed consultation in respect of funding arrangements for the Ombuds Scheme in 2025 and we look forward to being able to provide our feedback at this time.