

Consultation for the establishment of an Australian Aviation Industry Ombuds Scheme

Who are we?

AirHelp is an international company specialising in air passenger rights and helping passengers obtain compensation following a delayed or cancelled flight. Over 11 years we have obtained compensation for 2.5 million passengers and helped millions more via the information on air passenger rights freely available on our website.

We currently support passengers under multiple passenger regulations, including Europe's Regulation (EC) No. 261/2004, the UK Air Passenger Rights and Air Travel Organisers' Licensing (Amendment), the Brazilian National Civil Aviation Agency Resolution N° 400, the Canadian Transportation Agency's Air Passenger Protection Regulations, the Turkish Regulation on Air Passenger Rights (SHY PASSENGER), the Montreal Convention, and the recently introduced Passenger Rights Protection Regulation in Saudi Arabia.

AirHelp is a founding member of [APRA](#), the Association of Passenger Rights Advocates, an organisation pushing for better passenger protections in the EU. We are also an active member of the [European Tech Alliance](#), and we are currently [advising policy makers in the USA](#) on air passenger rights.

We've had representation in Australia since 2018, and have helped thousands of Australian passengers when they fly internationally under existing air passenger rights laws.

More information about us can be found on our website, airhelp.com

Responses to the questions posed by the Consultation paper

1. What should be the objectives of the Aviation Industry Ombuds Scheme?

The broad mission of the Ombuds Scheme is to **uphold and protect air passenger's rights**, especially where they have not been respected by airlines or airports, and to **address the**

power imbalance between airlines and consumers.

To fulfil this mission we consider the Ombuds Scheme should have the following specific objectives:

1. To **provide an independent, effective, and efficient mechanism for dispute resolution** between airlines and passengers or their representatives.
2. To **investigate** complaints and **issue decisions relating to compliance** with the Aviation Customer Rights Charter
3. To issue decisions that **clarify** any areas of confusion in the regulation and its applicability.
4. To issue **recommendations for future improvements** to the regulation

To ensure that it can fulfil these objectives, we consider it vital that the Ombuds Scheme enshrines the following values:

- **Independence:** as a body for upholding air passengers' rights, it cannot be beholden to airlines or other scheme members.
- **Accessibility:** passengers must be able to use the scheme free of charge, must be able to escalate complaints easily, and not be limited in how they choose to pursue a complaint.
- **Transparency:** rulings must be published with clear explanations and reasoning.
- **Efficiency:** complaints should be diligently dealt with, with minimal waiting time.
- **Effectiveness:** has the authority required to uphold Australia's air passenger rights, and uses it successfully.

2. What powers and functions should the ombudsperson have?

To fulfil its objectives, we propose the following functions and powers:

- To **investigate and consider** complaints against airlines and airports.
- To **order airlines and airports to supply evidence** relevant to the complaint.
- To order an **independent report by a specialist** at the airline or airport expense, where necessary to ensure there is proper information to make well-founded decisions. For example if an expert opinion is required.
- To transparently **share evidence** and reasoning with the passenger.
- To provide a decision that is **binding** to the airport or airline.
- To **publish decisions, and the reasoning** for the decision, for each complaint considered. Such transparency is required to address the power imbalance, ensuring

passengers and airlines or airports have equal access to Ombudsperson reasoning. Publishing reasoning also increases the likelihood that similar future disputes can be settled without resort to the Ombuds scheme.

- To order the airport or airline to **pay compensation** to the passenger.
- To allow the submission of questions about the **interpretation or validity of a provision** within the Aviation Customer Rights Charter and provide a binding decision that can be applied retrospectively.
- To allow the submission of questions regarding the applicability of the Aviation Customer Rights Charter and provide a binding decision that can be applied retrospectively. This includes cases where multiple national or international laws apply to a complaint. The ombudsperson has the power to clarify the order in which the laws apply, in order that the passenger may use other favourable regulations.
- To regularly inspect and **review airline conditions of carriage** to ensure that they comply with the regulation, together with the **power to rule** clauses that contradict the regulation null.
- To provide airlines and airports with **guidance and best practice recommendations** for their internal processes and claim resolution systems. Such guidance will help airlines assess whether their responses are compliant with the Aviation Customer Rights Charter, and ensure they make it easy for passengers and claim management companies to submit complaints.

In accordance with the 2024 Aviation White Paper, decisions made by the ombudsperson **must be binding** on airlines and airports.

However, we know from other Ombud schemes in both Australia and abroad that enforcement of decisions is often a challenge.

That is why we propose the following additional responsibilities and powers, which the Ombuds Scheme can use in cases of non-compliance:

- To **publish cases of non-compliance**: the creation of a “public blacklist” would allow passengers to make informed decisions about who they fly with, and function as an additional incentive for airlines and airports to comply with Ombudsperson’s decisions.
- The **power to impose fines** on airlines and airports that do not comply with the Aviation Customer Rights Charter or the Ombudsperson’s decisions.
- The **power to set the fines** in accordance with airline size and revenue, to ensure that fines create an effective incentive for larger airlines, and don’t unduly harm smaller airlines.

- The power to **increase fines** or impose higher fines on airlines who continue to not comply with the regulation or the Ombuds rulings.
- Where airlines continually fail to comply with the regulation, the Ombuds scheme must have a route to ensure **additional penalties** are applied. The Ombudsperson's reports of violations of air passenger rights must be dealt with seriously, just as any other violation of Australian regulations.

3. What governance arrangement should be adopted for the Aviation Industry Ombuds Scheme?

We agree that a governance arrangement is necessary to guarantee the independence and effectiveness of the Ombuds Scheme, and that it is crucial that it has participants representing consumer interests.

4. If a board is established to govern the Aviation Industry Ombuds Scheme, what powers and functions should the board have?

One important power of the board would be to appoint the Ombudsperson for a fixed term.

5. Is it appropriate to appoint two individual ombudspersons within the scheme – one with responsibility for aviation consumer issues, and the other with responsibility for aircraft noise?

No comment

6. Which airlines and airports should be required to be members of the Aviation Industry Ombuds Scheme? Should there be any exemptions and, if so, on what grounds?

- **All airlines operating from, to or within Australia** should be members of the Ombuds Scheme.
- **All airports within Australia**

There should be **no exemptions** for airlines or airports with low passenger volumes. Such exemptions would be contrary to the Ombud Scheme's mission to uphold passenger rights. Passengers must be treated equally, but by excluding low passenger volumes, the passengers using these airlines or airports would have fewer routes to justice as they would be required to take their complaints to court, instead of the Ombuds scheme.



7. Should the government adopt a phased approach to the application of the Aviation Industry Ombuds Scheme to different categories of airlines and airports?

There should **not be a phased approach**.

Passenger rights are not a new phenomenon. Airlines flying internationally are already required to respect existing passenger rights, including the Montreal Convention and Europe's EC 261. The addition of Australian passenger rights will fall within these airline's existing frameworks.

A phased approach will likely create unnecessary confusion for passengers as different phases create differences in their treatment and expectations. We know that even in established markets up to 85% of passengers don't understand their rights, which is why it's important to keep regulations simple, clear, and consistent.

We also note that a phased implementation is an exception and not the rule for other similar air passenger regulations and bodies,

8. How should funding arrangements for the Aviation Industry Ombuds Scheme operate?

The chosen funding arrangements should **incentivize airlines to resolve complaints directly** with customers rather than forcing customers to turn to the Ombuds Scheme. This is beneficial from all points of view, as resolving complaints directly means faster outcomes and lower costs.

A funding arrangement based on complaints volume and complaint escalation rates would fulfill this.

9. What features of existing industry ombuds schemes, and similar bodies, in Australia and overseas, should be considered in the design of the Aviation Industry Ombuds Scheme?

AirHelp has over 11 years of experience helping passengers enforce their rights under regulations across the world. From that experience, it is apparent that consumer Ombuds Schemes face significant issues, and unfortunately fail to effectively uphold passenger rights in the vast majority of cases.

In order for Australia to create an effective Ombuds Scheme we recommend the following features:

- **Well funded:** the Ombuds Scheme must have **sufficient people** to attend to all the cases that are filed, with no backlog.
- A **simple and cost-free** way to submit complaints. The process should be clearly explained to the passenger, with **stated timelines** for when they can expect a response.
- **Independent**
- Enough **authority** to ensure airlines and airports cannot simply ignore the regulation.
E.g.
 - To ensure they supply evidence relating to passengers' complaints, and that they share the evidence with the passenger in a clear and understandable format.
 - To issue binding decisions for airlines and airports
 - To set and issue fines for airlines and airports
 - To increase fines for non-compliance
- **Accessible.** The Ombuds Scheme must make it easy to submit a complaint, and respect passengers' right to decide how they want to pursue a complaint, including using third-party representation.

We are happy to see the use of public consultation in the development of both the Aviation Customer Rights Charter and the Ombuds Scheme, and it is our hope that passengers' views will be heard and acted upon.

In particular, we believe Australia can learn from the issues faced in Canada, where there has been considerable criticism of the Canadian Transportation Agency (CTA)'s failure to address the power imbalance between airlines and passengers or effectively function as an independent complaint handler.

- As the CTA is responsible for both creating the regulation and administering it, it's been reluctant to critique the regulation and issue decisions in questions of interpretation. Not even to provide clarification of the definitions of delay and cancellation when passengers are entitled to compensation.
- The CTA doesn't release the reasoning of their decision. The lack of transparency creates uncertainty over the interpretation and hinders the creation of "jurisprudence", developing and clarifying the regulation.
- The CTA fails to properly place the burden of proof on airlines to demonstrate that they have complied with the regulation and instead left passengers in the almost impossible position of proving that an airline has violated the regulation.
- There are concerns of institutional bias, which undermines the integrity of the CTA:

- Too often the CTA does not act in the interest of consumers. For example, during the Covid-19 pandemic, the CTA waived passenger's right to insist on cash refunds, at a time of financial instability for many passengers.
- While the CTA can issue fines to airlines, it has failed to do so except on a few occasions. For example, airlines were not fined for non-compliance with the regulation throughout the Covid-19 pandemic. Additionally the maximum fine (CAD 25,000) doesn't amount to a real deterrent for large airlines.
- The CTA failed to anticipate the amount of claims they would receive. As a consequence, they built up a backlog from day 2 which currently stands at over 78,000 cases.
- Airline terms and conditions are not subject to review by the CTA. This hinders their ability to protect passengers from predatory commercial practices, and airlines adding clauses to their terms and conditions that undermine the regulations.

10. What types of complaints should be eligible for consideration by the Aviation Industry Ombuds Scheme, and what types of complaints should not?

We agree that clear guidance on complaint eligibility provides clarity and fairness to passengers and airlines alike.

We suggest:

- There should be **no requirement for a response from the airline** before a passenger can bring their complaint to the Ombuds Scheme.
- The Ombuds Scheme should consider **complaints up to 3 years** after the flight disruption.

11. Should the Aviation Industry Ombuds Scheme be able to accept complaints relating to breaches of privacy by members of the scheme?

No comment

12. How should the Aviation Industry Ombuds Scheme handle complaints about airlines and airports in relation to services purchased through a travel agent or other third party?

As pointed out in the Consultation Paper, The Aviation Industry Ombuds Scheme will only be able to consider complaints against members of the scheme. As travel agents and other third parties will not be required to join the Scheme, it is proper that complaints are limited to airlines and airports.

Whether a consumer purchases a service directly from the operating airline, another airline or a travel agent or other third party, should not have any impact on the complaint handling by the Ombuds Scheme as this would negatively affect the rights of passengers, and create unnecessary confusion in what to expect depending on point of purchase.

13. What existing complaints schemes or processes have the potential to overlap with the Aviation Industry Ombuds Scheme?

No comment

14. Who should be eligible to make complaints to the Aviation Industry Ombuds Scheme?

All passengers travelling to, from and within Australia should be able to make complaints to the Ombuds Scheme, not only Australian citizens.

The scheme should recognize that equal access does not mean equal opportunity, and to ensure the Ombud Scheme is accessible to all, consumer protection groups should also be able to make complaints.

Research supports this:

“Not all social groups access the institution in the same proportion. Complaints made to government ombuds are rarely made from people who are socially disadvantaged. They are made by people who are from older, middle-class backgrounds rather than from the lower-class, young or minority groups. International research has confirmed that the general profile of the user of ombuds services is ‘a man or a woman in middle age with a higher education and a reasonable income and enough bureaucratic competencies’. Thus, more powerful members of society are able to take better advantage of the ombuds institution, which is designed to support all members of society regardless of race, class, gender or age.”

See Groves, Matthew , and Anita Stuhmcke, ed. The Ombudsman in the Modern State. Oxford: Hart Publishing, 2022. Bloomsbury Collections. pp. 6-7.

Passengers who lack knowledge of the regulations, or face language barriers (concerns also particularly relevant to international passengers) may not be aware of the possibility to make a complaint.

Third parties such as consumer protection groups fulfill an essential role bridging this gap and should also be able to file complaints, to help passengers receive the full protection afforded to them.

15. If small business and not for profit (NFP) organisations are eligible to make complaints, in addition to consumers, what criteria should be applied to define eligible small businesses and NFPs?

The Ombuds Scheme needs to be accessible for consumers and be created in such a way to ensure maximum protection. This means that passengers must be allowed to seek out help from third parties that can submit the complaint on behalf of the passenger.

Additionally, small businesses and NFP organisations dedicated to upholding passenger rights should be allowed to submit complaints against airlines, acting in their own name. This guarantees a rapid, fair, and cost-efficient way to solve disputes.

16. What complaint resolution process should the Aviation Industry Ombuds Scheme adopt?

Submission to the Ombuds Scheme:

In the majority of cases, passengers or their representatives will initially engage directly with the airline or airport, with the understanding that they can always resort to the ombuds scheme when either dissatisfied with the solution offered by the airline, or if no response is given within the time limit.

Submission to the Ombud Scheme should be made easy, and any requirements for claim submission must be clear to passengers and their representatives.

Complaint resolution process

Assuming regulations are clear, with defined limits and compensation amounts, we see a limited role for mediation, as consumers should receive what they are entitled to under the regulation.

The Ombuds Scheme's primary function is as a **decision maker**, ensuring the regulations are enforced without imposing undue burden on passengers, which includes not obliging them to go through a time-consuming mediation process.

- Airlines should provide clear documentary evidence if they deny liability and provide a detailed reasoning for rejecting a particular claim.
- The Ombuds Scheme should review the evidence and decide whether the passenger is or is not owed compensation under the Aviation Customer Rights Charter.
- The Ombuds Scheme publishes their decision and reasoning.
- The decisions should be binding and enforceable for airlines to avoid passengers seeking justice in the Court system which are long and expensive.
- For complaints where the passenger is awarded compensation, the Ombud Scheme should affirm the passenger's right to choose how they want to be refunded or compensated, whether that is to the original form of payment, by voucher, or by a bank transfer to the bank account of their choosing.

17. How much time should an airline or airport have to resolve a complaint, before the complaint is considered by the Aviation Industry Ombuds Scheme? What factors should be considered by the Ombudsperson when deciding if a complaint was resolved within a reasonable time?

- In the case of flight disruptions, most complaints will be similar i.e. arising from the same flights and events. As the airline can be expected to know whether a disruption was within their control or not we consider it reasonable that such complaints should be resolved within **2 weeks**.
- Only in exceptional circumstances should it be considered that a case was resolved in reasonable time if it takes more than 2 weeks. We consider 1 month as the maximum time.

18. What time limit should apply for making a complaint?

- Passengers should have **up to 3 years** to make a complaint. This is in line with the average statute of limitations in the jurisdictions we work across.
- A number of years is reasonable as many passengers are not aware of their rights, and require time to enforce them.

19. What should be the maximum monetary amount the ombudsperson is able to award?

We propose alignment with the existing standards set by the Montreal Convention, which is currently limited to 128,821 SDR or approx 260,000 AUD.

20. What regular publications should the Aviation Industry Ombuds Scheme produce?

Outcome of complaints:

- The Ombuds Scheme should **publish all decisions, together with the reasoning** for each complaint considered.
- The publication should provide insight into the Ombudsperson's reasoning, which creates an accessible knowledge base and enables parties to resolve similar future disputes directly.
- The publication should not reveal private details of the passenger or airline or airport operations.

Cases of airline and airport non-compliance:

- The Ombuds Scheme should publish reports in cases where airlines and airports fail to comply with the Air Passenger Rights Charter, or the binding decisions made by the Ombudsperson.
- The creation of a “public blacklist” would allow passengers to make informed decisions about who they fly with, and function as an additional incentive for airlines to comply with the Ombudsperson's decisions.

21. What processes should the Aviation Industry Ombuds Scheme adopt to provide procedural fairness to scheme members before it publishes certain data and information?

We observe that an issue with the previous body of protection of passenger rights (ACA) was that participating airlines were required to give approval before reports of their complaint handling were made public.

We recommend this requirement be removed, so that transparent reports about complaint handling of airlines and airports are readily available. By making such information public airlines will be incentivised to comply and uphold passenger rights.

22. What specific powers should the Aviation Industry Ombuds Scheme have to require airlines to provide information about delays and cancellations?

The Ombuds Scheme should have the power to request the airline to present any documentation it has related to specific delays or cancellations. For example:

- daily flight schedule reports
- internal delay reports
- email conversations from the airline's operations control centre,

- recordings or transcription of telephone calls between relevant agents
- technical repair reports
- announcements report
- weather reports

This list should not be considered exhaustive, as the Ombuds Scheme should be able to require any report relevant to a specific complaint.

24. What enforcement arrangements are appropriate to achieve compliance with the Aviation Industry Ombuds Scheme?

As explored in Question 2, we believe that the Ombuds Scheme must have powers of its own to enforce compliance, including imposing fines sufficient to provide a disincentive and publishing details of airlines and airports who fail to comply.

Where airlines and airports continually fail to comply with the regulation, the Ombuds scheme must have a route to ensure **additional penalties** are applied. The Ombudperson's reports of violations of air passenger rights must be dealt with seriously, just as any other violation of Australian regulations.

