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Via email: aviationconsumer@infrastructure.gov.au

Ms Sachse,

Response to the Aviation Industry Ombuds Scheme Consultation Paper

The Australian Airports Association (AAA) welcomes the opportunity to provide this response to the Department's Aviation Industry Ombuds Scheme Consultation Paper.

The AAA is the national voice for airports, representing the interests of more than 340 airports and aerodromes across Australia. It also represents more than 150 corporate members supplying goods and services to airports and the wider aviation industry.

The establishment of an independent Aviation Industry Ombuds Scheme is a significant step toward boosting passenger confidence in aviation services. Aviation plays a vital role in Australia's domestic and international connectivity, making consumer trust essential for the sector's continued growth and the industries that depend on it. It has the potential to deliver multiple benefits to travellers, including greater accountability among industry stakeholders, improved travel experiences, the identification and implementation of systemic improvements, and enhanced transparency and trust in aviation regulations.

The AAA will address its suggested recommendations in three parts: design, compliant handling and guidance and reporting.

Design of the Aviation Industry Scheme

Ombuds schemes are a form of alternative dispute resolution and have been successfully applied across a wide variety of industries, both in Australia and internationally. Current existing Ombudsmen include the Telecommunications Industry Ombudsman, Private Health Insurance Ombudsman and the Australian Financial Complaints Ombudsman. The Aviation Industry Ombuds Scheme needs to have clearly defined objectives which set out the purpose, accountability, and manage and meet the expectations of aviation customers and the industry.

Objectives of the ombuds scheme

An ombuds scheme must operate independently from the aviation industry to guarantee impartial decisions, free from bias or external pressure. This differs from the existing Airline Consumer Advocate, which is both funded and managed by the airlines, raising concerns about potential conflicts of interest.

The ombuds scheme must ensure that all parties in a complaint are treated fairly and impartially, with decisions based on objective evidence. Its primary aim should be to uphold the rights of aviation customers while considering fair and proportionate remedies.

The ombuds scheme should maintain transparent processes, ensuring that all parties receive clear, timely, and consistent communication. Decisions should be based on a well-defined set of principles and guidelines applied uniformly to all complaints.

The Ombudsperson should publish annual reports that review performance objectives and provide detailed information on all complaints received, including those beyond the responsibility of airlines and airports. This would offer a comprehensive understanding of the root causes of complaints and help improve industry practices.

Scope of the Ombuds Scheme

A tightly worded policy will help to enhance efficiency, clarity, and enforceability of the ombuds scheme. The need to establish an ombuds scheme has arisen from consumer dissatisfaction with airlines which is due to gaps in Australian consumer law.

A narrow scope for the scheme is needed as there can be many reasons why a passenger may be delayed, from passport control which is administered by Border Force; Air Traffic Control serviced by Air Services Australia or an if airplane is delayed/cancelled due to issues such as loss of power at an airport due to failure of the state-owned corporation provider of the electricity network.

The scheme should look at the terms and conditions of tickets and terms of carriage to determine what is missing between the two and how they currently interact with consumer law. The focus should be on ensuring consumers get full and timely airfare refunds in accordance with consumer law.

A focus on returning airfares to the passengers in full as well as timely manner. This will help limit the 'policy-implementation gap' by avoiding:

- Implementation Challenges – If the scheme were to have a broader scope, i.e more than just returning airfares (by providing accommodation etc), there will likely be a large scope of action required by different stakeholders who may have carrying capacities to implement the policy measures leading to inconsistent outcomes.
- Overwhelming the Ombudsperson - A broad mandate for the scheme, that goes beyond refunds, may overwhelm the ombudsperson with diverse types of complaints

Membership of the Ombuds Scheme

To assist with the rollout of the scheme, it may be necessary for a staged rollout to be undertaken for the airports it will be applicable to, allowing for learnings to be passed onto less well-resourced airports that may be required to participate.

Membership by airports should be allocated by the passenger movements at each airport, e.g over 1 million passengers annually. The UK aviation Alternate Dispute Resolution (ADR) scheme currently has 8 member airports that service over 1 million passengers annually. This scheme has seen been successful post its implementation in 2015 wherein 80 per cent of passengers on UK flights are now covered under the Civil Aviation Authority's (CAA) ADR schemes.¹

There is merit in including a similar threshold for airport membership of 1 million passengers per year for Australia as it would include 14 airports and cover 91.7 per cent of total passengers that are travelling by air.²

It is important that there is a threshold point to ensure that smaller regional and rural airports are not part of this scheme as it would be a very onerous requirement for them. Passengers will still be

¹ [Beyond the Horizon: The future of UK aviation](#) – Next Steps towards an Aviation Strategy (April 2018)

² [BITRE](#) Airport Traffic Data for 2023

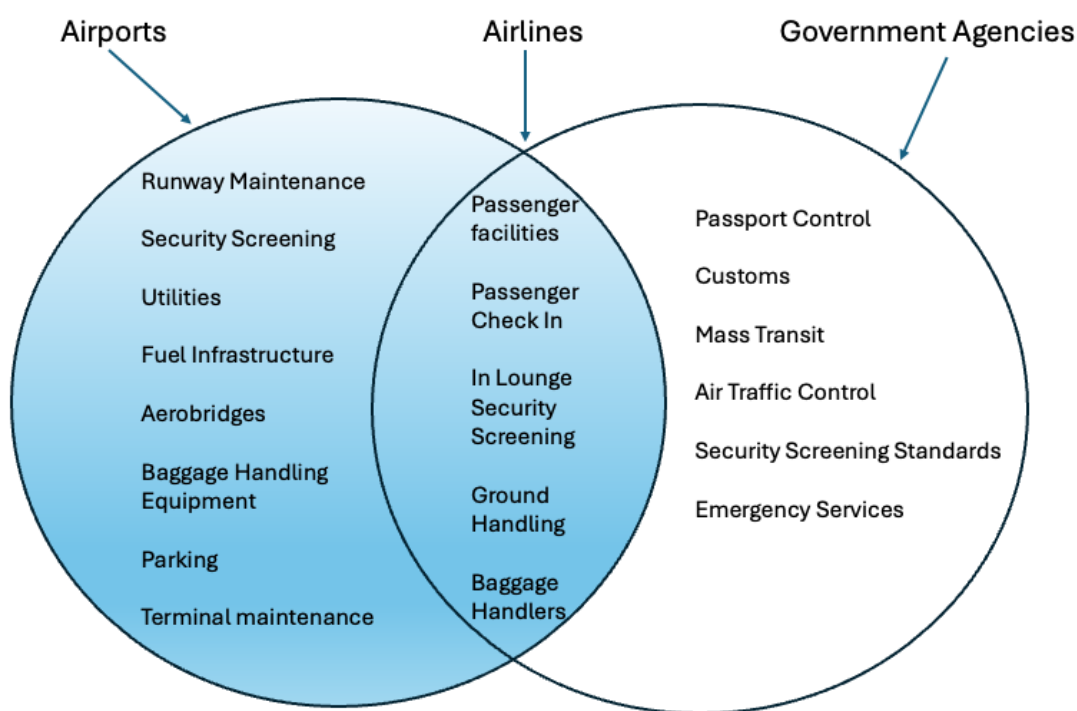
covered by Australian Consumer Law if there is an issue at smaller airports which needs to be pursued.

On eligibility, AAA advocates for government agencies such Airservices to be included in the scheme. For the 2023-2024 financial year, only one per cent of total flight delays were caused by airports while 11 per cent of delays were attributable to Airservices³. This highlights that more than one in ten flights were delayed due to Airservices.

Given Airservices data shows that airports are responsible for one per cent of total delays, then membership fees for the scheme should equitably be based on the rate of failure to provide aviation services rather than a flat membership fee.

As membership of the scheme is to be targeted at aviation and accordingly the key actors who participate in aviation should be considered.

Below is a diagram of an aviation ecosystem (from a passenger perspective) which demonstrates that the system is much more than airports/airlines:



Funding arrangements

A threshold for membership is needed to provide a transparent, measurable criterion making the process fair and consistent for all participants in the scheme.

Similar Ombuds schemes are funded through a levy on airlines and airports based on their size, revenue or passenger numbers, or a combination of all three. Given the role of government service

³ [Airservices Australia](#). (2024). *Australian Aviation Network Overview Financial Year 2024*.

delivery agencies in impacting on the aviation journey through delays and cancellations, partial funding from government should supplement industry contributions. This mixed funding model will help to ensure those responsible are paying.

The funding portion for airports should also be a consideration for the scheme, it is likely that the majority of the complaints will not relate to airports and the proportioned costs related to funding the scheme should be allocated accordingly. A continual review of complaints received will ensure that funding of the scheme is appropriately assigned, if airlines or government agencies receive higher complaints they should pay more.

It is important to consider how aviation companies will recover the costs of funding the scheme. Airlines might pass these costs to customers through ticket prices, while airports, lacking a direct customer relationship, will likely recover the costs through fees charged to airlines.

Governance

In establishing a board, it is vital that it is an independent, balanced and neutral board composition with a diverse representation of industry experts, governed by an independent chair.

It is important that there are general common appointment criteria for Board representatives that cover the general expectations for Board members. The makeup of the members of the Board should ensure that there is one seat on the Board for allocated to a current airport representative, as part of industry experience representation that the Board should cover. This current industry experience is essential to ensure the correct expertise represents Australian airports. This reflects the Board makeup of the Telecommunications Ombudsman which has representatives from Optus and Telstra on its board⁴.

We note the government intention for the scheme to eventually also manage noise complaints once legislation has set up the Aviation Industry Ombuds Scheme with two separate ombudspersons. However, these are distinct areas with little overlap. While their goals may be similar, their functions will differ, as current policies and regulations make dispute resolution and enforcement less applicable to noise issues. Additionally, a noise ombudsman has been operating since 2010, with extensive experience in handling such complaints. Merging the new consumer protection role with the existing noise complaint function could lead to conflicts in governance and hinder the organisation's ability to perform effectively.

A board with appropriate representation across consumer issues and noise issues is therefore imperative. To ensure the board is across the issues of both aviation consumer matters and aircraft noise, two board reference groups must be established, comprised of a mix of technical, consumer, and community representatives, as appropriate.

Other feedback

Existing schemes such as the Telecommunication Industry Ombudsman (TIO) provide a principal template for an aviation ombuds scheme however there are key criticisms of the TIO that should be avoided when setting up the aviation industry ombuds scheme:

- Using the word 'industry' in the name of the scheme – this is to help consumers understand the scheme is for them to access, rather it being for the 'aviation industry'

⁴[Telecommunications Industry Ombudsman](#). (2024). About us> Board.

- Managing tensions between consumers and customers – have a stringent term of references when setting up the ombuds scheme

It is essential that any scheme does not have an adverse impact on the cost of airfares and operational costs.

Complaint Handling

A key component to the scheme will be a clearly defined complaint handling process to ensure that it operates effectively. The provision of clear guidance on complaints eligibility will enable clarity and fairness, promote efficiency and provide certainty to consumers.

The ombuds scheme should not handle any complaint that falls outside of its defined remit. The government should avoid overlaps in remit of the scheme with other government or industry bodies that handle consumer complaints as overlapping remits could lead to inefficiency and/or forum shopping by consumers.

The aviation ombuds scheme should adopt a clear, structured approach to handling complaints about airlines and airports in relation to services purchased through a travel agent or other third party. While many passengers book flights through travel agents or online booking platforms, the extent of responsibility for airlines may be dictated by separate commercial agreements with the third party. Airports, conversely, do not have direct relationships with travel agents and booking platforms, and therefore do not have control on the terms and conditions of a passenger/consumer's agreement.

There already are a range of complaint options available for consumers including the ACCC, the Information Privacy Commissioner, the Civil Aviation Safety Authority, and the Human Rights Commissioner. It is important the government considers potential overlap of these bodies and which one will have jurisdiction for the particular complaint. There may be need to establish appropriate referral mechanisms between bodies to assist with this possibility.

It is important that the scheme is only eligible for the consumer as defined under the Australian Consumer Law – a person who acquires a service for an amount that does not exceed \$40,000 and is acquired for personal, domestic or house use or consumption. This will make everyone else who falls outside of this definition ineligible to use the scheme.

Complaint resolution process

The ombuds scheme services should only be requested after a complaint has been directly lodged with respective airline/airport and has received a definitive reply. The UK model of dispute resolution states that claimants have to first raise a complaint with the airline/airport first in writing.⁵

A comparison of global examples on time limits within which a decision has to be made by airline/airport in response to a claim (before the claimant can approach the ombudsman). The Australian scheme should follow the UK model and require airlines/airports to respond within 8 weeks of receiving the complaint.

Country/Region	UK	EU	Canada	US
Time limit	8 weeks	60 days	30 days	30 days

⁵ [Alternate Dispute Resolution for Aviation](#), accessed 19 September 2024

Once a complainant has received a reply from the airport/airline, they should lodge a request with the ombudsperson within three months. Applying a time period will allow matters to be resolved in a timely manner for all parties concerned.

AAA has collected best practices on complaint resolution schemes globally:

	UK	EU	Canada	Germany
Name	UK Aviation ADR (Alternative Dispute Resolution) Scheme	European Centre for Dispute Resolution (ECDR) for Aviation	Canadian Transportation Agency (CTA)	Ombudsman Services for Airlines, Germany
Step 1	Complaint Lodgement and Initial Assessment: Complaints can be submitted online or by post. The ADR team reviews whether the complaint is within their remit and if the complainant has already contacted the airline or airport.	Clear Communication: ECDR provides clear guidelines on its website about the complaint process, including eligibility criteria and required documentation, ensuring complainants know what to expect	Facilitation: CTA staff help both parties communicate and resolve the issue informally. This step is voluntary and can resolve many complaints quickly	Fast-Track Procedure: For straightforward issues, such as minor compensation claims, the Ombudsman provides a fast-track procedure that aims to resolve the complaint within a few weeks
Step 2	Information Gathering: Both parties are required to provide relevant information, and the ADR body can request additional evidence if needed. This step ensures a thorough understanding of the dispute	Structured Investigation Process: Once a complaint is accepted, the ECDR conducts a structured investigation, requesting detailed information from the airline and the complainant. Both parties can submit evidence and provide their version of events.	Mediation: If facilitation fails, trained mediators assist the parties in reaching a settlement. Mediation is confidential and less formal than adjudication	Binding Decisions: Unlike many ombudsman schemes, the decisions of the German Ombudsman are binding for participating airlines if the customer accepts the decision. This gives customers greater certainty that the outcome will be enforced.
Step 3	Conciliation and Mediation: The scheme prioritizes early resolution through conciliation or mediation,	Decision Timeline: The ECDR has a fixed timeline for issuing a decision, typically within 90 days of receiving the complete	Adjudication: If mediation fails, the CTA can make a binding decision. The process is similar to a legal proceeding, with	

	allowing parties to come to a mutual agreement before escalating to a formal investigation	complaint. This helps manage expectations and provides timely resolutions	both parties presenting their cases before a decision is made.	
Step 4	Decision and Compliance: The ADR body issues a non-binding decision based on the merits of the case. While not legally binding, member airlines are expected to comply, and failure to do so may result in public reporting.	Transparency in Decisions: Decisions are made based on applicable laws, regulations, and industry standards. The rationale behind each decision is explained clearly to both parties		

Overall, there are three key characteristics of an efficient complaints' resolution schemes:

- Clear and Accessible Communication: Providing detailed guidance on the complaint process, eligibility, and expected timelines
- Structured Investigation: A step-by-step process for gathering information and reviewing cases, ensuring fairness and thoroughness.
- Transparency and Accountability: Clear decisions with explanations and public reporting of non-compliance by scheme members.

Guidance and Reporting

The publication of the Ombudsperson's activities is essential for ensuring transparency and accountability within the Scheme. AAA recommends a performance dashboard be set up to ensure that the ombuds scheme provides a clear view and greater transparency of its performance to the public (e.g. this could include providing disaggregated information on complaints handled). Consideration should also be given to publishing performance statistics on DITRDCA's website.

This dashboard should include regular reports on airline performance regarding delays, cancellations, and customer service, creating public accountability.

There should also be an annual published report that includes data on complaints, trends, and insights from specific cases. The content and format of these publications should align with the Ombudsperson's duties and how their powers are applied to Scheme members. Other similar schemes publish reports that cover complaints, decisions, recommendations, and case processing times. In line with the proposed governance structure, the reports should also cover governance topics such as strategy, financial performance, risk management, and board engagement.

The Ombuds scheme should also ensure that guidance materials are developed, along with hosting regular workshops to ensure members, particularly smaller ones understand their obligations. It is important that Scheme members understand their obligations and how to respond to complaints as constructively as possible.

A review of the Ombuds scheme should be undertaken after the first year of operation to ensure it is acting as intended and if not allow for changes to be made.

The AAA is committed to working closely with the Department to ensure the scheme's successful implementation. A well-executed scheme will benefit passengers and, in turn, raise industry standards across the board. We would welcome the opportunity to discuss any of the points raised in this submission, please contact Natalie Heazlewood at [REDACTED]

Yours sincerely

A large black rectangular redaction box covering the signature of Natalie Heazlewood.

Natalie Heazlewood

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