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Mr Adam Stankevicius  
Acting Interim Commonwealth Aviation Industry Ombudsman  
Department of Infrastructure, Transport, Regional  
Development, Communication & The Arts  
111 Alinga Street  
Canberra ACT 2601

Via email: [Redacted]

Dear Adam

The Australian and New Zealand Ombudsman Association (ANZOA) is the professional association for Ombudsmen in Australia and New Zealand. Our membership includes industry-based Ombudsman, Parliamentary Ombudsman and other statutory ombudsman offices.

ANZOA is taking the opportunity to make a submission to the Department of Infrastructure, Transport, Regional Department, Communications and the Arts (the Department)'s Aviation Industry Ombuds Scheme—Consultation paper (Consultation Paper) of August 2024.

Our formal submission is attached, and we would like it to be made public. We value the opportunity to provide detailed feedback on the specific questions posed in the Consultation Paper.

In summary, ANZOA welcomes the establishment of an Aviation Industry Ombudsman scheme (AIOS) as outlined in the Consultation Paper. We note that the Consultation Paper demonstrates a solid understanding of the fundamentals of industry-based ombudsman schemes including the requirement to comply with Treasury's [Benchmarks for Industry-based Customer Dispute Resolution | Treasury.gov.au](#).

We also note that at this stage, there is no consideration of other personal, recreational or business travel sectors being included in such a scheme. This could include cruise lines, train and coach services (not public transport) and independent travel agents. We strongly suggest that this be considered in the future given consumers experience similar dissatisfaction with these services.

For further information about ANZOA's submission, please contact Janine Young on [Redacted] or by email to [Redacted]

Yours sincerely

[Redacted Signature]

**Janine Young**  
**ANZOA Secretary/Treasurer**

## 1. DESIGN OF THE AVIATION INDUSTRY OMBUDS SCHEME

### 1.1 Objectives of the ombuds scheme

#### Q1 What should be the objectives of the Aviation Industry Ombuds Scheme?

ANZOA notes that the examples provided in the Consultation Paper reflect the objectives of a number of existing Industry Ombudsman schemes and that these objectives have supported the effective performance of those schemes for over 30 years. The effectiveness of the industry-based model has been independently tested a number of times, including by the Productivity Commission [Inquiry Report - Access to Justice Arrangements - Productivity Commission \(pc.gov.au\)](#) and the Ramsay Review - [R2016-002 EDR-Review-Final-report.pdf \(treasury.gov.au\)](#).

Therefore, we strongly support that similar objectives to those outlined are used to establish the Aviation Industry Ombuds Scheme.

### 1.2 Powers and functions of the ombudsperson

#### Q2 What powers and functions should the ombudsperson have?

It is core to the success of the AIOS that the scheme has jurisdiction to effectively cover the range of complaints that consumers and stakeholders expect the AIOS to handle; and that it has the necessary powers and functions to deliver the service required to meet the office's objectives. This includes the potential objectives outlined in the consultation paper, and being able to:

- a) develop and implement a fit for purpose alternative dispute resolution (ADR) process that supports independent, fair and efficient complaint handling. This includes resolving complaints through negotiation, conciliation, investigation or other appropriate ADR informed processes;
- b) make decisions that are binding on the members of the AIOS if accepted by the consumer;
- c) compel the provision of information by members of the AIOS to support complaint handling and systemic investigations;
- d) collect, analyse, share and publish data and analysis about the complaint handling performance of the members of the AIOS;
- e) identify, investigate and seek redress in relation to systemic issues that relate to a member or group or type of members, through referral, to and involvement from, those AIOS members;
- f) report and refer to the appropriate regulator, relevant government Minister or other authority, conduct of AIOS members that is identified as potentially warranting enforcement action;
- g) refer AIOS member non-compliance to an appropriately empowered regulator; and
- h) provide education and awareness raising services to support consumer awareness of their rights to contact the AVO scheme.

In exercising those powers and functions as outlined in the consultation paper, the AIOS should have regard to what is fair and reasonable, taking into account the law, relevant industry codes, and guidelines, and good industry practice.

### 1.3 Governance arrangements

**Q3 What governance arrangement should be adopted for the Aviation Industry Ombuds Scheme?**

**Q4 If a board is established to govern the Aviation Industry Ombuds Scheme, what powers and functions should the board have?**

The *Independence* Benchmark clearly identifies the governance arrangements, and powers and functions of the Board / overseeing body required to govern the AIOS. The practices that sit under this Benchmark note that:

- “2.6 *There is a separate entity set up formally to oversee the independence of the office’s operation.*
- 2.7 *Where the office is established as a company, the overseeing entity must have a balance of consumer, industry and, where relevant, other key stakeholder interests involved in governance.*
- 2.8 *Representatives of consumer interests on the overseeing entity must be:*
  - a) *capable of reflecting the viewpoints and concerns of consumers; and*
  - b) *be a person in whom consumers and consumer organisations have confidence.*
- 2.9 *As a minimum the functions of the overseeing entity should include:*
  - a) *appointing or dismissing the decision-maker;*
  - b) *making recommendations for or approving the office’s budget;*
  - c) *receiving complaints about the operation of the office;*
  - d) *recommending and being consulted about any changes to the office’s jurisdiction;*
  - e) *receiving regular reports about the operation of the office; and*
  - f) *receiving information about systemic problems.*

With respect to 2.7, ANZOA strongly recommends that additional independent, experienced Directors form part of the AIOS Board to ensure that “other key stakeholder interests” are adequately considered in governance decision making processes. This approach would align with current governance best practice and the views of the Australian Institute of Company Directors.

**Q5 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?**

The establishment of the AIOS will result in the appointment of an Aviation Industry Ombuds. It is important that this role has clear accountability for consumer issues within its jurisdiction and also aviation noise complaints. A single decision maker will need to be accountable for the exercise of the powers and functions of the role, including binding decisions.

That role can delegate specific functions to an individual such as a Deputy Ombuds for receipt, investigation and resolution of aircraft noise complaints up to the point where a Binding Decision is required. Having this function at arm’s length means that a binding decision relating to aircraft noise can be made independently of the investigation. Transitional arrangements may be necessary to achieve this outcome ie taking time to move aircraft noise complaints into the Aviation Ombuds scheme at the end of tenure for the current Aircraft Noise Ombudsman.

## 1.4 Requirements for airlines and airports to be members of the ombuds scheme

**Q6 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?**

**Q7 Should the government adopt a phased approach to the application of the Aviation Industry Ombuds Scheme to different categories of airlines and airports?**

When considering the membership of the AIOS, it is important to consider the practices that underpin the *Effectiveness* Benchmark. Of note is practice 6.2 that notes:

- 6.2 *The scope of the office (including the decision-maker's powers) is sufficient to deal with:*
- a) *the vast majority of complaints in the relevant industry or service area and the whole of each such complaint; and*
  - b) *complaints involving monetary amounts up to a specified maximum that is consistent with the nature, extent and value of customer transactions in the relevant industry.*

To meet the intent of this Benchmark, it is necessary that membership is as broad as required to ensure that “the vast majority of complaints in the relevant industry or service area” (ie in order to meet consumer expectations) can be addressed through the AIOS. This would mean that all major national, state based, metropolitan and regional airlines and airports need to be members. We make no comment further on the appropriateness of exemptions or staging except to note that membership will likely need to change over time as consumer expectations and the industry evolve.

## 1.5 Funding arrangements

**Q8 How should funding arrangements for the Aviation Industry Ombuds Scheme operate?**

There are a number of different funding models used by industry-based ombudsman ANZOA members. The overarching principle for all is that each scheme is industry funded ie by scheme members, on a user pays basis. Current funding models necessarily accommodate a diverse range of member sizes - from the very large to the very small. Further exploration of these funding models directly with individual schemes should inform the funding arrangements for the AIOS.

**Q9 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?**

The common features of the industry-based ombudsman schemes already considered by the government provide a strong framework on which to develop the AIOS. Regular independent reviews are undertaken by existing industry-based Ombudsman schemes. These reviews highlight the effectiveness of these schemes within Australia and internationally. We strongly recommend that the Department further considers the features of these schemes, noting that there are variances between schemes, in order to incorporate the most appropriate features in the design of the AIOS.

## 2. COMPLAINT HANDLING

### 2.1 Complaint Eligibility

- Q10 What types of complaints should be eligible for consideration by the Aviation Industry Ombuds Scheme, and what types of complaints should not?**
- Q11 Should the Aviation Industry Ombuds Scheme be able to accept complaints relating to breaches of privacy by members of the scheme?**

To support consumer confidence and trust in the aviation industry and AIOS, a comprehensive range of complaints needs to be within the remit of the AIOS. At a minimum, this should extend to airline and airport services including marketing, sales, contracts, billing, credit and payments services, privacy, rewards programs, delays, cancellations, the actions / lack of action by airline / airport staff, and customer service.

It is also critical that consumers living with disability, vision impairment or mobility challenges, and/or their carers, are able to make complaints about accessibility. This includes barriers to access or use of airlines / airports facilities, customer service processes or information.

These complaint categories should be outlined in the governance documents for the scheme, ie what is in jurisdiction as well as clear advice about what is not in jurisdiction ie setting of pricing / price structures, commercial activities unrelated to provision of airline and airport services etc. Establishment of the AIOS should include development of consumer education materials about jurisdiction coverage.

- Q12 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?**

It is the existing practice of industry-based Ombudsman scheme ANZOA members that where a third party (for example a travel agent) is acting as an agent of a member of the scheme, complaints in relation to the services purchased through a travel agent or other third party would be the responsibility of the member. However, if the travel agent / third party is acting as the agent of the consumer or operating independently of both the airline and the customer, the scheme would have no jurisdiction to consider the complaint. Like other industry-based Ombudsman schemes, the AIOS should be required to establish a no-wrong-door referral system so that consumers are directed towards the most appropriate external dispute service ie Fair Trading, ACCC, Consumer Affairs etc.

- Q13 What existing complaints schemes or processes have the potential to overlap with the Aviation Industry Ombuds Scheme?**

ANZOA has not undertaken a detailed review of where overlap would occur. However, where it occurs, ANZOA members establish Memorandum of Understanding with entities to ensure a seamless customer complaint experience. For example, energy and water ombudsman often share jurisdiction over state owned water corporations with state ombudsman; where this occurs, an MoU is established outlining the role of each ombudsman scheme and referral processes so that complaints are appropriately managed by the scheme with that authority. As well as providing consumers with seamless complaint experience, it also prevents forum shopping of complaints.

## 2.2 Complainant Eligibility

**Q14 Who should be eligible to make complaints to the Aviation Industry Ombuds Scheme?**

**Q15 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?**

Consumers (residential and small business) of airport and airline services should be eligible to make complaints to the AIOS. In determining the definition of consumers, including small businesses, the Department should reference the definition of consumer in the *Competition and Consumer Act 2010*.

## 2.3 Complaint Resolution Processes

**Q16 What complaint resolution process should the Aviation Industry Ombuds Scheme adopt?**

While there is some variation in the complaint process of ANZOA members, we note they all share the same common principles which are outlined in the AIOS consultation paper:

- Stage 1 Attempt to resolve the complaint directly between the business and the customer
- Stage 2 Referral of the complaint to the Ombuds scheme
- Stage 3 Case management and binding decision

ANZOA supports the Government's interest in adopting a similar process as detailed in the Consultation Paper (pages 17-18). We also note that this is aligned with the Australian Standard for Complaints Management (AS 10002: 2022 Guidelines for Complaints Management in Organisations).

**Q17 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?**

When deciding whether a complaint is resolved within a reasonable time, the Ombudsperson should consider procedural fairness as well as whether the circumstances involve consumer vulnerability, urgency or consumer harm.

ANZOA would strongly recommend that the Interim Ombudsperson appointed to establish the scheme seeks advice from current industry ombudsman about best practice with respect to complaint referral and resolution timeframes. Over time, best practice timeframes for the AIOS will evolve that reflect consumer expectations and increased sophistication in the members' complaint handling processes as a result of their membership of the AIOS.

**Q18 What time limit should apply for making a complaint?**

ANZOA industry ombudsman members generally require a complaint to be made or referred to the scheme within 12-24 months of the consumer first becoming aware of the events giving rise to the complaint. However, the Ombudsperson should have the discretion to consider whether it is reasonable to accept a complaint outside these timeframes as there may be circumstances where this is fair, for example where the member has not provided information about the office of the Ombudsperson to the consumer when the member was responding to the complaint.

**Q19 What should be the maximum monetary amount the ombudsperson is able to award?**

ANZOA notes that there is variation in the monetary amounts that its members can award. We recommend that the Government has regard to the *Competition and Consumer Act 2010* (\$100,000).

### 3. GUIDANCE AND REPORTING

#### 3.1 Publications by the Ombuds Scheme

**Q20 What regular publications should the Aviation Industry Ombuds Scheme produce?**

The practices underpinning the *Accountability* benchmark state that:

- 4.5 *The office publishes a detailed and informative annual report containing specific statistical and other data about the performance of the office, including:*

**General information**

- a) *a description of the jurisdiction of the office (for example, a list of participating organisations and outline of complaints that can be received);*
- a) *information about how the office works;*
- b) *information about how the office ensures equitable access;*
- c) *information about new developments or key areas in which policy or education initiatives have been undertaken or are required;*
- d) *a list of participating organisations supporting the office, together with any changes to the list during the year; and*
- e) *where the office's jurisdiction permits, the names of those participating organisations which do not meet their obligations as members of the office.*

**Information about complaints**

- f) *the number and types of complaints it receives and their outcome, including information outlining the complaints received and outcomes for each of the participating organisations;*
- g) *the time taken to resolve complaints;*
- h) *any systemic problems arising from complaints;*
- i) *examples of representative case studies and reports on investigations; and*
- j) *in appropriate cases, information about any participating organisations which do not meet their obligations.*

- 4.6 *The annual report is to be made public, including through distribution to participating organisations, relevant stakeholders and otherwise made available upon request.*

ANZOA recommends that this is the minimum public reporting requirement on the AIOS. This should be supplemented by regular publishing of data and trend analysis, member and stakeholder newsletters, and systemic issue reports. Regular media engagement, proactive and in response to requests for comment, on key or emerging issues should also be established. These are core accountability mechanisms for the scheme, and they also play a key role in raising awareness of the scheme's role and how to access the scheme.

### 3.2 Aviation Customer Rights Charter

While the consultation paper does not seek comment or advice about the Aviation White Paper's commitment that the AIOS will produce an Aviation Customer Rights Charter, ANZOA supports this initiative noting that it will provide clarity on the minimum standard of consumer protections that apply to all airlines operating in Australia.

ANZOA notes that minimum standards can set a low bar especially for any customers who are experiencing, or at risk of experiencing financial or other vulnerability as a result of poor customer service or inappropriate actions by members of the scheme. As a result, industry ombudsman schemes resolve complaints on the basis of what is fair and reasonable, having regard to relevant laws, codes and regulations (including Charter obligations), good industry practice and the individual circumstances of the complaint / complainant.

### 3.3 Procedural Fairness

#### **Q21 What processes should the Aviation Industry Ombuds Scheme adopt to provide procedural fairness to scheme members before it publishes certain data and information?**

All industry based ANZOA members follow the principles of procedural fairness when resolving complaints and when publishing reports and data. This includes providing regular updates on member data throughout the year including via member portals or email. This means that members are aware of the data before it is published and can prepare media responses / stakeholder engagement if necessary. Regular engagement with members (individually or collectively) ensures that they are aware of any information, data or reports that are about published.

## 4. SHOW CAUSE ARRANGEMENT

#### **Q22 What specific powers should the Aviation Industry Ombuds Scheme have to require airlines to provide information about delays and cancellations?**

As noted throughout the submission, the AIOS should have comprehensive powers to enable it to perform the functions conceptualised by Government. Transparency by industry members supports improved trust and confidence in the industry and the AIOS.

The show cause arrangement that the government will introduce for delayed and cancelled flights, including reporting the reasons to the Bureau of Infrastructure and Transport Research Economics (BITRE), may go some way to addressing the level of consumer dissatisfaction with airlines relating flight cancellations and delays, but only if that data is publicly reported in a way that consumers can understand it.

However, this will not assist the AIOS in resolving individual complaints about specific delays or cancellations, including:

- the reasons they occurred
- how the airline communicated with affected consumers about the delay / cancellation
- what actions the airline took to provide redress to affected consumers ie alternative timely flights, refunds, credits etc.



Therefore the AIOS needs specific powers to seek this information in order to be able to resolve customer complaints.

The consultation paper also states that the Aviation White Paper announced that ‘where appropriate, the ombudsperson will also have the power to audit reasons for delays and cancellations’. ANZOA is concerned that depending on how this is implemented, it may result in the AIOS taking on what should be regulator responsibilities. A more appropriate approach would be to ensure that the AIOS has the power to undertake systemic investigation about delays or cancellations where it identifies, through individual complaints, that an airline may not be accurately recording / reporting reasons for delays / cancellations or appropriately providing consumer redress. As a result of systemic investigations which identify potential non compliance with BITRE reporting and/or other requirements, the AIOS would report that information to the member and relevant regulator / minister.

## 5. SCHEME COMPLIANCE

### **Q22 What enforcement arrangements are appropriate to achieve compliance with the Aviation Industry Ombuds Scheme?**

The consultation paper outlines specific requirements relating to:

- Membership of the AIOS
- Compliance with AIOS directions including to provide data and information
- Provision of redress / remedies including when a final decision is made by the Ombudsperson
- Member funding of the scheme.

The paper also states that where an airline or airport fails to comply with a requirement of legislation, that enforcement action may be required; and that a government entity would be responsible to taking enforcement action.

ANZOA notes that compliance with obligations as part of an industry-based Ombudsman scheme relies on an effective regulator / government entity, such as the ACCC, provided that it works to a comprehensive compliance, monitoring and enforcement framework, and has the power to address non-compliance via infringement notices or court action.