

# Aviation Industry Ombuds Scheme

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Submission to the Department of Infrastructure,  
Transport, Regional Development, Communications  
and the Arts  
October 2024

## Introduction

Australian Chamber – Tourism (the Chamber) welcomes the opportunity to comment on the design of the Aviation Industry Ombuds Scheme (the ombuds scheme). Measures that increase consumer outcomes and confidence to travel should be and are supported by the Chamber.

Ensuring that travellers to, from and around Australia can rely on a fair and competitive aviation industry is critical to supporting the recovery of travel and tourism following the pandemic and its restrictions. The establishment of an ombuds scheme is a welcome step toward boosting passenger confidence in aviation services. 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 Chamber recognises that the establishment of an ombuds scheme has been the subject of significant advocacy of our members over a sustained period; as such, we thank the Government for committing to implementing such a scheme.

Our comments within this submission address some key foundational areas of the scheme which, if implemented, should support the establishment of a sound ombuds scheme which delivers positive outcomes for consumers while balancing the requirements of aviation industry participants.

## Need for an Aviation Industry Ombuds Scheme

The Australian Competition and Consumer Commission (ACCC) has noted that “the lack of effective competition over the last decade has resulted in underwhelming outcomes for consumers in terms of airfares, reliability of services and customer service”.<sup>1</sup>

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<sup>1</sup> ACCC (2023), [Airline Competition in Australia, Final Report](#), June 2023, pg.2.

Globally, consumer rights have been strengthened following the performance of airlines regarding cancellations and credits during the COVID-19 restriction period. Reform is needed to simplify refund rights for flight cancellations and passengers not being accommodated on the same day, and the responsibilities of actors within the aviation industry in delivering these refunds where appropriate.

## Complaint handling

### *Complaint eligibility*

We welcome the Government's position within the consultation paper regarding which complaints the Ombuds will be able to consider, namely the proposed exclusion of travel agents. This is crucial – the scheme must be directly between the airline (and airports) and the consumer, as the terms and conditions of an airfare are set by the airlines, and the consumer funds are held by the airline, not the travel agent. This remit should be clear for consumers seeking to use the services under the ombuds scheme, as well as to scheme members.

### *Complainant eligibility*

The ombuds scheme should be accessible to all consumers who purchase air travel tickets – be this by directly purchasing through the airline or through a travel agent or other third party.

Although it is sensible that the ombuds scheme only consider complaints within its defined remit, this should not prohibit the Ombuds from directing consumers to more appropriate avenues of information or assistance, where practicable, to provide this advice, where it is not overly onerous on the Ombuds. This may be particularly useful in the initial period following the establishment of the scheme, noting that its remit may not be widely known or tested during this time, and where overlap with other government or industry bodies may occur.

### *Complaint resolution process*

In relation to matters where an air ticket has been purchased through a travel agent or other third party, where the remedy involves compensation, this should be administered directly between the airline (or airport) and the consumer. Where a refund is required, this should follow the usual process, generally through the Billing and Settlement Plan (BSP), a worldwide system designed to facilitate the selling, reporting and remitting procedures or agents and airlines.

Timely response to, and where possible, resolution of matters should be an objective of the ombuds scheme. However, this timeliness requirement must include reasonable requirements where they extend to participants in and around the scheme. For example, where a refund is the appropriate remedy, the Ombuds or delegate should arrive at this determination as soon as practicable. In the application of any refund, especially where travel agents or other third parties were involved with the purchase of the tickets, reasonable timeframes within which the refunds are made must be in place.

There should be timeframes placed on airlines to initiate the refund (which should be the same regardless of whether they are refunding directly or via an agent). Timeframes should then also be placed on agents to refund to the consumer after they have received the funds from the airline. Regardless of the remedy process ultimately determined as part of this consultation, it is vitally important that agents are not responsible to provide consumer refunds where they are not yet in possession of those funds from the airline.

## Other matters

### *Scheme membership*

Members of the scheme should include all airlines which are enabled to transport consumers, or to new entrants who seek to carry consumers who purchase air travel tickets, who should be required to become members prior to entering the market. Not requiring all airlines to be members may open the ombuds scheme to exploitation, ultimately undermining the intent and operation of the scheme.

Airport membership should be based on passenger movements. Regardless of the figure, it is important that there is a threshold point to ensure that smaller regional and rural airports are not burdened with the requirements of the ombuds scheme, especially where the ACL applies.

It may also be appropriate for Airservices Australia to be a member of the ombuds scheme.

Appropriate privacy requirements must apply to scheme members, including that any customer information received should only be used for the purposes of the resolution of the complaint and not for marketing or other purposes. With regard to resolving disputes around breaches of privacy by scheme members, this must not overlap with or confuse the responsibilities of the Privacy Commissioner, or the Australian Information Commissioner more broadly. Confusion in this respect will be onerous on both the Aviation Industry Ombuds as well as the Privacy and Australian Information Commissioners. Consideration must also be given to ongoing reforms to the *Privacy Act 1988* to ensure any relevant measures are appropriately aligned.

### *Scheme funding*

We note that 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. It may also be appropriate for government service delivery agencies to partially fund the scheme also, recognising their role in the aviation journey. This mixed funding model will help to ensure those responsible for issues identified by the ombuds scheme are paying.

Funding portions could be calculated on a proportional basis. To ensure this is not unfair on any particular industry group, 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.

## Transparency

The Chamber encourages transparency around the operations of the ombuds scheme and the responses from its members. As such, we recommend that reporting on complaints, resolutions, other actions taken, and relevant analysis occur no less than quarterly. Quarterly reporting will provide transparency and deliver some level of accountability, and it will also align with other reporting and monitoring, such as by the ACCC. This reporting timeframe should not prevent the Ombuds from engaging with other government processes – such as by making submissions on relevant policy matters and consultations – and should not preclude the Ombuds from providing recommendations to the Government for policy or regulatory change, nor from referring relevant matters to the ACCC for investigation and enforcement. In addition, an annual report would be appropriate, as with other ombuds regimes in other industries.

A key facet of this transparency will also be whether the ombuds scheme is working effectively. As such, there should be a review of the operational effectiveness of the ombuds scheme after its first year of operation.

## Next steps

In addition to implementing the ombuds scheme, increasing competition will lead to better consumer outcomes, and should be a priority. Consumer protections without competition reforms will be ineffective – the government must make appropriate changes to allow additional competition within Australia's aviation sector. Reducing barriers to competition will increase Australians' opportunities regarding how and the types of products they purchase.

Should you require any additional information or clarification of any points contained within, please contact John Hart, Executive Chair, Australian Chamber – Tourism at



### About Australian Chamber – Tourism

Australian Chamber – Tourism (the Chamber) is a peak body representing Australian businesses engaged in the visitor economy. It brings together key participants in the tourism and travel sector to advocate better policies, including tax, regulation, tourism marketing, research, labour supply, visas and infrastructure. The Chamber is a part of the Australian Chamber of Commerce and Industry (ACCI), Australia's largest and most representative business network.

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Telephone 02 6270 8000 | Email [info@acci.com.au](mailto:info@acci.com.au) | Website [www.acci.com.au](http://www.acci.com.au)

Media enquiries: Telephone 02 6270 8020 | Email [media@acci.com.au](mailto:media@acci.com.au)

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