



ACCC submission

Submission in response to the Aviation Industry Ombuds Scheme consultation

October 2024

Acknowledgement of country

The ACCC acknowledges the traditional owners and custodians of Country throughout Australia and recognises their continuing connection to the land, sea and community. We pay our respects to them and their cultures; and to their Elders past, present and future.

Australian Competition and Consumer Commission

Land of the Ngunnawal people

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Introduction

The Australian Competition and Consumer Commission (ACCC) welcomes the opportunity to provide comment to the Department of Infrastructure, Transport, Regional Development, Communications and the Arts' (DITRDCA) consultation paper on the design and functions of the Aviation Industry Ombuds Scheme.

The ACCC is an independent Commonwealth statutory agency that promotes competition, fair trading and product safety for the benefit of consumers, businesses and the Australian community. The ACCC's primary responsibilities are to enforce compliance with the competition, consumer protection, fair trading and product safety provisions of the *Competition and Consumer Act 2010* (CCA), regulate national infrastructure and undertake market studies. The CCA also contains the Australian Consumer Law (ACL), which is enforced by state and territory ACL regulators alongside the ACCC under a one law, multiple regulator model.

The ACCC welcomes the Federal Government's commitment to establish an industry-funded Aviation Industry Ombuds Scheme. As set out in our submission to the [Aviation Green Paper](#), there has been a sustained number of consumer contacts to the ACCC about the aviation sector over many years. Consumers have reported poor customer service including poor communication, decreasing service quality, and issues in resolving disputes and obtaining redress. The ineffective Airline Customer Advocate has failed to satisfactorily resolve consumer complaints and has resulted in consumers bearing the costs of poor conduct by the aviation sector.

The ACCC agrees with the view expressed in the consultation paper that the Aviation Industry Ombuds Scheme should be designed to adopt similar features to comparable industry ombuds schemes, including the Telecommunications Industry Ombudsman (TIO) and Australian Financial Complaints Authority (AFCA), and tailored to the specific circumstances of the aviation sector. These existing ombuds schemes facilitate timely, accessible and fair consumer dispute resolution in Australia.

External dispute resolution schemes play an important role in allowing consumers to resolve complaints in a manner that is generally faster, cheaper, and more accessible than the formal legal system.

The introduction of an ombuds scheme in the aviation sector will mean greater efficiencies and improved effectiveness in dispute resolution, including through incentivising airlines to improve internal complaints handling. Airlines will be incentivised to handle issues proactively and resolve the bulk of complaints through internal dispute resolution, rather than having those complaints dealt with by the Aviation Industry Ombuds Scheme. It will also encourage airlines to identify and address systemic, root cause issues earlier, to minimise the number of consumer complaints which are resolved through the ombuds scheme.

The ACCC also supports the idea of an Aviation Customer Rights Charter (the Charter), to complement, not replace consumers' rights under the ACL, and considers the Charter should also include specific compensation amounts for certain events, and guidance on factors to consider where it would be fair and reasonable to provide amounts higher than the set amounts.

In creating the Charter, it will be important to expressly recognise that:

- the obligations in the Charter do not limit or change any obligations that businesses must still comply with under the CCA and ACL, and

- nothing in the Charter, or in decisions made by the ombuds scheme in accordance with the Charter, will affect, exclude or interpret the CCA or ACL.

Design of the Aviation Industry Ombuds Scheme

Benchmarks for industry-based consumer dispute resolution

The ACCC considers the Aviation Industry Ombuds Scheme should adhere to the Federal Government's Benchmarks for Industry-based Customer Dispute Resolution and have this codified in the establishing legislation.¹ The TIO, AFCA, and energy and water and other ombuds schemes in Australia have been set up following these Benchmarks and are regularly reviewed against them. In addition, the TIO has the Benchmarks codified in its primary legislation, and the Minister must have regard to them when making legislative instruments with respect to the scheme.²

The Benchmarks were first established by the Federal Government in 1997 on a voluntary basis and were developed in consultation with industry and consumer groups.³ In 2013, the Benchmarks were reviewed by the Commonwealth Consumer Affairs Advisory Committee, and in 2015 the Federal Government released updated guidance with respect to the Benchmarks. The underlying principles of the six Benchmarks are:

- Accessibility – the dispute resolution scheme should make itself readily available to customers by knowledge of its services, being easy to use and having no cost barriers.
- Independence – the decision-making process and administration of the dispute resolution scheme should be independent from participating organisations.
- Fairness – the procedures and decision-making of the dispute resolution scheme should be fair and seen to be fair.
- Accountability – the dispute resolution scheme should publicly account for its operation by publishing its final determinations and information about complaints, and by reporting any systemic problems to its participating organisations, policy agencies and regulators.
- Efficiency – the dispute resolution scheme should operate efficiently by keeping track of complaints, ensuring complaints are dealt with by the appropriate process or forum, and regularly reviewing its performance.
- Effectiveness – the dispute resolution scheme should be effective by having an appropriate and comprehensive jurisdiction, and periodic independent reviews of its performance.

The Benchmarks have been effective in guiding external dispute resolution schemes in their operation and decision-making. We consider that the Benchmarks should guide the implementation of the Aviation Industry Ombuds Scheme, and to ensure these principles

¹ The Treasury, 2015, [Benchmarks for Industry-based Customer Dispute Resolution](#), February 2015, accessed 25 September 2024

² Section 128, *Telecommunications (Consumer Protection and Service Standards) Act 1999*

³ [Benchmarks for Industry-based Customer Dispute Resolution Schemes](#), 1997, accessed 25 September 2024

underpin the Aviation Industry Ombuds Scheme's operations permanently, they should be codified in the scheme's enabling legislation.

The Benchmarks link with the objectives of the Aviation Industry Ombuds Scheme as suggested in the consultation paper.

Powers and functions of the Aviation Industry Ombuds Scheme

The ACCC broadly agrees with the proposed powers and functions of the Aviation Industry Ombuds Scheme, being to:

- deliver an external dispute resolution service in relation to airlines' and airports' conduct in a way that is accessible, independent, fair and accountable
- direct airlines and airports to provide specific remedies to customers
- issue public guidance on airlines' and airports' obligations to their customers, consistent with relevant legislation
- publish reports on airline and airport conduct, and make policy recommendations to the Federal Government
- refer instances of systemic misconduct that may raise concerns under the CCA to the ACCC for investigation and potential action.

To ensure that the Aviation Industry Ombuds Scheme is effective, the ACCC strongly agrees that the establishing legislation will need to provide the scheme with specific powers to make binding directions, and legally oblige scheme members to comply with these directions.

We strongly support the proposed function of referring to the ACCC potential systemic competition and consumer issues that may raise concerns under the CCA. However, we consider that the Aviation Industry Ombuds Scheme also has an important role to play in addressing systemic issues, or issues that impact a broad range of consumers in a similar way. For example, when the fuel supply issue occurred at Perth Airport in June 2024, all airlines operating out of the airport that day were forced to cancel flights until the issue was resolved. If such circumstances occurred in the future, an Aviation Industry Ombuds Scheme should have the power to proactively direct the airlines involved as to what they need to do to provide remedies and compensation to impacted consumers.

Governance arrangements

The ACCC supports the position that a governing board should be established to oversee the Aviation Industry Ombuds Scheme, including the appointment of the ombudsperson(s). The ACCC considers that the existing ombuds schemes in Australia that have an independent chair, and an equal number of directors with consumer protection and industry experience are the most effective. The ACCC considers the Aviation Industry Ombuds Scheme board should follow this model. With respect to the independent chair, alongside the important criteria of their independence, they also need to have the right skills and experience to contribute meaningfully to the governance of a consumer dispute resolution scheme.

The ACCC agrees that the board should not have a day-to-day role in managing the scheme. Rather, the ACCC considers that the Aviation Industry Ombuds Scheme should follow terms of reference or rules that are approved by the board, rather than being set in legislation. This

would align the Aviation Industry Ombuds Scheme with the operational structure of both AFCA and the TIO.

While the Aviation Industry Ombuds Scheme needs to be underpinned by supporting legislation to establish the scheme and its broad functions, the detail of how it operates (for example, matters such as its dispute resolution steps and timeframes, complainant eligibility etc) should be set out in rules approved or amended by the board. Empowering the scheme to develop and amend its own rules will allow for more timely changes when circumstances in the sector change, or related laws change, allowing the rules to be more adaptable.

We consider the Aviation Industry Ombuds Scheme should also publicly consult on any material or significant proposed changes to its operational terms of reference or rules before implementing any amendments.

Given the distinct remit and specialist knowledge required, the ACCC supports the Federal Government's proposed approach to have two individual ombudspersons within the scheme, one with responsibility for aviation consumer issues and the other with responsibility for aircraft noise.

For the Aviation Industry Ombuds Scheme to be effective, the appointed ombudspersons need to be truly independent and not be associated with any company participating in the scheme. The ACCC notes that one of the criticisms of the ineffective Airline Customer Advocate was that the scheme lacked genuine independence in its operation and decision-making.

Membership of the scheme

The ACCC supports the Government's commitment for both airlines and airports to be members of the Aviation Industry Ombuds Scheme.

The ACCC considers that all public passenger airlines and airports operating in Australia should be required to be members of the Aviation Industry Ombuds Scheme, irrespective of the size of their business or passenger volumes. This will ensure there are uniform protections for aviation consumers and consistent obligations on airlines and airports. Depending on the issues involved, consumers can experience equal levels of detriment from disputes with small airlines or airports, as they do with larger airline or airport operators. As such, the ACCC considers there should not be any exemptions from membership based on business size or passenger volumes.

We also note that small telecommunications and internet service providers and small financial service providers, including mortgage brokers, are covered by the TIO and AFCA schemes respectively. The Federal Government's proposal to expand the Aviation Industry Ombuds Scheme's role in the future to also cover issues with non-compliance with the (still to be drafted) proposed new aviation-specific disability standards makes it even more important to ensure that all public passenger airlines and airports are covered by the scheme from the start.

Rather than exempting small airlines and airports from the Aviation Industry Ombuds Scheme altogether, concerns about the financial burden on small airlines and airports can instead be addressed through the design of the funding model for the scheme.

Both domestic and international airlines operating in Australia should be members of the Aviation Industry Ombuds Scheme. With respect to international airlines, we regularly

receive contacts from consumers about issues with international airlines, including some failing to have adequate customer services systems in place, such as not having an accessible and staffed contact number. This can significantly impact on the ability of consumers to exercise their rights under the ACL, in particular their consumer guarantees rights.

The ACCC supports the Aviation Industry Ombuds Scheme commencing for all members at the same time. We consider that there will be inconsistent coverage and protections for consumers, and the potential for both consumer and industry confusion, if there is a phased implementation for different airlines and airports becoming members of the scheme.

Funding arrangements

The ACCC supports the government's commitment for the Aviation Industry Ombuds Scheme to be funded by members of the scheme. An industry-funded scheme will align the Aviation Industry Ombuds Scheme with comparable ombuds schemes, including the TIO and AFCA.

The ACCC considers that the scheme should be funded by a regular membership fee, set at an appropriate amount and scaled to business size, plus an additional scheme fee for each member based on the volume of complaints against them and their complaints escalation rates. As the consultation paper notes, such an arrangement creates greater incentives for scheme members to resolve disputes satisfactorily at the internal dispute resolution stage. For example, AFCA has a "user-pays" model, with a single annual registration fee, no complaints fees for the first 5 complaints against a member, and additional fees based on the number of complaints against the member and the stage at which each complaint was resolved.⁴ This scalable funding model means that many small or medium size enterprises, such as mortgage brokers, financial advisors or insurance brokers contribute a small amount to the operation of the scheme, unless they are a source of high levels of escalated complaints.

To assist new entrants establishing in the sector, the funding arrangements could also be structured to allow their membership fees to be waived or reduced for an initial period, for example, in the first year of membership.

The ACCC considers that the Department's proposal for more detailed consultation in 2025 about specific funding arrangements should encompass consultation with all relevant stakeholders (i.e. including consumer advocates and relevant regulators and government agencies), not just industry participants.

Scheme compliance

For the scheme to be effective, it is important that airlines and airports comply with the decisions of the Aviation Industry Ombuds Scheme, such as promptly complying with determinations made. The ACCC notes the government's proposal that a government entity may be responsible for enforcement action against an airline or airport that fails to comply with legislative requirements of the Aviation Industry Ombuds Scheme, including:

- being a member of the scheme

⁴ Australian Financial Complaints Authority, 2024, [AFCA Funding Model, Key Features](#), accessed 25 September 2024

- complying with requests for information and documents under the proposed information gathering powers
- providing remedies to consumers or otherwise complying with decisions made by the ombudsperson, and
- making payments to fund the operation of the scheme.

It is important that in the first instance the scheme is able to take action in relation to these matters. Nevertheless, the ACCC considers it may be appropriate for a properly constituted regulator to be able to take action to enforce compliance with the legislative requirements of the Aviation Industry Ombuds Scheme in the event actions taken by the scheme are not effective. The compliance regime will need to be carefully considered to ensure it is legally effective. We note that in other sectors, industry participants' involvement in an external dispute resolution scheme is underpinned by some form of licensing regime, or specific statutory requirements for a sector, and the schemes' compliance regimes are connected to the relevant licensing or other statutory regime.

The Australian Communications and Media Authority (ACMA) plays an enforcement role with respect to the TIO scheme. The ACMA can take court action for non-compliance with directions of the TIO, seeking civil penalties of up to \$10 million for contraventions by companies, and up to \$50,000 for contraventions by individuals. The ACMA has previously taken enforcement actions, including court action, against telecommunication companies for non-compliance with the TIO scheme.⁵

The Australian Securities and Investments Commission (ASIC) plays a similar enforcement role where financial service providers are in breach of their licensee obligations to maintain an AFCA membership, or they fail to comply with an AFCA determination.⁶

It would be beneficial for the relevant regulator to have a range of compliance and enforcement tools available to it to address potential non-compliance with the Aviation Industry Ombuds Scheme, including formal warnings, infringement notices, remedial directions, accepting enforceable undertakings. Further, any legislated penalty amounts for non-compliance should be set at an appropriate level so that they provide a meaningful deterrent effect.

Guidance and reporting

The ACCC supports the Federal Government's commitment that the Aviation Industry Ombuds Scheme will publish guidance material for customers and the aviation industry, and produce reports about the aviation industry's performance and conduct.

Guidance material published by the Aviation Industry Ombuds Scheme can advise consumers about how the scheme handles complaints. The Aviation Industry Ombuds

⁵ For example, the Federal Court imposed a total of \$565,125 in penalties against Limni Enterprises Pty Ltd (Limni Enterprises), formerly known as Red Telecom Pty Ltd (Red Telecom), and its sole director as a result of court action taken by the ACMA against Red Telecom for failing to comply with binding decisions of the TIO. See <https://www.acma.gov.au/articles/2022-07/acma-welcomes-significant-penalties-red-telecom-federal-court-case>

⁶ For example, following ASIC court proceedings, the Federal Court imposed \$100,000 in penalties against 2 home finance companies General Commercial Group Pty Ltd (formerly known as Urban Commercial Group) and Eden Capital (Australia) Pty Ltd (formerly known as Southside Lending) for failing to cooperate with AFCA. In addition, the director of General Commercial and director of Eden Capital were fined \$30,000 and \$20,000 respectively for their roles in the misconduct. For the next 12 months, both companies were restrained from engaging in credit activity and the directors were restrained from being involved in any business carrying on credit activity. See: <https://asic.gov.au/about-asic/news-centre/find-a-media-release/2023-releases/23-009mr-home-finance-companies-and-directors-to-pay-150-000-for-failing-to-cooperate-with-afca/>

Scheme would also need to provide guidance on the proposed Aviation Customer Rights Charter once it is created.

The Aviation Industry Ombuds Scheme can also play an important role in providing guidance to airlines and airports on how they should handle and resolve common issues in their internal dispute resolution processes, so that similar issues are dealt with pro-actively in the same way, rather than consumers who experience a cancellation or delay from the same event each having to individually go through detailed internal dispute resolution with an airline, and then detailed external dispute resolution with the Aviation Industry Ombuds Scheme. This will also help keep the costs of operation of the scheme lower and help to reduce burden on member airlines and airports.

The ACCC considers there are significant benefits in the Aviation Industry Ombuds Scheme regularly releasing data about complaints, including:

- the total number of complaints received, and any key trends or insights
- top complaints by issue
- the percentage of complaints that are resolved at different stages of the dispute resolution process
- average time to resolve complaints
- percentage of complaints that are resolved in the complainant's or member's favour, and
- complaint levels per airline or airport.

Regular reporting of aviation complaints data will improve transparency in the aviation sector and may improve industry practices by signalling to airlines and airports the practices that need addressing. It will also complement the ACCC's current domestic airline competition monitoring role.

The ACCC also considers there is merit in the Aviation Industry Ombuds Scheme publishing determinations in some form, with any information that may identify the complainant redacted. This would align with the practice of AFCA, which publishes decisions and includes details of the complaint, the issues and key findings, the determination and reasons for the determination, and supporting information.⁷ Publishing determinations in some form would provide greater transparency about the ombuds scheme's decision-making and would help guide the sector in their internal dispute resolution processes. This could include a more streamlined version of reporting of key data and information from determinations.

The ACCC is concerned about the suggestion in the consultation paper that the Aviation Industry Ombuds Scheme should provide a "reasonable opportunity for airlines and airports to respond to any information that might adversely affect them" before the scheme publishes the information.

Much of the types of information being proposed for publication by the Aviation Industry Ombuds Scheme will be purely factual information. For example, if Airline A ends up being the airline with the most complaints handled by the scheme over the 2025/26 financial year, that might be information that could adversely impact Airline A's reputation, however it is factually correct. As factually correct information, the core principles of independence and accountability (see discussion of Benchmarks above) mean that the Aviation Industry Ombuds Scheme should publish the information without any obligation to give Airline A an opportunity to respond before publication. Airline A can still comment on the point in any public communications it chooses to make after publication of the information.

⁷ Australian Financial Complaints Authority, 2024, [Search published decisions](#), accessed 25 September 2024

Allowing airlines and airports an opportunity to respond to all information before it is published also creates an additional process which could unnecessarily divert resources of the airlines, airports and the Aviation Industry Ombuds Scheme to deal with disputes about the publication of information, when those resources would be better used for complaints handling and customer dispute resolution.

Other ombuds schemes in Australia, such as AFCA and the TIO, do not provide the opportunity to members to respond to information in any reports or data they publish before publication. AFCA publishes the names of financial service providers when publishing determinations, without allowing the financial service providers an opportunity to respond before the determinations are published.

With respect to publication of determinations made, these will of course need to be considered subject to the principles of procedural fairness under administrative law.

However, allowing airlines and airports an opportunity to attempt to influence purely factual data or information that the Aviation Industry Ombuds Scheme publishes would undermine the transparency and independence of the scheme.

Aviation Industry Ombuds Scheme remit and process

Remit and complaint resolution process

The ACCC supports the Government's proposed complaint resolution process for the Aviation Industry Ombuds Scheme, modelled on existing external dispute resolution schemes in Australia, with the following stages:

- require the customer to attempt to resolve the complaint directly with the business
- unresolved complaint is escalated to the ombuds scheme
- consideration by ombuds scheme and case management
- binding decision of ombuds scheme.

The ACCC recommends that like the TIO and AFCA, in its complaints handling and decision-making, the Aviation Industry Ombuds Scheme should consider all relevant law, good industry practice and fairness in all the circumstances.

The Aviation Industry Ombuds Scheme should have a broad remit to hear complaints and be empowered to hear all ACL complaints and matters related to the Aviation Customer Rights Charter. The ACCC agrees that Aviation Industry Ombuds Scheme should also be enabled to consider matters relating to airline obligations for lost or damaged baggage under the *Civil Aviation (Carriers' Liability) Act 1959* (Cth).

In addition to hearing such complaints and matters, the ACCC considers the Aviation Industry Ombuds Scheme should also be able to accept and determine complaints relating to potential breaches of privacy law by members of the scheme.

External dispute resolution schemes that have been recognised by the Office of the Australia Information Commissioner (OAIC) form part of the complaint handling framework in the

Privacy Act 1988 (Cth) (Privacy Act).⁸ The OAIC has recognised AFCA, the TIO, and various energy and water ombuds services as able to handle particular privacy-related complaints. As such, the ACCC considers the Aviation Industry Ombuds Scheme's remit should include privacy-related complaints about airlines or airports. Relatedly, the ACCC considers that the Aviation Industry Ombuds Scheme should be empowered and required to report potential contraventions of the Privacy Act to OAIC, as well as raising potential systemic privacy-related issues with the OAIC.

In terms of the process the scheme undertakes to resolve complaints, the ACCC strongly supports a framework under which the Aviation Industry Ombuds Scheme makes determinations that are binding on the member, but where a consumer retains the right to reject the determination and pursue action through a relevant court or tribunal. This is an important and long-standing feature of the alternative dispute resolution framework in Australia.

The ACCC also supports the Aviation Industry Ombuds Scheme having the power to require members to provide requested information within a specified timeframe to enable the scheme to resolve disputes and make determinations.

Travel agents or third party intermediaries

The ACCC considers that the Aviation Industry Ombuds Scheme should be able to deal with complaints about airlines or airports, even when the travel associated with the complaint was booked through a travel agent (or other intermediary).

Traditionally, where travel is booked through a travel agent, consumers deal with the travel agent, rather than the airline, for all aspects of the transaction. The terms of the relationship between an airline and a travel agent may vary from case to case. In some cases, an airline may have the right to direct a travel agent to pass on to consumers a remedy; in other cases an airline may not have that right. While the Aviation Industry Ombuds Scheme may not be able to make decisions that can bind or direct travel agents, the scheme should be able to give binding directions to airlines regarding how they will deal with consumers who have booked through a travel agent (for example, a direction that the airline provide a remedy directly to consumers).

As an illustrative example, in our compliance and enforcement work during the COVID-19 pandemic, we saw cases where an airline had agreed to provide a refund to a consumer, and had in fact provided the funds to the relevant intermediary (often an online travel aggregator based in another country), however the intermediary had failed to pass the funds onto the consumer, and in some cases failed to even engage with the consumer. It would be very costly, and sometimes impossible, for consumers to take action in these cases to obtain the funds they are owed. The ACCC considers that the Aviation Industry Ombuds Scheme should be able to consider such complaints, and direct an airline to provide the refund directly to the consumer in such circumstances. After reimbursing the consumer, the airline can pursue its own remedies against the travel agent, where the travel agent may have contributed to the problem.

Eligibility to make a complaint

The ACCC considers that the Aviation Industry Ombuds Scheme should be able to hear complaints from consumers and businesses. Individuals who are travelling for business

⁸ S35A(1) of the *Privacy Act 1988 (Cth)*

purposes, including sole traders, are affected in the same manner as consumers by flight cancellations or delays, or other aviation issues.

Transactions made by businesses or not-for-profit organisations are covered by the ACL consumer guarantees in some circumstances. Transactions are covered under the consumer guarantees where a product or service is:

- under \$100,000⁹, or
- over \$100,000 and normally bought for personal, domestic or household use or consumption, or
- vehicles and trailers used mainly to transport goods on public roads.

However, even if a transaction meets the above criteria, the consumer guarantee rights do not apply if the goods or services are purchased to be re-supplied or to be used up or transformed in the course of a process of repair, production or manufacture.

Consequently, many flights purchased by businesses for travel their employees are undertaking for work would arguably be covered by the ACL consumer guarantees. As such, the ACCC considers that the Aviation Industry Ombuds Scheme should not exclude complaints from businesses or not-for-profit organisations. We also agree with the view expressed in the consultation paper that it would be more expeditious, fair and cost efficient for small businesses and not-for-profit organisations to resolve disputes with airlines and airports using the Aviation Industry Ombuds Scheme, rather than relying on litigation. Small businesses and not-for-profit organisations face similar access to justice issues as consumers.

Including issues with flights booked by businesses and not-for-profits in the scheme's remit will also help ensure consistency in remedies (ie. all passengers on the same flight facing that same delay or cancellation will be treated consistently, rather than based on the purpose of their travel). This consistency of handling will in turn likely help reduce burden on the member airlines.

Internal dispute resolution timeframes

The ACCC considers that the Aviation Industry Ombuds Scheme's complaint resolution process should include a set timeframe in which the airlines and airports are required to resolve complaints before they are escalated for consideration by the scheme.

The ACCC considers that the timeframe for airlines and airports to try to resolve complaints before they are escalated to the Aviation Industry Ombuds Scheme should be a clear maximum time limit, rather than an imprecise requirement like specifying it should be done within a "reasonable" time and setting out factors to be considered in assessing whether or not a complaint was dealt with in a reasonable time during airlines' and airports' internal dispute resolution processes. This would add unnecessary confusion and another area for potential dispute that could further delay the resolution of complaints. It also risks consumers not making their way to the scheme at all due to the barriers this can create.

As part of its requirements for financial services licence holders, ASIC sets certain standards for financial service providers' internal dispute resolution processes. This includes requiring most financial firms to provide a response to a complainant with the final outcome of their

⁹ From 1 July 2021, the monetary threshold for the definition of a consumer was increased from \$40,000 to \$100,000. See [Regulation 77A](#), Competition and Consumer Regulations 2010

complaint no later than 30 days after receiving the complaint.¹⁰ The ACCC considers there could be merit in aligning the timeframe requirements for airlines and airports with this requirement for financial service providers, noting that financial complaints can often be quite complex.

The Aviation Customer Rights Charter could include the mandatory timeframes for the airlines and airports on resolving complaints at the IDR stage.

Time limits for making a complaint

Ombuds schemes in Australia generally have time limits in place for consumers to make a complaint after the issue arising or after attempting to have the complaint resolved directly between the consumer and the scheme member.

For example, the TIO can accept a complaint if a consumer complains to TIO within 2 years of first discovering the issue or problem. The TIO has discretion to consider complaints that occurred longer than 2 years in the past, but within 6 years of the issue or problem arising. In exercising this discretion, the TIO will consider the reason for the delay, when the consumer should reasonably have first discovered the issue or problem, and any impact the delay might have on the scheme member.

In the case of AFCA's scheme, in most cases consumers have 2 years to lodge a complaint with AFCA after receiving a final response to the complaint from the financial service provider.

The ACCC considers it is appropriate for the Aviation Industry Ombuds Scheme to have time limits for consumers to make a complaint after receiving a final response from a member of the scheme. There is merit in Aviation Industry Ombuds Scheme having the discretion to consider complaints beyond the nominated time-limit in exceptional circumstances, such as the consumer experiencing issues which have placed them in a position of vulnerability, and so impacted their ability to lodge a complaint. Further, given some consumer claims may turn on the specific reasons behind, and causes attributed to, a delay or cancellation, any time limits for making complaints should also take into account the need for consumers to be able to obtain this information from the Aviation Industry Ombuds Scheme in order to understand their ability to make a claim.

Maximum monetary amount

The ACCC understands the Federal Government's position that it considers it is appropriate that there be a maximum monetary amount that the ombudsperson is able to award in any specific case. Setting a maximum monetary amount recognises that the more appropriate fora for resolving some higher-value aviation related claims may be a court or tribunal. Further, as noted earlier, having an ombuds scheme framework where the ombudsperson's determinations are binding on the member, but a complainant can choose to reject the determination and pursue action through a relevant court or tribunal, means that complainants still have an avenue of recourse if they consider they are entitled to a higher amount of compensation.

To ensure any limits can be more adaptable to future changes circumstances, the ACCC considers that any maximum monetary amount should be set out in the rules for the

¹⁰ ASIC, [RG 271 Internal dispute resolution](#), 2021, accessed 25 September 2024

scheme's day-to-day operations (rather than being set in the legislation establishing the scheme).

The ACCC recommends the Aviation Industry Ombuds Scheme should also be able to award compensation for non-financial losses.

The ACCC also considers it appropriate that maximum monetary amounts should be subject to regular indexation and review, in consultation with stakeholders, to account for the impacts of inflation or changes in the cost of living over time. This should be set out in the rules for the scheme's day-to-day operations. For example, the AFCA Rules set out the maximum monetary limits it can award per claim and require AFCA to adjust these monetary limits every 3 years, in line with the higher of the percentage increase in the Consumer Price Index or Male Total Average Weekly Earnings (as per the Australian Bureau of Statistics).¹¹

These measures would align the Aviation Industry Ombuds Scheme with comparable ombuds schemes in Australia and would ensure that the Aviation Industry Ombuds Scheme is sustainable and equitable in its long-term operation.

In considering maximum monetary amounts the ombudsperson can award in any individual claim, the ACCC recommends:

- The maximum amount should be calculated on a per-passenger per-claim basis.
- The maximum amount for non-financial loss should reflect the physical inconvenience and time taken by a complainant to resolve their dispute.
- The ombudsperson should be able to exercise discretion to award money above any maximum monetary limits in exceptional circumstances, where the ombudsperson considers it is fair and reasonable to do so.

Additional measures

Show cause arrangement and the ombudsperson's power to obtain information

The ACCC supports the Federal Government's commitment to adopt a 'show cause' arrangement with additional requirements for airlines to report the reasons for delays and cancellations as part of the airlines' regular reporting of flight data to the Australian Government's Bureau of Infrastructure and Transport Research Economics (**BITRE**).

The introduction of the show cause arrangement will increase transparency about the reasons for flight delays or cancellations and will also likely assist the ombuds scheme in considering complaints.

For this reporting, the ACCC supports the development of simple, clear categories for the reasons for flight cancellation or delay. The arrangement should strike an appropriate balance between requiring airlines to provide sufficient but not excessive detail on the reasons for cancelling and/or delaying flight. It should also build on the existing BITRE framework, to help reduce burden.

¹¹ Australian Financial Complaints Authority, 2024, [Complaint Resolution Scheme Rules](#), D.4.2

We note that the Department will be conducting a separate consultation process on the design of the reporting requirements, and that the government will also consider potential interaction between this requirement and the reforms to the Sydney Airport Demand Management framework, announced by the government in February 2024. The ACCC supports this further consideration and notes that it would be clearly more beneficial to have one consistent information disclosure arrangement, rather than airlines having to understand and comply with 2 separate arrangements.

In addition, the ACCC strongly supports the Aviation Industry Ombuds Scheme having the ability in the scheme's terms of reference or rules to obtain additional information about flight cancellations or delays from airlines and airports, including having the ability to:

- obtain detailed information and document relating to the reasons for delays or cancellations as reported to BITRE, and
- obtain additional information relating to specific delays or cancellations the subject of a complaint, or for which the scheme may provide pro-active direction to scheme members on remedies to be provided.

Aviation Customer Rights Charter

The ACCC supports the Government's commitment to introduce an Aviation Customer Rights Charter, to provide greater clarity about the obligations that the industry has to its customers.

While the current consultation is not seeking stakeholder views on the content of the Charter, in developing the Charter the ACCC highlights that Government will need to ensure:

- the obligations in the Charter do not limit or change any obligations that businesses must still comply with under the CCA and ACL, and
- nothing in the Charter, or in decisions made by the Aviation Industry Ombuds Scheme in accordance with the Charter, will affect, exclude or interpret any provisions of the CCA or ACL.

The ACCC considers there is merit in the Charter providing more prescriptive requirements than is currently set out in the ACL, including:

- timeframes for airlines or airports to provide refunds, compensation or other remedies
- the length of flight delays that are considered unreasonable
- obligations about what information airlines have to communicate to customers about flight delays and cancellations and when
- specific compensation amounts for certain events, and guidance on factors to consider where it would be fair and reasonable to provide amounts higher than the set amounts
- requirements for airlines' and airports' internal dispute resolution processes, including timeframes in which they must provide a response to a consumer complaint with the final outcome of their complaint.

A well-designed Charter will assist airlines and airports to pro-actively provide reasonable remedies and resolutions before an issue even escalates to an internal complaint, and to more rapidly and satisfactorily resolve complaints through their internal dispute resolution processes. This will then likely reduce the number of complaints escalated to the Aviation Industry Ombuds Scheme, which will help reduce burden for both the scheme and airline and airport members of the scheme.

In particular, in the absence of the inclusion of specific compensation amounts in the Charter, these will instead need to be determined on a case by case basis by the ombudsperson, leading to delay for consumers and significant additional costs to industry.

The Charter will also need to be regularly reviewed to ensure it evolves and remains appropriate for current circumstances, issues and technologies.