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Attention:

Department of Infrastructure, Transport, Regional Development, Communications & the Arts
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By email: aviationconsumer@infrastructure.gov.au

BARA response to the Aviation Industry Ombuds Scheme Consultation Paper

The Board of Airline representatives Australia (BARA) is an industry association representing the interests of most international carriers that serve Australia, focused on assisting their aviation operations to and within Australia. BARA members represent approximately 60% of all international aviation capacity operated to Australia (Bureau of Infrastructure and Transport Research Economics (BITRE) CY2023 data).

BARA members airlines vary enormously in the scale of their operations to Australia. The largest carriers operate multiple wide-body aircraft every day to all or most major Australian international airports, whilst the smallest may operate a single smaller aircraft to one airport a few times per week. BARA has sought input from across this span of members, as in response to the design and subsequent implementation of the Aviation Industry Ombuds Scheme (the Scheme), it is important to consider the potential impact on these different sized operators, to avoid unequally burdening smaller carriers.

BARA supports Scheme design that will genuinely improve overall aviation industry passenger outcomes. This requires a primary focus on communication, education, and mediation rather than only the application of financial penalties on participants, which do not (as has been well demonstrated in analysis of 'similar' overseas schemes) help deliver the desired overall industry performance outcomes.

BARA thanks the Department for seeking input from stakeholders on the design of this important new scheme and appreciates the opportunity to provide these comments. BARA remains available for any further clarification or consultation regarding this input provided.

Yours sincerely



Stephen Pearse
Executive Director

BARA provides the following feedback and comments to the specific questions raised within the Aviation Industry Ombuds Scheme - Consultation Paper

A. Design of the Scheme

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

- BARA considers that the scheme should focus on providing opportunities and appropriate processes that deliver better passenger outcomes and help achieve resolution when issues do arise, rather than primarily seeking to impose penalties on aviation providers.
- An international air travel journey involves a complex ecosystem of suppliers and providers which for the most part operates incredibly well. The Scheme should therefore focus on both facilitating complaint resolution where issues have arisen with enhanced options for mediation, and on improving communication between all stakeholders for continuous improvement.
- The scheme should help educate and inform consumers about their rights and responsibilities (both under existing Australian Consumer Law (ACL) and existing international conventions related to air travel).
- The scheme must balance between ensuring consumers receive the protections to which they are entitled yet allow the aviation industry to provide diverse and competitive offerings to consumers.

Q2 - What powers and functions should the ombudsperson have?

- The primary function of the ombudsperson should be to facilitate communication and education about existing rights. The suggestion to develop an Australian equivalent of the UK's Air Passenger Travel Guide, which sets out passengers' rights and responsibilities, is one that BARA supports.
- The ombudsperson must ensure that procedural fairness is practiced, with all referred complaints dealt with on their individual facts and merits.
- The powers of the ombudsperson should be limited to seeking information related to specific cases.

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

- The scheme should have a governance structure that includes a wide variety of stakeholders, including airlines, airports, consumer groups and other relevant associations. The governing body should ensure cost-efficiency and procedural fairness for both consumers and stakeholders.

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

- The Ombuds Scheme should be governed by a collective of stakeholders with a funding structure focused solely on monitoring the provision of efficient outcomes, identification of trends for communication back to the industry at large to facilitate continuous improvement, and cost recovery.

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?

- BARA supports the separation of roles to appoint two separate ombudspersons – one for consumer issues, and one for aircraft noise.
- BARA is supportive of a single framework within the Department of Infrastructure if it is more cost-efficient to have both ombudspersons operate within a single governance model.
- However, complaints related to aircraft noise versus consumer issues differ considerably and noise complaints in particular involve more complex and technical reviews of specific airline operations and the actions of air navigation providers.
- Consumer travel complaints and noise complaints require very different subject matter knowledge.

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?

- BARA is not aware of any current members who believe they should be excluded on the grounds of their home jurisdiction obligations, treaties or international air services agreements, however once the scheme is operational carriers will be in a better position to further advise.
- BARA strongly supports that the proposed Ombuds scheme membership should be widened to include all principal stakeholders involved in facilitating air travel. Specifically, this includes: -
 - Airservices Australia as the incumbent air navigation service provider (ANSP) in Australia, and
 - Travel agents and other booking intermediaries (see response to Q12)
- Evidence from schemes in place overseas highlights the incidence of delays and disruptions which stem from ANSP actions – including allowable responses due to weather & safety concerns, or in contrast delays caused by internal ANSP service delivery failures.
- For the Australian Ombuds scheme to better achieve its stated goal of improving outcomes for consumers, it is imperative that shared accountability exist across all key players impacting the consumer’s travel experience.

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

- The introduction of a new Ombuds scheme intending to fully capture and manage responses across the complexity of all air travel international and domestic from initiation is a significant challenge.
- BARA members are predominantly (but not exclusively) international carriers, with over 90% of their capacity concentrated into the four major international airports of Sydney, Melbourne, Brisbane and Perth. There are potentially distinct differences in consumer expectations of international versus domestic air travel.
- International air travel for consumers may be ‘standalone’ point-to-point on an international carrier from one of these major Australian airports to an overseas port, or may include a domestic connection(s) prior to international departure (and the same in reverse), or the total journey could be on an Australian airline (domestic and international sectors). Such itineraries may be constructed as ‘through tickets’ inclusive of a domestic Australian airline sector(s), or comprise of separate tickets for the different portions of the total journey purchased by consumers independently. This variability creates additional complexity in reviewing whether to

phase in one type of passenger journey (or stakeholder) versus another within the scheme from the onset.

- BARA does not consider that there is a simple answer to this issue however urges the Government to carefully consider how a scheme can be most successfully implemented from the start to prioritise delivering enhanced outcomes. BARA is available for additional consultation on this aspect of the Ombuds scheme implementation.
- The issue of the Scheme funding model (see BARA Q8 response) is an additional issue that the Government may wish to review in parallel with that of whether to phase-in some elements of the scheme.

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

- The scheme should operate cost-efficiently (as overseen by its industry-wide Board) and with defined parameters and goals related to administrative costs per claim.
- BARA acknowledges that all scheme participants will be required to fund the Ombuds scheme.
- BARA understands that some other industry ombuds schemes such as the Telecommunication Industry Ombudsman (TIO) or the Australian Financial Complaints Authority (AFCA) are funded by a combination of: -
 - A flat membership fee, plus
 - a volume related payment related to the % of complaints handled for each participant, and/or
 - payment adjusted by the number of those complaints that are escalated within the complaint’s resolution process
- BARA considers that the proposed participants in the Aviation Ombuds Scheme are different in nature and number than those covered under these other industry ombuds schemes such as the TIO (1577 participants) or AFCA (44,958).
- The airline industry is structured very differently to those industries. According to BITRE Jun-24 data, there were 60 airlines operating international services to/from Australia – of which 3 were cargo carriers and 3 are also domestic Australian airlines (QF, JQ and VA). Domestic pax in Jun-24 represented 58.4% of all pax carried in the month. BARA airlines ranged from the largest carrying 307k pax (3.9% of the total INTL + DOM passenger numbers) to just 1,387 pax (0.018% of the total) – a range so vast that even a low-level flat membership fee could be inequitable in its application.
- BARA therefore suggests that a flat membership fee for the Aviation Ombuds scheme may be inappropriate with respect to both total contribution and equity. Instead: -
 - INTL carriers could contribute to the funding of the scheme based on the proportion of complaints received in relation to each airline, or
 - A participation fee for international carriers must be tiered by carrier size based on passengers carried or operated capacity (BARA membership is based on capacity defined categories as reported by BITRE).

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?

- BARA recommends the Government disallow 3rd party applications to the Australian Ombuds scheme (see responses to Q13 & 14), to avoid the situation prevalent in Europe where an ‘industry’ has emerged to encourage claims purely for financial gain rather than focusing on issue resolution and the outcome of delivering overall passenger experience improvements.

B. Complaint Handling

Q10 - What types of complaints should be eligible for consideration by the Aviation Industry Ombuds Scheme, and what types of complaints should not?

- BARA understands that IATA has outlined a range of eligible and ineligible types of complaint categories which (as BARA members are all IATA members) BARA endorses.
- These include (but are not limited) that for eligibility: -
 - The complainant is to be the only person filing the complaint, and it should not be a third party filing on their behalf.
 - To be eligible to make a complaint against a scheme member, a passenger must have already complained to that stakeholder directly in writing and either received a final written response (a 'deadlock letter') or given the stakeholder eight (8) weeks to respond to the complaint.
 - The complaint only relates to a specific ticket. Cases should be reviewed on a ticket-by-ticket basis.
- Ineligible claims should include (but are not limited to): -
 - 'Class action' type complaints
 - Subjective quality of service issues
 - Complaints pertaining to breaches of privacy which should be handled by the Commonwealth's Office of the Australian Information Commissioner
 - Complaints relating to a disruption caused by medical reasons (such as a sick passenger requiring attention, thus delaying or diverting a flight) or due to government agency enforcement
- In terms of jurisdictional validity, in accordance with the Chicago Convention (1944), the aviation scheme passenger rights regimes should only apply to events related to flights departing Australia, so as to avoid any conflict with laws and practices of third countries.

Q11 - Should the Aviation Industry Ombuds Scheme be able to accept complaints relating to breaches of privacy by members of the scheme?

- No – see response to Q10

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?

- BARA submits that travel agents & other intermediaries should also be covered by the scheme.
- A significant proportion of particularly international travel is booked via travel agents and other intermediaries (such as online travel agents (OTA's)). If these intermediaries do not pass on required or relevant passenger information to the airlines through the booking channels, the airlines cannot know nor communicate with the passengers regarding any specific circumstances, requirements or expectations for their air travel (this may also include provision of information related to the handling of passengers with disabilities). Similarly, if travel agents or other intermediaries do not pass on necessary schedule or equipment changes to passengers or have not verified passenger contact details and cannot therefore pass on

relevant information, then in these cases delays, disappointment and disruption can occur due to issues well beyond the control of airlines (or airports).

- Passenger refund issues can often also be as a result of an agent or intermediary response, especially if travel itineraries are complex and include not just air travel but significant other land and ancillary arrangements requiring refunds and the potential application of cancellation or other administrative fees. BARA airlines are aware of issues during the recent recovery from the Pandemic when airfare refunds had been processed to time back to an agent or intermediary (for example when border closures were extended or re-introduced thereby impacting passenger travel plans) yet the passengers did not receive monies for much longer due to additional complexities of their land arrangements; - yet these customer perceived and complained that the refund issue was the fault of the airline.
- BARA maintains that all booking intermediaries should be similarly accountable under the scheme for appropriately providing their contracted services as will be airlines and airports.

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

- BARA members report occasional and infrequent claims arising through various state Consumer Administrative Tribunals. The proposed Aviation Industry Ombuds Scheme should include rules and provisions to avoid complaints or issues being raised multiple times if one path of resolution has not been deemed to have provided an appropriate or the desired outcome by the complainant.

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

- An eligible complainant (with respect to airlines) should be defined as a “passenger” meaning an individual who is either the purchaser, and/or the recipient of goods or services provided by a scheme member (airline) under an aviation services contract (booking).
- Third parties (complainants on behalf of passengers) should not be eligible.

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?

- BARA does not consider that businesses or organisations (whether NFP or other) should be eligible to lodge complaints under the scheme. Regardless of the form or channel of booking or payment, individuals (or groups booked together) are direct customers (passengers) of airlines and if dissatisfied need to resolve any issues by first complaining directly as per the scheme timelines and guidelines, and only then if dissatisfied be eligible to raise to the ombudsperson.

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

- The Australian Government Treasury have issued complaint resolution guidelines – these are generic but include case management and escalation provisions which should be maintained.
- Complainants must have already lodged a complaint with the relevant stakeholder (whether this be the airline, airport, travel agent or ANSP) and allowed 8 weeks for a satisfactory response.
- Additional time for response in relation to mass disruption or force majeure events may be granted by the scheme and if appropriate communicated to the complainant by the ombudsperson.
- In order to improve overall industry outcomes, the scheme should include a ‘refer-back’ mechanism, as this can provide a critical feedback loop for stakeholders leading to enhanced resolution of potential ongoing issues.
- The right to appeal any Ombuds Scheme decision should be reciprocal for both consumer and stakeholder.

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?

- BARA concurs with the generally accepted period of 8-weeks for an initial satisfactory response.
- Complaints must be lodged within 12 months of final travel date by passengers.

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

- See response to Q17

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

- BARA considers the Montreal Convention provides suitable maximum levels of compensation in relation to international air travel and should be adopted within the proposed scheme for consistency.

C. Guidance and Reporting

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

- A formal annual report should be the minimum requirement of the Scheme, providing clearly identified categories of complaints received and percentage that are resolved directly by airlines vs escalation, amongst other metrics.
- As the Scheme should also be focused on the continuous improvement of outcomes within the aviation industry, BARA further suggests that the Ombudsperson provide bi-annual trend data for all stakeholders to review, enabling scheme participants to better understand any systemic or persistent issues and take appropriate action more promptly.

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

- The consultation paper describes procedural fairness in a manner to which BARA would agree.
- The decision of individual claims should be kept confidential between the parties.

D. Show Cause arrangements

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

- The consultation paper advises that the Department of Infrastructure will consult through a separate process with the industry on the arrangements for reporting flight delay and cancellation data. This is especially relevant for international carriers, who do not currently provide separate delay data to BITRE. The costs and benefits of imposing such reporting obligations on airlines, including which airlines are required to report, will be material as to how effectively and efficiently the scheme can operate.
- BARA suggests that once an appropriate data collection process is determined, that BITRE be the sole recipient of the relevant data from airlines and the principal source of data provision to the Ombud scheme for investigating cancellation and delay data.
- The aviation industry is already working to further improve standardised reporting of IATA delay codes to avoid confusion and potential disagreements as to the primary causes of air travel delay or disruption.

E. Scheme Compliance

Q23 - What enforcement arrangements are appropriate to achieve compliance with the Aviation Industry Ombuds Scheme?

- Section 5.1 of the Consultation paper outlines some proposed Enforcement actions – BARA has no additional comment on these.