



Tuesday, 15 October 2024

Richard Wood  
First Assistant Secretary  
Department of Infrastructure, Transport, Regional Development  
Communications and the Arts  
GPO BOX 594  
Canberra ACT 2601

Dear Richard,

Thank-you for the opportunity to provide a submission to the Government's proposed Aviation Industry Ombuds Scheme. Brisbane Airport Corporation Pty Limited (BAC) has consistently supported mechanisms to build passenger protections in the Aviation Industry, including the independent review of consumer complaints. In its Greenpaper submission of 27 November 2023, BAC noted the lack of a dedicated consumer complaints body acting on individual customer matters (notwithstanding the industry funded and controlled Airline Consumer Advocate).

We believe that the establishment of an independent Aviation Ombuds Scheme (AOS) is a positive step towards building passenger confidence in aviation services. Given the critical role played by aviation in Australia's domestic and international connectivity, consumer confidence is central to sustaining growth in the sector and supporting the key industries reliant on aviation. The establishment of an AOS has the potential to provide a range of benefits to the travelling public, including enhanced accountability for sector participants, an improved travel experience, the ability to identify and drive systematic sector improvements, and increased transparency and trust in the aviation regulatory framework.

However, the introduction of a quasi-judicial mechanism needs to be carefully balanced and calibrated to avoid a system that adds cost and complexity to industry with limited effectiveness for end users. This balance includes the consideration of an ombuds' powers, functions, governance and funding, amongst others. It also requires an understanding of, and co-ordination between, the existing legislative, regulatory and institutional frameworks in place for consumers and the wider administration of the sector. Our response to the questions posed by the Department's Discussion Paper: *The Aviation Industry Ombuds Scheme* is based on these considerations.

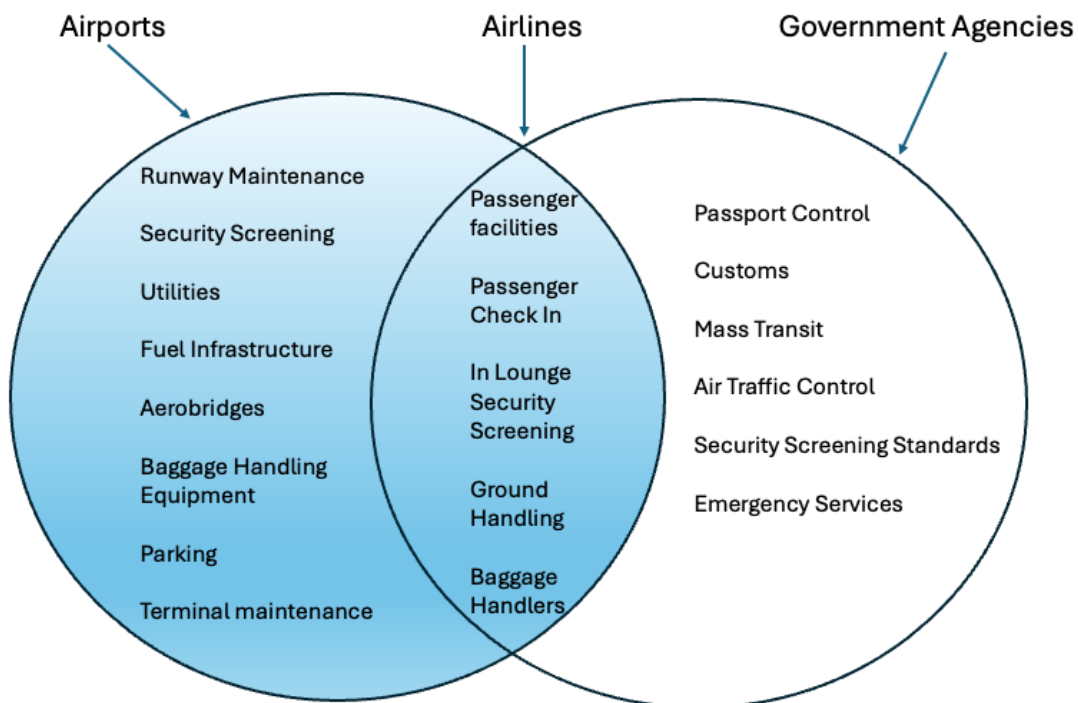
We offer our response in three parts:

- 1. The design of the Aviation Industry Ombuds Scheme**
- 2. Complaint handling under the Ombuds Scheme**
- 3. Guidance and reporting**

## The nature of passenger and customer complaints at Brisbane Airport

Airports are a highly complex and multi-layered ecosystem characterised by multiple players interacting in overlapping roles. This complexity has clear implications from a passenger rights perspective. For example, at Brisbane Airport (BNE), mass transit services are provided by Airtrain (via a contract with the State Government); passport control is administered by Border Force (Federal Government); and Air Traffic Control is serviced by Airservices Australia (Federal Government). Issues, delays or matters of service quality for these services are not within the direct control of BAC. Other services, such as airline lounges or baggage services have shared responsibility between airports and airlines, depending on the commercial structure of service agreements. A diagram of the aviation ecosystem (from a passenger perspective) is provided below:

Figure 1: the airport ecosystem



In line with the above depiction of the aviation ecosystem, BAC's own customer contact data suggests the majority of complaints are for matters concerned with parking, security screening and facilities management. Other matters (such as lost or damaged luggage) are referred to relevant, responsible, parties. This means that airports, although a critical component of the passenger journey, have a defined nexus of control, with some limited overlaps for specific functions.

Of additional note is the existing regulatory framework under s155 of the *Airports Act 1996* (Cth), providing the Australian Consumer and Competition Commission (ACCC) the power to monitor Quality of Service metrics (QSM) at major airports. Under QSM, a range of subjective measures from passengers are collected via surveys, then calculated by the ACCC on a scale of 1 to 5 (very poor to excellent). Items included for measurement include airport access (e.g. space for pickup/drop off); check in services and facilities; security inspection; flight information and public address systems; and the standard of gate lounges.<sup>1</sup> Results of airport performance are published on an annual basis by the ACCC, and measured against previous performance to provide an overall picture of airports' investment in passenger service. A similar monitoring regime does not exist for airlines.

<sup>1</sup> ACCC. *Guideline for quality of service monitoring at airports*. June 2014.

Therefore, any design of an Industry Ombuds Scheme (including the development of a Charter of Passenger Rights), needs to acknowledge the above relationships and complexity of the aviation ecosystem, and should not duplicate or conflict with existing regulatory arrangements.

## Part 1 – Design of the Aviation Industry Ombuds Scheme

### Objectives of the Aviation Industry Ombuds Scheme

Ombuds schemes are a well-established form of alternative dispute resolution and have been adapted to a diverse range of industries both locally, and overseas. Examples include the Telecommunications Industry Ombudsman (Cth), the Australian Financial Complaints Authority (Cth), and the Health Ombudsman (Qld). While all of these schemes operate within different corporate and legislative structures, a review of their enabling legislation, corporate reporting and external commentary provides key principles that can be universally applied to an AOS. These principles include:

- **Independence:** an ombuds scheme should operate independently from members of the aviation industry to ensure decisions are made impartially and without undue influence. This stands in contrast to the current dispute resolution scheme (the Airline Consumer Advocate), which is funded and administered by airlines
- **Accessibility:** an ombuds scheme should be accessible to all aviation consumers, providing a range of pathways and platforms from which to lodge complaints and seek advice. Brisbane Airport provides a range of passenger engagement points throughout its terminals and virtually via social media, its website (including chatbots, webforms and information sheets) and a dedicated customer service line
- **Fairness:** an ombuds scheme should ensure parties to a complaint are treated in an honest and impartial manner, with objective decisions made on evidence. The primary goal should be to protect the rights of aviation consumers and consider appropriate and proportionate remedies
- **Transparency:** processes and decisions made by an ombuds should be transparent, with clear, timely and consistent communication to all parties involved. Decisions made by the ombuds need to follow a clear set of principles and guidelines, with a consistent application to complaints
- **Efficiency:** an ombuds framework should seek to resolve complaints promptly and efficiently, seeking to intervene in a dispute as a last resort. Where intervention is required, the framework should minimise delays and ensure timely outcomes to all parties
- **Accountability:** an ombuds should be accountable for its performance, with regular reporting and reviews to ensure that it is undertaking its role in line with its objectives and implementing continual improvements to the delivery of its functions.

We believe that the establishment and operation of an AOS needs to be based on the above key principles. These principles will, in turn, inform and guide other key considerations of the AOS.

### Powers and functions of the Ombuds

As the potential cross-section of issues heard by the Aviation Ombuds are broad, an AOS needs to be supported with a range of powers to support its objectives. These powers, however, need to be proportionate to the Ombuds' scope and role, and ensure the efficient and timely handling of disputes. Based on the powers of similar ombuds schemes, and the principles outlined above, the powers of an AOS (from an aviation context) could include:

- **Investigative powers:** the Ombuds should have the authority to conduct independent investigations into complaints about aviation members, including issues related to delays, cancellations, lost luggage, and customer service. Investigative powers however need to directly relate to the scope of complaints within the jurisdiction of the Ombuds, noting the potential overlap with other administrative and legal review schemes;

- **Dispute resolution:** the Ombuds should facilitate the resolution of disputes between consumers and airlines or airports, providing adjudication services where necessary. However, clear criteria should be used to help inform whether an Ombuds seeks to actively adjudicate a dispute, including:
  - The capacity of parties to participate effectively
  - The context of the issue, including the history of past disputes with the complainant
  - The nature, importance and complexity of the issues in dispute
  - The likelihood of an agreed outcome; and
  - The cost to the Ombuds and members
- **Enforcement powers:** the Ombuds should have the power to enforce decisions. However, the scope of decisions made by the Ombuds should be carefully considered, including the type of undertakings prescribed to members. For example, under the Telecommunications Ombudsman Scheme, the decision maker may require a member to pay compensation for non-financial loss; or pay compensation to reimburse a consumer for the expense of having to deal with a situation or complaint.<sup>2</sup> We believe the discretion to exercise such a power should be carefully considered and weighed against the principles of fairness and efficiency (above).
- **Advisory role:** the Ombuds needs to support improvements in aviation industry practice by identifying and investigating systemic issues. The Ombuds can provide advice and recommendations to the government and industry stakeholders on improving customer service and compliance with consumer protection laws. Advisory functions should be able to be undertaken with or without a complaint.
- **Reporting and transparency:** the Ombuds should publish regular reports on the nature and outcomes of complaints, as well as the performance of airlines and airports in handling customer issues. This can include publishing and sharing statistics and trend analysis, case studies, and scheme commentary. Following from this reporting function, the Ombuds can raise public awareness about passengers' rights and the processes available for addressing issues with scheme members.
- **Collaboration with regulators:** the Ombuds needs to collaborate with regulatory and service delivery bodies (e.g. the ACCC, DITRDC, Department of Home Affairs and Airservices Australia) to ensure that industry practices align with consumer protection standards and to address systemic issues. Similarly, a collaboration and advocacy function can help provide additional insights for better regulation and monitoring of the sector.

## Governance Arrangements

While not addressed in the Discussion Paper, BAC presumes the AOS will operate as an independent not-for-profit company authorised by legislation. While BAC has no issue with this governance approach, it does note this structure is suited to an exclusively industry funded scheme. Accordingly, transparency and accountability are of primary importance to industry, as is the efficiency and effectiveness of the scheme for passengers/consumers.

BAC notes the intention of Government for the AOS to protect consumer rights and oversee the handling of noise complaints (with the appointment of two separate ombudspersons). These are two distinct remits with little to no complementary characteristics. Accordingly, while objectives of each distinct ombuds can be similar, the functions will not necessarily be the same (e.g. dispute resolution and enforcement will not be readily applicable to noise issues, given current policy and regulatory structures). Further, a noise ombudsman has already been established and operating since 2010, with over a decade of experience in addressing noise complaints. Combining a newly established function (consumer protection) with an existing, mature function (noise complaints), has the potential to cause conflicts not only in corporate governance, but also the capacity of the organisation to efficiently deliver its defined functions. This is notwithstanding industry recommendations to move the noise ombudsman function outside of Airservices Australia.

---

<sup>2</sup> Telecommunications Industry Ombudsman. *Terms of Reference*. 1 January 2022: Part 2.38(e),(f).

A board with appropriate representation across consumer issues and noise issues is therefore imperative. To ensure the board is across the issues of both aviation consumer matters and aircraft noise, BAC also recommends two board reference groups be established, comprised of a mix of technical, consumer, and community representatives, as appropriate. Consideration should also be given to how resources are allocated and where appropriate, shared, to ensure organisational expertise is balanced with operational efficiency.

From an information sharing perspective, as discussed previously, careful consideration should be given to the interaction of existing legislative frameworks for the sector. Particularly in the case of airport competition monitoring, the ACCC already has an extensive range of powers to monitor the quality of airport services and facilities, as outlined in s155 of the *Airports Act 1996* (Cth). These powers are in addition to the ACCC's powers to gather information under the *Competition and Consumer Act 2010* (Cth). Information provided to the ACCC should complement the QSM function, with the ACCC's reporting on airport performance focussed on matters outlined in by the ACCC's *Guideline for quality of service monitoring at airports* (2014). Any potential increase in scope to QSM measures (vis a vis AOS data) should be considered as part of Initiative 15 of the Aviation Whitepaper: *implementing an enhanced version of pricing and service quality at Australia's major airports*.

### **Members of Ombuds Scheme**

As discussed at Part 1, aviation represents a complex ecosystem of participants, with often overlapping roles in the passenger journey. While airports control specific aspects of the aviation value chain, the extent to which they can control a passenger's journey needs to be clearly understood. Further, where airports have direct control of a passenger journey (e.g. runway maintenance and utilities infrastructure), agreements with airlines may already be in place to compensate an airline for delays and cancellations. Therefore, where compensation arrangements are established by an AOS, airports should not be penalised twice in circumstances where compensation is sought for passenger disputes.

Consideration also needs to be given to the role of government-based services, such as air traffic control, passport control and customs. For example, in August 2024 alone, BNE was subject to 29 hours of an activated Ground Delay Program (GDP) due to resourcing constraints and other operational issues at Airservices Australia. Whilst this was a direct impact to Brisbane operations, the flow on impact of activated GDP's at other domestic ports should also be considered. Similarly, in FY24 BNE's international terminal experienced six recorded instances where a third-party service or application was unserviceable resulting in operational impacts (this includes outages to the APP platform and/or outages to Border Force equipment). Each of these incidents has direct effects on the passenger experience, and at times, may have knock on effects for other components of the passengers' journey.

### **Funding Arrangements for Ombuds Scheme**

The funding of an AOS should be directly related to the role of its members (as described above). This ensures those entities which are directly responsible for passenger complaints in the scheme contribute a proportional amount to its funding. Similar ombuds schemes are funded through a levy on airlines and airports based on their size, revenue or passenger numbers. However, given the role of government service delivery agencies, partial funding from government should also be considered to supplement industry contributions (e.g. repurposing current Aircraft Noise Ombudsman funding to establish and operate the AOS). This approach will ensure an AOS operates sustainably while still operating independent from industry.

Consideration needs to be given to how relevant entities in the aviation supply chain will seek to recover the costs of funding an AOS. Airlines may recover the costs of a levy directly through ticket pricing structures. Airports do not have a similar direct financial relationship with passengers/consumers and will most likely seek to recover AOS costs through aviation charges with airlines. This structure will be highly complex, given the myriad of pricing inputs influencing aviation charging agreements and airport service agreements, and the positioning of two private entities – airlines and airports – to negotiate the recovery of AOS costs based on commercial interests.

Similar to other independent Tribunals (e.g. the Queensland Civil and Administrative Tribunal), government could also consider a nominal complaint or application fee for lodging a complaint. A nominal fee can help to cover administrative costs for the AOS, while also providing an incentive for passengers/consumers to carefully consider their complaint before lodgment. For example, under QCAT, a minor civil dispute application costs \$90.10 for claims under \$1,000, and \$153.70 for claims between \$1000 to \$10,000. Importantly, these fees can

be reduced or waived under specific circumstances to ensure the scheme doesn't deter consumers from seeking redress.

BAC strongly recommends a 'mixed' approach to funding comprised of an industry levy, government contributions (to account for government service delivery functions) and an application/complaint fee. We note that the optimal mix of contributions may need to be refined as the scheme matures.

## Part 2 – Complaint Handling

### Complaint Eligibility

The range of passenger/consumer complaints in an aviation context can be extensive. BAC customer feedback data indicates complaints for its terminals are centred around cleaning, signage, security screening, and public transport accessibility. As stated at Part 1, airports are already monitored for performance on these matters by the ACCC under its QoS Monitoring framework. Notwithstanding this framework, there are matters which airports have defined passenger/consumer obligations, including:

- Car Parking, comprising the quality of facilities, ease of access, transfers, refunds and compensation
- Facilitation and support of passengers with specific accessibility requirements within defined areas of the terminal
- Security screening, including the conduct of security staff and the handling of customer items

Other matters fall within the direct ambit of airlines (noting commercial agreements with airports to deliver an appropriate standard of service), including:

- **Flight delays and cancellations:** including complaints, refunds and compensation related to significant delays, cancellations, and the handling of these situations by airlines
- **Baggage issues:** including complaints about lost, damaged, or delayed baggage, including the adequacy of compensation provided

**Customer service:** concerns about the quality of customer service provided by airlines, including issues with staff behavior and responsiveness

- **Accessibility:** complaints from passengers with disabilities or reduced mobility regarding the assistance provided within an airlines' area of responsibility
- **Ticketing and pricing:** issues related to ticketing and ticket terms and conditions. This could include incorrect charges, fare discrepancies, flight cancellation fees, rescheduling fees and no shows. Consideration could also be provided to problems with booking systems
- **In-flight Experience:** complaints about the in-flight experience, including seating, cleanliness, and availability of specific services.

The scope of an AOS review into the above matters should be guided by both an airline's ticket Terms and Conditions and its Terms of Carriage, and their interface with Australian Consumer Law. Further guidance is also provided under international standards on aviation consumer protection, administered by the International Civil Aviation Organisation (ICAO). Within this context, consideration of privacy matters under s35A of the *Privacy Act 1988* (Cth) would be outside the scope of eligible complaints, and arguably, the core intent of the AOS.

When considering services purchased through a travel agent or other third party, the privity of relationship between parties is of central importance. While many passengers book flights through travel agents or online booking platforms, the extent of responsibility for airlines may be dictated by separate commercial agreements with the third party. Airports, conversely, do not have direct relationships with travel agents and booking platforms, and therefore do not have control on the terms and conditions of a passenger/consumer's agreement. Noting this distinction, handling airline complaints from all sources ensures consistency within the AOS, and enhances consumer protection by addressing a broader range of issues that passengers/consumers may face.



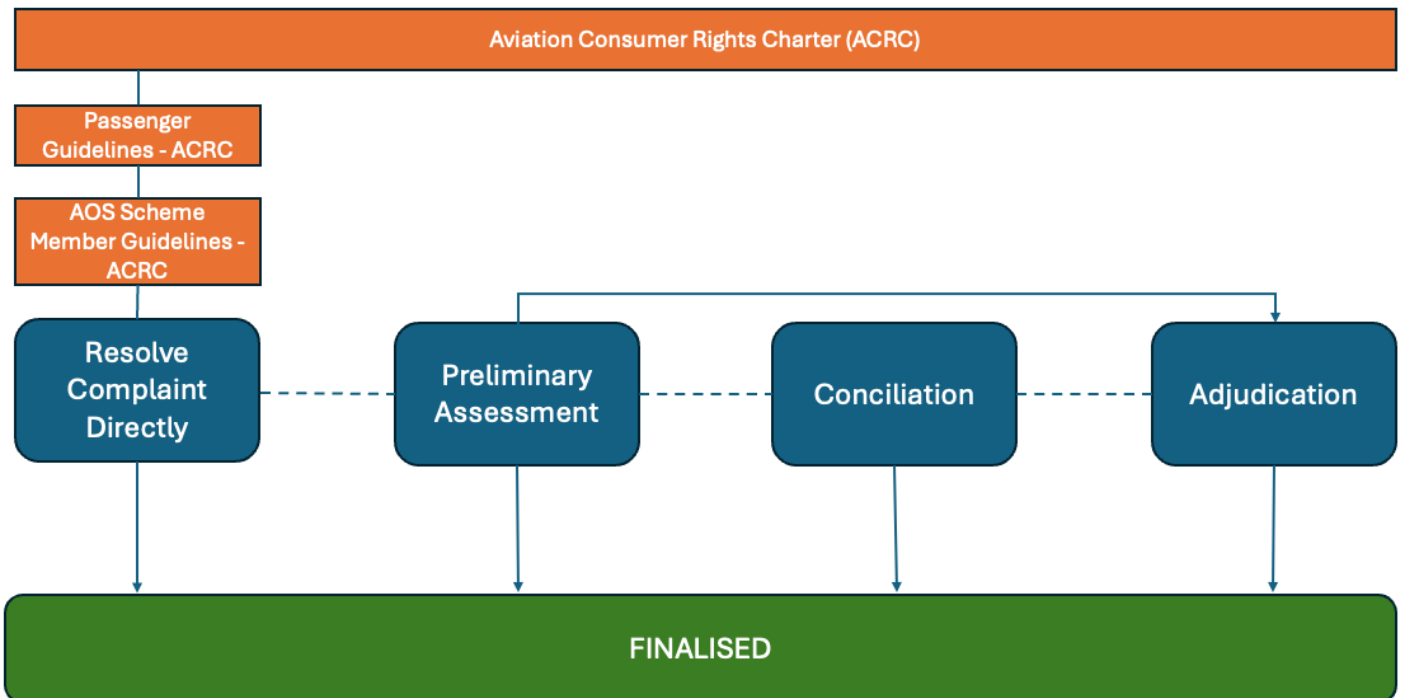
BAC recognises existing forums available to passengers/consumers on a range of aviation related matters. This includes the Information Privacy Commissioner (Federal), the Civil Aviation Safety Authority (Federal), and the Human Rights Commissioner (Federal and State). In Queensland, consumers may also direct complaints to the Office of Fair Trading for investigation (and referral to an appropriate agency) or conciliation. Ensuring a clear role and ambit for the AOS, as well as appropriate referral mechanisms between bodies, is therefore imperative to ensure passengers/consumers have a precise line of sight to complaints management in an aviation environment.

### Complaint Resolution Process

In line with the objectives of the AOS, as outlined in Part 1, BAC believes a complaint resolution process should focus on the scheme member's adherence to Aviation Consumer Rights Charter (ACRC). This means at first instance, passengers/consumers should seek to resolve the complaint directly with a Scheme member. Where a complaint cannot be resolved directly with a scheme member, a complaint can then be made to the Ombuds. The Ombuds may then undertake a preliminary assessment of the complaint against the ACRC, providing advice to the Scheme member on this assessment. Where a complaint remains unresolved after the preliminary assessment, the Ombuds may elect to move to conciliation, bringing parties together to find a resolution (and in turn, recommending an outcome). If a complaint continues to remain unresolved (or a Scheme member elects to defend a complaint), the Ombuds may formally adjudicate the complaint, providing a binding determination on the Scheme member. Note: under certain circumstances (e.g. the complexity of the complaint or the capacity of a complainant), the Ombuds should be given the discretion to move to adjudication immediately (refer to Figure 2, below).

The use of a preliminary assessment and referral method, followed by gradual intervention by the Ombuds, helps to balance the efficiency and accessibility of the Scheme against the need for transparency, fairness and accountability. Where possible, through the Ombuds guidance and reporting function, best practice in complaints resolution, together with clear guidelines on the ACRC, should be sought to be implemented by Scheme members. This 'adjudication as a last resort' approach will help facilitate the faster resolution of complaints, while improving the standard of complaints management across the sector.

Figure 2: Ombuds complaint resolution process



## Part 3 - Guidance and Reporting

### Publications by Ombuds Scheme and Aviation Consumer Rights Charter

BAC agrees publication of the Ombuds activities is a central component of ensuring transparency and accountability in the Scheme. The type and contents of these publications should be dictated by the functions of the Ombuds and the application of their powers on Scheme members. Similar schemes publish reports that include complaints, decisions and recommendations (including case processing times). Reports also include complaint data, trends on the nature of complaints as well as case studies and insights from cases. Given the governance arrangements proposed for the scheme, reporting on governance matters (e.g. strategy, financials, risk management, and board engagement) also needs to be published. We believe that from its initial inception, an annual report comprising the aforementioned inputs be considered. The development of further corporate publications can then be canvassed as the Scheme evolves and matures.

From a community and industry engagement perspective, the Ombuds should work closely with Scheme members to ensure they understand their obligations and respond to complaints as constructively as possible. Regular guidance and advice on the application of the ACRC to Scheme members is therefore recommended, particularly to define service quality standards and dispute resolution mechanisms. For example, the Financial Services Ombudsman (UK) provides a range of forums, steering groups and meetings with industry to share insights and improve complaint management across its consumer scheme.

### Procedural Fairness

Brisbane Airport recognises certain information published under the AOS may adversely affect its members. Where this is the case, BAC supports a process supporting natural justice to the relevant members. While the development of a process is for the Ombuds to finalise, we believe any process seeking to address the interests of a member should allow for the following:

- **Notification and consultation:** the Ombuds inform an affected member about its intention to publish data or information, providing reasonable time for the member to respond or raise concerns before publication
- **Right to respond:** the Ombuds allow the opportunity for an affected member to present their perspective on the data or information, and provide for an unbiased assessment of this perspective
- **Transparency:** the Ombuds develop and communicate the criteria and reasons for publishing data or information at first instance, and subsequently the incorporation of a member's response
- **Confidentiality:** consider commercially sensitive information and ensure only relevant and necessary data is published; and
- **Appeal mechanism:** ensure a process for members to appeal a decision if they believe it was made unfairly or without due consideration to a member's response.

Similar arrangements are in place for a range of statutory authorities undertaking investigative and reporting functions, including the ACCC, the Commonwealth Ombudsman, and the Australian Transport Safety Bureau.

While the above commentary is an initial response to the establishment of the AOS, we look forward to ongoing collaboration with the Department in ensuring the successful implementation of the scheme. We believe that a well-functioning scheme will ultimately benefit passengers and in turn, improve overall industry standards. If you have any questions regarding our response, please contact Mr Rishi Wijesoma on [REDACTED]

Yours sincerely,

[REDACTED]

Rachel Crowley  
**Executive General Manager**  
**Communications and Public Affairs**