



Submission

In response to the Aviation Industry Ombuds Scheme – Consultation Paper

30 October 2024

About this submission

Disability Voices Tasmania apologises for the delay in providing this response and hope that its views will be considered. The delay has been caused in large part by the fact that DVT has been without paid staff since 30 June 2024 and has, since shortly after that, been waiting on finalisation of new funding from the Federal Government. This means that all of its activities have had to be undertaken on a voluntary basis.

Disability Voices Tasmania

Disability Voices Tasmania (DVT) is an across-disability organisation providing a united voice on issues of concern to Tasmanians' with disability.

The purpose of Disability Voices Tasmania is to:

- Strengthen and promote the individual and collective voices of people with disability.
- Work together to ensure all people with disabilities can participate in and contribute to our community as equal and active citizens.
- Be an inclusive, diverse, transparent and democratic organisation led by and for people with disability.

Response to consultation questions

Consultation Question 1: What should be the objective of the Aviation Industry Ombuds Scheme?

The following example objectives listed are a solid basis for the scheme with proposed modifications:

- to provide an alternative early and effective dispute resolution services to aviation customers who have been unable to resolve their dispute directly with the airline or airport;
- to receive, investigate, make decisions relating to, given directions relating to, and facilitate the resolution of complaints by aviation customers about airlines and airports;
- to act impartially, independently and effectively in acquitting its functions recognising the power disparity between customers and airlines and airport providers.

DVT notes, however, that the scheme should have a specific objective relating to accessibility:

- to assist in the early resolution of complaints in relation to accessibility of airlines and airports and their related facilities and, to this end, to work co-operatively with federal, state and territory discrimination and equal opportunity statutory authorities;
- to report regularly/annually to the federal body with authority to licence and renew licences of commercial airline operators about the performance of all licensed airline operators in relation to both general consumer matters and accessibility of airline travel in particular.

Consultation Question 2: What powers and functions should the ombudsperson have?

DVT notes and endorses the comments in the submission of Dr John McPherson AM in relation to the importance of avoiding creating a “paper tiger’ due to unforeseen limitations in authority due to poor drafting”.

Further, DVT urges that the legislation establishing the ombuds scheme ensure that the ombudsperson is required to be pro-active in ensuring increased consumer protection and accessibility of airline travel to all current and potential customers. This includes having the capacity to make binding orders, give binding directions, accepting binding undertakings and have the power to enforce the production of data necessary to ensure the ombuds scheme can monitor airline travel and intervene where necessary.

Consultation Question 3: What governance arrangement should be adopted for the Aviation Industry Ombuds Scheme?

Again, DVT notes and endorses the response by Dr John MacPherson AM in respect of this question and further urges that the legislation require diverse consumer representation on the governance board with a specific requirement that it include representation by at least two people with disability with relevant expertise.

Consultation Question 4: If a board is established to govern the Aviation Industry Ombuds Scheme, what powers and functions should the board have?

DVT notes and endorses the response by Dr John MacPherson AM in respect of this question. In addition, the Board should have obligations to report publicly in accessible formats on the work and outcomes of that work of the scheme.

Consultation Question 5: 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?

DVT notes and endorses the response by Dr John MacPherson AM in respect of this question. In addition, consideration should be given to a third position with specific duties and functions in relation to ensuring compliance with human rights and equal opportunity obligations under Australia's discrimination laws, to work directly and collaboratively with existing statutory authorities in this area.

Consultation Question 6: What 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?

DVT notes and endorses the response by Dr John MacPherson AM in respect of this question. For people in some parts of Australia that are more remote or not connected through land transport, the importance of such a scheme is heightened. Any limits on coverage of airlines and airports, or the capacity to exempt airlines or airports, would undermine the universal benefit of the scheme and the particular benefit for those who are more reliant on air travel because of location and other circumstances.

Consultation Question 7: Should the government adopt a phased approach to the application of the Aviation Industry Ombuds Scheme to different categories of airlines and airports?

While a phased approach may appear attractive on its face, it would result in differential treatment of people seeking fair and accessible airline travel and airport services. Airline travel is a vital service for many in more rural and remote areas of Australia and any phasing of implementation is likely to particularly disadvantage people living in those areas.

Consultation Question 8: How should funding arrangements for the Aviation Industry Ombuds Scheme operate?

DVT notes and endorses the response by Dr John MacPherson AM in respect of this question. A factor in determining the level of the fee related to volume of complaints should include consideration of the timeliness of responses from airlines and airports, with lengthy time frames for resolution, even where no escalation is required, incurring increased fees.

Consultation Question 9: 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?

DVT notes and endorses the response by Dr John MacPherson AM in respect of this question. In respect of the composition of the Board, DVT urges that there should be significantly greater consumer representation than industry representation in recognition of the power disparity and resource capacity of industry. Further, the consumer representation should include both general consumer representatives with relevant expertise and specific consumer representatives from the disability advocacy and legal rights sector.

Consultation Question 10: What types of complaints should be eligible for consideration by the Aviation Industry Ombuds Scheme, and what types of complaints should not?

It is disappointing that the coverage in respect of disability access complaints is being treated as a matter for future consideration. Failures by airlines and airports to respond appropriately to the access needs of people with disability have been a constant feature of Australian airline travel despite the adoption by the Federal Parliament in 2005 of the *Disability Standards for Accessible Public Transport*. These failures result in people with disability being injured, their aids and equipment being damaged, their travel plans being disrupted and their human dignity undermined. Given the existing of nationally binding standards and the regular media reporting of grievous accessibility failures by airlines and airports, further delays in fulfilling the promise of accessible airline travel is unjustifiable.

It is also vital that the scheme have the capacity to deal with complaints that involve third parties, such as travel agents, security screening services, etc. It would be a serious problem if a customer was precluded from getting an effective and just outcome in relation to airline travel or airport facilities if there was joint or separate liability vested in a third party. The scheme should

be capacity of dealing with the entirety of the situation experienced. To do otherwise is to artificially disjoint that experience and put the customer to additional burden.

Further, complaints relating to business travel by individuals, such as to attend a meeting interstate or overseas or to participate in a conference, etc, should be within scope.

Consultation Question 11: Should the Aviation Industry Ombuds Scheme be able to accept complaints relating to breaches of privacy by members of the scheme?

DVT notes and endorses the response by Dr John MacPherson AM in respect of this question. Again, while some complaints may be discrete in terms of the scope of issues, many will involve a range of concerns arising out of an incident or experience. To the greatest extent possible, the entire incident or experience should be within scope for the complaint resolution process.

Consultation Question 12: 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?

DVT submits that third-party providers of services directly linked to the provision of airline or airport services should be dealt with as part of a whole-of-complaint resolution approach. Artificially disjointing complaints undermines access to justice for people who experience problems with airline travel or airports.

Consultation Question 13: What potential complaints schemes or processes have the potential to overlap with the Aviation Industry Ombuds Scheme?

DVT notes and endorses the response by Dr John MacPherson AM in respect of this question.

Consultation Question 14: Who should be eligible to make complaints to the Aviation Industry Ombuds Scheme?

DVT notes and endorses the response by Dr John MacPherson AM in respect of this question.

Consultation Question 15: 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?

DVT notes that there may be a justification for limiting the eligibility of large not-for-profits. It is vital, however, that smaller not-for-profits, particularly those run by members of disadvantaged or marginalised groups (including people with disability) be eligible to make complaints under the scheme. It may be appropriate to limit eligibility to small NFP (say with 15 or less EFT staff) and all NFPs that are Disabled Persons' Organisations (DPOs).

Consultation Question 16: What complaint resolution process should the Aviation Industry Ombuds Scheme adopt?

DVT notes and endorses the response by Dr John MacPherson AM in respect of this question.

In respect of Stage 1 of the process, the legislation should set a statutory time limit on the time available to the scheme member to resolve the complaint. This should be no more than 3 months, irrespective of the complexity of the situation. Further, respondent entities should be required to provide at least annual reports of all complaints received and dealt with, including time frames for initial responses, and outcomes of the 'internal' processes, eg, resolved, referred to the scheme, etc. That reporting should be publicly available in accessible formats.

In respect of referral, this should be an automatic process if the complaint has not been resolved within the statutory time frame. The referral should include all of the material already provided by the customer to the scheme member and all responses provided by the scheme member. The scheme can then engage directly with the customer as to whether or not they wish to continue with their complaint.

In respect of Stage 2, there should be no referral back of the complaint to the scheme member on receipt of a referral from the scheme member. This would add a level of unjustifiable frustration for the customer who has already had to go through the scheme member's process without satisfaction.

In respect of Stage 3, to the greatest extent possible there should be no duplication of requirements on the customer who has complained. It is well

understood that multi-stage processes can become exhausting and result in complainants being unable to meet timelines for responding or being confused about why they are being required to respond again to matters they have already responded to.

Consultation Question 17: How much time should an airline or airport have to resolve a complaint, before the complaint is considered by the Aviation Industry Ombud Scheme? What factors should be considered by the Ombudsperson in deciding if a complaint is resolved within a reasonable time?

DVT notes and endorses the response by Dr John MacPherson AM in respect of this question.

A matter that could be included in the legislative framework is the option of the complainant being able to extend the time available to the scheme member to resolve the complaint before it is automatically referred. This approach is found in the *Anti-Discrimination Act 1998* (Tas) in respect of the statutory timeframe for complaint investigation.

Consultation Question 18: What time limit should apply for making a complaint?

The time limits found in personal injury laws and consumer protection laws – which we understand are generally 3 years – should apply, with the discretion to extend the time in appropriate circumstances.

Consultation Question 19: What should be the maximum monetary penalty amount the ombudsperson should be able to award?

In relation to remedies, there is no basis for limiting the monetary amount that can be awarded. Having a statutory limit has the effect of driving down all compensation awards as the limit is seen as applicable only to the most egregious situations. The awards must be capable of compensating for both economic and non-economic losses and harms. For example, if a person is, as a result of the actions of an airline or an airport, left without an operative mobility device, there will be economic costs in terms of repairs and accessing temporary alternatives. There will also be significant non-economic harms as the person will have much more limited mobility until such time as they are provided with a fully functional replacement for their damaged device. This is both a dignity harm, but also a harm to that person in respect

of their various activities for which they were undertaking travel, whether recreation or business.

Consultation Question 20: What regular publications should the Aviation Industry Ombuds Scheme produce?

DVT notes and endorses the response by Dr John MacPherson AM in respect of this question.

Consultation Question 21: What processes should the Aviation Industry Ombuds Scheme adopt to provide procedural fairness to scheme members before it publishes certain data and information?

DVT notes and endorses the response by Dr John MacPherson AM in respect of this question.

Consultation Question 22: What specific powers should the Aviation Industry Ombuds Scheme have to require airlines to provide information about delays and cancellations?

DVT notes and endorses the response by Dr John MacPherson AM in respect of this question.

Where an airline or airport asserts the reason for a delay or cancellation relates to a third party, including a customer, the Scheme should be provided by the scheme member with proof that this was the sole or operational cause of that delay or cancellation. It is important to avoid the possibility of people with disability being blamed for delays as has been the case in the past, including in litigation and as justification for restricting available spaces for wheelchair users on flights.

Consultation Question 23: What enforcement arrangements are appropriate to achieve compliance with the Aviation Industry Ombuds Scheme?

DVT notes and endorses the response by Dr John MacPherson AM in respect of this question.

DVT notes the critical importance of a government entity having responsibility for taking enforcement actions. Where a remedy has been ordered, the customer should not have to pursue that remedy.