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Department of Infrastructure, Transport, Regional Development Communications and the Arts  
GPO Box 594  
CANBERRA ACT 2601  
AUSTRALIA

**By email:** [aviationconsumer@infrastructure.gov.au](mailto:aviationconsumer@infrastructure.gov.au)

**IATA Response to *Aviation Industry Ombuds Scheme Consultation Paper***

The International Air Transport Association (IATA) is the global trade association for the world's airlines, representing some 340 airlines, or over 80% of total air traffic. Our members include Qantas, Virgin Australia and Link Airways, as well as many international airlines who operate services to/from Australia. We support many areas of aviation activity and help formulate industry policy on critical aviation issues.

IATA appreciates the ongoing, transparent consultation processes being undertaken by the Department in relation to the Aviation White Paper and other aspects of aviation policy. We are supportive of the path being taken by the Department toward the introduction of an Ombuds Scheme, which takes into account all key stakeholders from across the industry and consumers.

In our submission, we have provided IATA's global perspective and are confident that the Australian Government can learn from international best practices and implement a Scheme that other jurisdictions can look to, more broadly, for inspiration. For the Department's convenience, we have outlined our position, and then broken out our response based on the consultation paper's questions in the appendix.

We look forward to continuing our discussions with the Government pertaining to the design of the Ombuds Scheme and welcome any questions you may have in relation to our submission.

Please do not hesitate to email me [REDACTED] or Chris Tudehope [REDACTED] should you require any additional information.

Sincerely yours,

[REDACTED]

Matteo Zanarini  
Area Manager South West Pacific



### *Design of the Aviation Industry Ombuds Scheme*

The International Air Transport Association (IATA) commends the Australian Government for taking the path of developing an Ombuds Scheme for the aviation sector, and for the thorough, transparent consultation process presently taking place to ensure that said scheme is one that takes all stakeholder views into account. The International Air Transport Association (IATA) believes that the proposed Aviation Industry Ombuds Scheme (Ombuds Scheme) for aviation should use the existing Australian Consumer Law (ACL) as reference given its status as a global best practice. IATA recognises ACL as global best practice for consumer law, and thus the implementation of the Ombuds Scheme should use ACL as the basis of the powers and functions of the scheme.

Australia has a unique opportunity to learn from the lessons of other jurisdictions and shape a credible alternative to the ineffective regulation introduced in the European Union (EU), United States (US) and Canada. Not only have those regulations generated a huge administrative burden with lengthy backlogs, they have also created an adversarial approach to claim resolution all the while leading to no improvement in consumer outcomes due to the disconnect between control and accountability given the complexity of the aviation eco-system.

IATA members explicitly wish to avoid the financial burdens associated with implementing EU Regulation 261/2004, which is estimated to be at least 0.5% of their overall cost base. In Canada, the Air Passenger Protection Regulations (APPRs) cost the Canadian Transport Agency (CTA) approximately CAD30 million per annum to administer and the ever-expanding claims backlog is in excess of 60,000 claims. Delays and cancellations in Canada and the EU are no lower than in Australia.

IATA therefore considers that the Government's focus should be on mediation and also ensuring that the Ombuds Scheme enhances the effectiveness of the current aviation ecosystem as a whole. IATA also recommends that the Government gives careful consideration to the administrative costs of the Ombuds Scheme and starts small to avoid repeating the mistakes of Canadian and European regulators.

IATA believes that Australia is in a prime position to implement a scheme that, as an association, we are able to point to as global best practice. We have every confidence that, through this consultation process, the Australian Government will seek to implement a scheme that others can look to for inspiration.

An appropriately designed Ombuds Scheme is one that should educate and inform consumers about their rights and responsibilities under ACL and, where applicable, international conventions. Indeed, it is pertinent that the scheme strikes a balance between protecting consumers and the competitiveness of the aviation sector.

As a base line for consumer education around their rights, IATA believes that the production of a single source of information, along the lines of the United Kingdom's *Air Passenger Travel Guide*<sup>1</sup> would bode well to ensure that the Ombuds Scheme is not needlessly clogged up by matters which are outside the intended scope of what is covered under the scheme. IATA's perspective is that informed consumers are empowered consumers and that appropriate provision of information *ex ante* can avoid problems occurring in the first place.

To improve the consumer complaint handling process and encourage better performance, airlines and airports should not be the only ones tasked to address consumer complaints. The Ombuds Scheme should adopt a broader shared accountability approach. Aviation is a complex and inter-connected system with multiple stakeholders having an influence over system performance and service delivery. Any regime will only be effective in improving consumer outcomes if all stakeholders in the system face incentives to offer high levels of service and are accountable if they do not. It is crucial that collaboration occurs across the whole value chain, so as to improve the customer experience. As seen in Canada, where 56% of 2022's delayed flights were for safety and reasons outside

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<sup>1</sup> Air passenger travel guide, Government of the United Kingdom (<https://www.gov.uk/government/publications/air-passenger-travel-guide>)  
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the airline's control<sup>2</sup>, there must be a balanced approach taken to the introduction of any manner of Ombuds Scheme. In the Australian context, H1 23 reporting<sup>3</sup> showed that almost 1 in 5 ground delays nationally were attributable to Airservices Australia. In Brisbane alone, 508 of the 597 "lost slots" were attributable to Airservices Australia. FY24 reporting<sup>4</sup> shows that over 6,300 hours of delays were attributable to weather and over 800 hours attributable to Airservices Australia.

It is important that the governance structure of the Ombuds Scheme is composed by a collective of stakeholders with a funding structure that is tightly monitored and controlled, focused solely on cost recovery. IATA is of the perspective that representation should include airlines, airports, consumer groups and associations. The governing body must seek to ensure cost-efficiency and procedural fairness for consumers and stakeholders alike and provide the ombudsperson with valuable information that will ultimately support consumer complaint resolution.

### *What falls within the Ombuds Scheme*

As the scheme is developed, the Government should consider international air service treaties as a base layer of any policy. Within the scheme, international air treaties such as the Montreal<sup>5</sup> and Chicago<sup>6</sup> Conventions must be respected, as these would supersede any Australian ombuds scheme. IATA notes ICAO's recent *Review of limits of liability* will result in increased limits for claims under the Montreal Convention from 28 December 2024<sup>7</sup>.

Also, it is important that all cases addressed by the Ombuds Scheme are resolved according to Australian Consumer Law (ACL). Experience in Europe with Regulation 261/2004 has shown the risk of effectively creating regulation on a case-by-case basis through the decisions of the Court of Justice of the European Union (CJEU).

In developing the Aviation Passenger Rights Charter, the Ombuds Scheme should consider the preservation of an airlines' ability to differentiate themselves through individual customer service offerings, thereby giving consumers the freedom to choose an airline that corresponds with their desired price point and service standards. It would be unwise to impose a regimen that would be overly burdensome on carriers focused on providing a value-based offering, as this has a high propensity to impact fares.

Similarly, the Ombuds Scheme must take into account the ICAO guidelines<sup>8</sup> pertaining to assistance to passengers in the case of airport/airline disruptions, which delineates what does and does not fall under airline jurisdiction. The working paper acknowledges that airlines are exonerated from providing more than basic services and assistance to passengers in extraordinary circumstances, force majeure, or situations beyond the airline's control. IATA would implore the Government to consider this in the development of the Ombuds Scheme. We would support the Government seeking to educate consumers on these global standards. Similarly, we would support education on the uncertain and sometimes fluid nature of air travel, whereby an initial delay window may increase or decrease due to changing conditions that also may be out of the airline's control.

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<sup>2</sup> Almost half of all flight delays in 2022 were airlines' responsibility, government data suggests. CBC Canada. Available at: <https://www.cbc.ca/news/politics/2022-flight-delays-airline-responsibility-compensation-1.6987189>

<sup>3</sup> Australian Aviation Network Overview FY23. Airservices Australia. Available at: <https://www.airservicesaustralia.com/wp-content/uploads/Australian-Aviation-Network-Overview-Financial-Year-2023-3.pdf>

<sup>4</sup> Australian Aviation Network Overview FY24. Airservices Australia. Available at: <https://www.airservicesaustralia.com/wp-content/uploads/2024/07/Australian-Aviation-Network-Overview-Financial-Year-2024.pdf>

<sup>5</sup> Convention for the unification of certain rules for international carriage by air. IATA. Available at: <https://www.iata.org/contentassets/fb1137ff561a4819a2d38f3db7308758/mc99-full-text.pdf>

<sup>6</sup> Convention on International Civil Aviation – Doc 7300. ICAO. Available at: <https://www.icao.int/publications/pages/doc7300.aspx>

<sup>7</sup> Memorandum PSC/2024-10/112. IATA. Available at: [https://www.iata.org/contentassets/c33c192da39a42fcac34cb5ac81fd2ea/mc\\_99\\_ticket\\_notices-memo\\_psc2024-10-112.pdf](https://www.iata.org/contentassets/c33c192da39a42fcac34cb5ac81fd2ea/mc_99_ticket_notices-memo_psc2024-10-112.pdf)

<sup>8</sup> Assistance to passengers in case of airport/airline disruptions. ICAO 215<sup>th</sup> Session. Available at: <https://www.icao.int/sustainability/Documents/C.215.WP.14804.REV1.EN.PDF>



In line with the principle of shared accountability amongst airlines and airports, the Ombuds Scheme must take into account *all* key players in the consumer's travel experience. This includes, but is not limited to:

- Air Navigation Service Providers (ANSPs - i.e. Airservices Australia)
- Travel agents

As all actors play a role in ensuring the efficient and effective running of the aviation sector, to exclude ANSPs and travel agents would undermine the effectiveness of the Ombuds Scheme.

ANSPs play a crucial role in managing air traffic, which directly impacts the operational efficiency of airlines. Delays, absence or inefficiencies in air traffic control can lead to flight delays, cancellations and other issues that can affect passengers of no fault of the airline or the airport. While weather events are also known to frequently impact a consumer's travel plans, we do not foresee enforcement of the Ombuds Scheme against any party for this reason.

IATA is also of the view that travel intermediaries (brick and mortar and online travel agents) should be included as accountable stakeholders. While airlines are continuing to invest in customer communications technology, there continues to be a specific challenge with travel booked through intermediaries. In some cases, customer contact details are not shared with the airline, meaning that should there be any disruption, direct contact is impossible - exacerbated by time zone differences and varying operating hours. IATA is of the view that intermediaries should be obliged to forward contact details to airlines, subject to relevant data privacy considerations, or they should bear the accountability of any consequences for having failed to provide these contact details to airlines.

It is of interest to all parties that an amicable resolution of complaints between parties is prioritised, with a Ombuds Scheme focussed on education over enforcement. To allow for the seamless operation of the Ombuds Scheme, it is therefore essential to prioritise open communication and mutual understanding to avoid complaints becoming adversarial or litigious. It is indeed of great importance that any such scheme would seek to have enforcement as a last resort, in accordance with ACL.

#### *Appropriateness of Appointing Two Ombudspersons.*

Given the divergent nature of noise complaints versus consumer travel complaints, IATA believes that for the Ombuds Scheme to be both effective and cost-efficient, it can operate under a single framework as long as the ombudspersons handling consumer complaints and noise complaints remain distinctly independent and are differentiated by a specific complaint resolution framework. This is because both types of complaints differ considerably in motivation and involve complex, technical aspects of airline operations and air navigation providers.

IATA and its members fully support the principles and practices outlined in the ICAO Balanced Approach to Aircraft Noise Management<sup>9</sup>. The Aircraft Noise Ombudsman (ANO) should work closer with (or perhaps take ownership of) the Noise Complaints and Information Service (NCIS) to achieve better outcomes for impacted members of the community and become more effective in its operation. One such measure would be to publish anonymised complaint data and statistics on the number and nature of complaints, as well as the outcomes of any investigations. Another would be to quantify complaints not solely on the number of complaints, but the number of complainants and their locations. In 2023, NCIS received 51,589 complaints from 5,035 complainants, of which 20,716 of these came from one complainant<sup>10</sup>.

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<sup>9</sup> The Balanced Approach to Aircraft Noise Management. ICAO. Available at: [https://www.icao.int/environmental-protection/Documents/Publications/Guidance\\_BalancedApproach\\_Noise.pdf](https://www.icao.int/environmental-protection/Documents/Publications/Guidance_BalancedApproach_Noise.pdf)

<sup>10</sup> Airservices Australia submission (Submission 42) to *Senate Inquiry on the Impact and Mitigation of Aircraft Noise*. Available at: [https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Rural\\_and\\_Regional\\_Affairs\\_and\\_Transport/AircraftNoise/Submissions](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Rural_and_Regional_Affairs_and_Transport/AircraftNoise/Submissions)  
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By delineating the volume of complaints and areas of high complaint rates from complainants, the ANO and NCIS will be able to more effectively understand where the key issues lie with aircraft noise and flight path design.

Moreover, both consumer travel complaints and noise complaints involve complex and technical aspects of the aviation operation and require very different subject matter knowledge.

## Complaint Handling

### *Eligibility*

For a complaint to be considered by the Ombuds Scheme, it is crucial that there are clear parameters about what will and will not be accepted by the ombudsperson. Should the parameters not be clearly outlined or be too broad, there is a risk that the Ombuds Scheme will be overwhelmed by complaints from consumers who have not followed due process and are thus simply creating additional work for the ombudsperson.

It is IATA's recommendation that the eligibility guidelines employed by the Ombuds Scheme should include that:

- The complaint only relates to a specific ticket, and not to any sort of 'class action' type complaint whereby a group of consumers are attempting to achieve differing outcomes. Cases should be reviewed on a ticket-by-ticket basis.
- The complaint must have already been raised with the relevant scheme member, with the stakeholder having been given adequate time (i.e. 8 weeks, as seen in the UK's PACT<sup>11</sup>) to respond. Should the stakeholder not have responded within this timeframe - or should the outcome not be to the complainant's satisfaction - only then may they raise it with the ombudsperson citing the stakeholder's complaint reference number.
- The complaint must be filed no later than 12 months after the last sector on the issued ticket\*. This is to ensure currency of complaints being filed. The longer it takes for a complaint to be filed, the greater the risk of an airline not being able to effectively identify the cause of the issue. Should the complaint be filed a long time after the matter at hand, there is a risk of being outside the parameters of data kept by the airline. An extended or lack of time limit imposed has the potential for ongoing financial burdens and risk for airlines.
  - \*If a consumer is flying from Point A to Point B on 1 October and returning from Point B to Point A on 8 October, irrespective of whether their issue was on the first or second flight, the 12-month count would start from 8 October.
- The complainant is to be the only person filing the complaint, and it should not be a third party filing on their behalf. This is to avoid the creation of cottage industries, as seen in the European Union and United Kingdom, where third parties profit at the expense of consumers, airlines and regulators.
- The complaint is not to be about matters pertaining to breaches of privacy, as these should be handled by the Commonwealth's Office of the Australian Information Commissioner, as with any other concern pertaining to privacy breaches from any other sector of the economy.
- The complaint is not relating to a disruption caused by medical reasons (i.e. ill passenger requiring attention, thus delaying a flight) or government agency enforcement (i.e. deportation delaying departure of a service or border closures due to global pandemic).
- The complaint may pertain to failures to deliver on the set of standards for passengers with disabilities. To this effect IATA supports the development of a review of passenger disability standards. Furthermore, IATA welcomes a collaborative approach between the aviation sector and disability advocacy groups to

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<sup>11</sup> How the CAA can help. UK Civil Aviation Authority. Available at: <https://www.caa.co.uk/passengers-and-public/resolving-travel-problems/how-the-caa-can-help/how-the-caa-can-help/>  
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ameliorate outcomes for passengers with various needs. IATA is of the view that these standards should be separate to the Ombuds Scheme, but a failure to deliver on said standards can be brought before the ombudsperson.

- In accordance with the Chicago Convention 1944, passenger rights regimes should only apply to events occurring within the territory of the legislating State (i.e. Australia) or outside the territory with respect to aircraft registered there (i.e. in Australia) and therefore should only apply to flights departing Australia, so as to avoid any conflict with laws and practices of third countries. In a similar vein, the scheme should exclude claims for passenger death or injury under the Montreal Convention and equivalent domestic provisions, as these claims already have well-established processes through Australian federal processes.

### *Process*

As outlined above, and in order to qualify for an Ombuds Scheme review, complainants must have already lodged a complaint with the relevant stakeholder (whether this be the airline, airport, travel agent etc) and allowed 8 weeks for a satisfactory response. When a case involves a mass disruption or force majeure (i.e. severe weather, Australian government-imposed restrictions or computer malfunctions, such as the recent CrowdStrike global shutdown), scheme members should be allowed additional time to process the complaint and determine the origin of the cause. This should be clearly outlined to consumers at the time of lodging their initial complaint to the stakeholder.

Once a response has been received from the scheme member and/or adequate time (i.e. 8 weeks) has passed, the consumer may then submit to the ombudsperson. The focus of the Ombuds Scheme should be on mediation and seeking a resolution with which both the stakeholder and complainant are satisfied. As such we support a refer-back step in the Ombud Scheme process. Given any decision made by the ombudsperson would be deemed binding on both parties, we welcome a two-stage decision making process (preliminary finding to final outcome). To the extent that either party is unsatisfied with the decision of the Ombuds Scheme, then any right of appeal must be symmetrical i.e. both the consumer and the industry stakeholder has equal right to appeal.

IATA is not of the view that there should be any form of asymmetry between what applies to industry and consumers, with all accorded the same right for appeal. This approach aims to create a fair and balanced system where neither side has an advantage over the other, therefore ensuring that either party have the same opportunity to appeal a decision.

A satisfactory outcome, while working within the framework of ACL, should not be focused on financial aspects, such as punitive compensatory schemes, but rather by a means by which the system can work better and improve. If the system starts to prioritise compensation as the primary indicator of success, it risks becoming adversarial. This could lead to an increase in unnecessary legal disputes, rather than genuinely resolving the complaint. It will not be in the best interest of consumers. Any monetary remedy should be in line with existing law and should be proportional and linked to clear and demonstrated harm.

It is worth reiterating that there is the potential for protection regimes from third countries to overlap with the proposed Ombuds Scheme. It is therefore important to avoid duplication and potential 'double-dipping' by confirming that a complaint has not also been raised in another jurisdiction.

### **How to communicate the scheme's efficacy**

It is crucial to clearly delineate the roles and responsibilities between the Federal Ombuds Scheme and State Fair Trading offices. This will ensure a cohesive and efficient approach to handling consumer disputes, preventing overlap and confusion. Effective coordination and clear guidelines will help maintain a streamlined process, ultimately benefitting consumers by providing them with a transparent and reliable resolution pathway.



### *Reporting*

In order to report the effectiveness of the Ombuds Scheme, the ombudsperson should be seeking to produce an annual report of its activities, including audited accounts to ensure cost effectiveness and cost recovery. The Ombuds Scheme should avoid any additional reporting that does not provide explicit benefits to consumers or duplicates existing reporting. IATA welcomes the Government's commitment to reviewing reporting requirements and separate consultations that may result from this requirement. It is IATA's view that any reporting should focus explicitly on the scheme and its efficacy, as we do not view duplication of existing reporting requirements as being beneficial.

One of the key metrics of the current Airline Consumer Advocate is 'complainant satisfaction' with the resolution. Given the aforementioned structures in place, including clear requirements around eligibility, it would be expected that the outcome provided by the stakeholder and the ombudsperson would be to the complainant's satisfaction. Given the finite nature of the ombudsperson's decision (i.e. no means for complainant appeal), we do not believe that such a metric should be carried over to the new Ombuds Scheme.

### **How to instigate 'show cause' requirements**

IATA research has consistently found that one of the key priorities for consumers in the event of disruption is access to better information during disruption and before travel starts. This is not just a job for airlines, but for all stakeholders in the customer's travel journey. Given that a significant proportion of flight disruptions are due to circumstances outside airlines' control, it is crucial to be consistent with the equitable principle of shared accountability. Notably, all actors in the aviation ecosystem play a role in ensuring a smooth passenger experience and should be accountable for providing timely and accurate information related to flight disruptions within their control. This should be a streamlined process and based on standard reporting data.

Any 'show cause' requirements by the Ombuds Scheme should be strictly limited and linked to the specific complaint being considered by Ombuds Scheme. The Ombuds Scheme should have the power to specifically request further detail from a scheme member should the detail be unavailable through other reporting mechanisms. This should only pertain to specific complaints, and not broader trends. If there is a delay to their journey, data suggests that as a priority, consumers need to understand the length of the delay and how it may impact their overall journey, followed by the reason for the delay.

### **How to ensure scheme compliance**

IATA is of the view that the Ombuds Scheme should follow better regulation principles<sup>12</sup> whereby there is consistency and coherence, proportionality, and clarity around its requirements.

Should it be found that a stakeholder does not meet the obligations of the ombudsperson's decision (i.e. any amends that have been deemed appropriate), they should be reminded of their requirements under the Ombuds Scheme and in extreme cases may be referred to other bodies.

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<sup>12</sup> Good Regulatory Practices. ICAO. Available at: [https://www.icao.int/sustainability/Pages/regulatory\\_practices.aspx](https://www.icao.int/sustainability/Pages/regulatory_practices.aspx)  
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## Appendix: Responses to Individual Questions

### 1. What should be the objectives of the Aviation Industry Ombuds Scheme?

IATA considers that the overarching objective of the Ombuds Scheme should be to promote constructive engagement between stakeholders and across the whole value chain in order to improve the performance of the aviation network.

Additional objectives for the Ombuds Scheme should be:

- To educate and inform consumers and industry groups about their rights and responsibilities under Australia's Consumer Law (ACL);
- To assist consumer and airlines in addressing and resolving disputes efficiently. The ombuds scheme should prioritise mediation and seek to simplify complaint resolution;
- To strike a balance between protecting consumers and industry competitiveness, including preserving airlines' ability to differentiate themselves through individual customer service offerings.

### 2. What powers and functions should the ombudsperson have?

The primary functions of the Ombuds Scheme should relate to communication and education, including through the development of an Australian equivalent of the UK's *Air Passenger Travel Guide* (initially called the *Air Passenger Charter*), which sets out passengers' rights and responsibilities for passengers.

With regard to complaint resolution, the primary function of the Ombuds Scheme should be as a mediator between consumers, airlines and other actors in the aviation ecosystem. A responsibility for the Ombuds Scheme should be to ensure that all parties should be heard on specific cases. Aviation is an extremely complex industry. Airlines should be provided with opportunities to provide factual background and operational insights on specific consumer issues.

Concerning powers, any 'show cause' requirements by the Ombuds Scheme in order to investigate specific complaints should be strictly limited and linked to the specific complaint being considered by Ombuds Scheme. The Ombuds Scheme should have the power to specifically request further detail from a scheme member – including ANSPs, travel agents and any other industry stakeholder with a role in service delivery - should the detail be unavailable through other reporting mechanisms. This should only pertain to specific complaints, and not broader trends.

### 3. What governance arrangement should be adopted for the Aviation Industry Ombuds Scheme?

It is important that the governance structure of the Ombuds Scheme is composed by a collective of stakeholders with a funding structure that is tightly monitored and controlled, focused solely on cost recovery. IATA is of the perspective that representation should include airlines, airports, consumer groups and associations. The governing body must seek to ensure cost-efficiency and procedural fairness for consumers and stakeholders alike and provide the ombudsperson with valuable information that will ultimately support consumer complaint resolution.

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

In line with the response to question 3, IATA supports the creation of a board to oversee the Ombuds Scheme. Its functions should be to ensure that the Ombuds Scheme is cost efficient and that the scheme carries out its functions respecting procedural fairness in all instances.





**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?**

Given the divergent nature of noise complaints versus consumer travel complaints, IATA believes that for the Ombuds Scheme to be both effective and cost-efficient, it can operate under a single framework as long as the ombudspersons handling consumer complaints and noise complaints remain distinctly independent and are differentiated by a specific complaint resolution framework. This is because both types of complaints differ considerably in motivation and involve complex, technical aspects of airline operations and air navigation providers. Moreover, both consumer travel complaints and noise complaints require very different subject matter knowledge.

**6. 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?**

In line with the principle of shared accountability amongst airlines and airports, the Ombuds Scheme must take into account *all* key players in the consumer's travel experience. This includes, but is not limited to:

- Air Navigation Service Providers (ANSPs - i.e. Airservices Australia)
- Travel agents

As all actors play a role in ensuring the efficient and effective running of the aviation sector, to exclude ANSPs and travel agents would undermine the effectiveness of the Ombuds Scheme.

ANSPs play a crucial role in managing air traffic, which directly impacts the operational efficiency of airlines. Delays, absence or inefficiencies in air traffic control can lead to flight delays, cancellations and other issues that can affect passengers of no fault of the airline or the airport. While weather events are also known to frequently impact a consumer's travel plans, we do not foresee enforcement of the Ombuds Scheme against any party for this reason.

IATA is also of the view that travel intermediaries (brick and mortar and online travel agents) should be included as accountable stakeholders. While airlines are continuing to invest in customer communications technology, there continue to be a specific challenge with travel booked through intermediaries.

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

International experience, for example with the implementation of Alternative Dispute Resolution (ADR) in some countries in Europe or the Air Passenger Protection Regulations (APPRs) in Canada, has shown that a failure to start small can lead to a mediation body becoming overwhelmed and ineffective while it is still developing capability and experience.

**8. How should funding arrangements for the Aviation Industry Ombuds Scheme operate?**

It is important that the Ombuds Scheme itself and all associated activities are as streamlined and efficient as possible. Care should be taken to avoid a situation like that in Europe where a whole industry of claims management companies has developed.

For the Ombuds Scheme, it should be subject to strict financial oversight with effective incentives to be cost-efficient. For example, while a cost recovery principle is supported, consideration should be given to



limiting funding through cost-recovery to be less than 100% of costs. The administrative cost per case should be capped at a reasonable amount to reduce the arbitration cost for both consumers and carriers.

The Ombuds Scheme should establish well-defined parameters to prevent consumers from indiscriminately making claims that may lead to an influx of complaints and stimulate the development of a "claims farming" industry, as seen in Europe. While the intent of the Ombuds Scheme is to mediate for the best outcome and not to charge consumers for bringing complaints before the ombudsperson, costs should nevertheless be recoverable if the claim is ultimately upheld.

#### **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?**

There are various negative precedents that the government would be wise to avoid in designing the Ombuds scheme for Australian aviation, including the emergence of claims management companies in Europe. From a resourcing and cost-efficiency perspective, the long complaint backlogs in Canada or in certain Alternative Dispute Resolution (ADR) regimes in Europe, such as Spain, are also cautionary tales.

#### **10. What types of complaints should be eligible for consideration by the Aviation Industry Ombuds Scheme, and what types of complaints should not?**

For a complaint to be considered by the Ombuds Scheme, it is crucial that there are clear parameters about what will and will not be accepted by the ombudsperson. Should the parameters not be clearly outlined or be too broad, there is a risk that the Ombuds Scheme will be overwhelmed by complaints from consumers who have not followed due process and are thus simply creating additional work for the ombudsperson.

It is IATA's recommendation that the eligibility guidelines employed by the Ombuds Scheme should include that:

- The complaint only relates to a specific ticket. Cases should be reviewed on a ticket-by-ticket basis.
- The complaint must have already been raised with the relevant scheme member, with the stakeholder having been given adequate time (i.e. 8 weeks, as seen in the UK's PACT) to respond. Should the stakeholder not have responded within this timeframe - or should the outcome not be to the complainant's satisfaction - only then may they raise it with the ombudsperson citing the stakeholder's complaint reference number.
- The complainant is to be the only person filing the complaint, and it should not be a third party filing on their behalf. This is to avoid the creation of cottage industries, as seen in the European Union and United Kingdom, where third parties profit at the expense of consumers, airlines and regulators.
- The complaint may pertain to failures to deliver on the set of standards for passengers with disabilities. To this effect IATA supports the development of a review of passenger disability standards. Furthermore, IATA welcomes a collaborative approach between the aviation sector and disability advocacy groups to ameliorate outcomes for passengers with various needs. IATA is of the view that these standards should be separate to the Ombuds Scheme, but a failure to deliver on said standards can be brought before the ombudsperson.

IATA recommends that certain categories of complaint be explicitly excluded from the remit of the Ombuds Scheme:

- 'Class action' type complaints whereby a group of consumers are attempting to achieve differing outcomes.
- Quality of customer experience issues (i.e. meals or inflight entertainment experience)
- Complaints pertaining to breaches of privacy; these should be handled by the Commonwealth's Office of the Australian Information Commissioner, as with any other concern pertaining to privacy breaches from any other sector of the economy.



- Complaints relating to a disruption caused by medical reasons (i.e. ill passenger requiring attention, thus delaying a flight) or government agency enforcement (i.e. deportation delaying departure of a service or border closures due to global pandemic).

In accordance with the Chicago Convention 1944, passenger rights regimes should only apply to events occurring within the territory of the legislating State (i.e. Australia) or outside the territory with respect to aircraft registered there (i.e. in Australia) and therefore should only apply to flights departing Australia, so as to avoid any conflict with laws and practices of third countries.

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

No. Complaints pertaining to breaches of privacy; these should be handled by the Commonwealth's Office of the Australian Information Commissioner, as with any other concern pertaining to privacy breaches from any other sector of the economy.

**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?**

IATA is of the view that travel intermediaries (brick and mortar and online travel agents) should be included as participants in the Ombuds Scheme as accountable stakeholders. While airlines continue to invest in customer communications technology to enhance customer experience, there continues to be a specific challenge with travel booked through intermediaries.

In some cases, customer contact details are not shared with the airline, meaning that should there be any disruption, direct contact is impossible - exacerbated by time zone differences and varying operating hours. IATA is of the view that intermediaries should be obliged to forward contact details to airlines, subject to relevant data privacy considerations, or they should bear the accountability of any consequences for having failed to provide these contact details to airlines.

Similarly, IATA and its members face specific issues related to refunds of tickets booked through online intermediaries, in particular where the purchase is not made through standard industry distribution systems.

**13. What existing complaints schemes or processes have the potential to overlap with the Aviation Industry Ombuds Scheme?**

The consumer protection regimes for third countries could overlap with the Ombuds Scheme. It is important to avoid duplication and the associated administrative burden of the same complaint being investigated in multiple jurisdictions.

In accordance with the Chicago Convention 1944, passenger rights regimes should only apply to events occurring within the territory of the legislating State, or outside that territory for flights departing the jurisdiction.

**14. Who should be eligible to make complaints to the Aviation Industry Ombuds Scheme?**

The complainant is to be the only person filing the complaint, and it should not be a third party filing on their behalf. This is to avoid the creation of cottage industries, as seen in the European Union and United Kingdom, where third parties profit at the expense of consumers, airlines and regulators.



**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?**

Per the response to Q14, this option should not be permitted.

**16. What complaint resolution process should the Aviation Industry Ombuds Scheme adopt?**

In order to qualify for an Ombuds Scheme review, complainants must have already lodged a complaint with the relevant stakeholder (whether this be the airline, airport, travel agent etc) and allowed 8 weeks for a satisfactory response. When a case involves a mass disruption or force majeure (i.e severe weather, Australian government-imposed restrictions or computer malfunctions, such as the recent CrowdStrike global shutdown), scheme members should be allowed additional time to process the complaint and determine the origin of the cause. This should be clearly outlined to consumers at the time of lodging their initial complaint to the stakeholder. Once a response has been received from the scheme member and/or adequate time (i.e. 8 weeks) has passed, the consumer may then submit to the ombudsperson if they are not satisfied with the outcome at this stage.

The focus of the Ombuds Scheme should be on mediation and seeking a resolution with which both the stakeholder and complainant are satisfied. As such we support a refer-back step in the Ombud Scheme process. Given any decision made by the ombudsperson would be deemed binding on both parties, we welcome a two-stage decision making process (preliminary finding to final outcome). To the extent that either party is unsatisfied with the decision of the Ombuds Scheme, then any right of appeal must be symmetrical i.e. both the consumer and the industry stakeholder has equal right to appeal.

**17. 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?**

Per the response to question 16, the relevant stakeholder (whether this be the airline, airport, travel agent etc.) should be allowed 8 weeks for a satisfactory response. This timeframe is in line with the process followed by the UK CAA's Passenger Advice and Complaints Team (PACT). It also allows time for engagement between stakeholders prior to responding to the complainant – for example if a complaint is lodged with an airline but in fact relates to an issue for which another stakeholder (such as an air navigation services provider or a travel agent) is responsible.

When a case involves a mass disruption or force majeure (i.e severe weather, Australian government-imposed restrictions or computer malfunctions, such as the recent CrowdStrike global shutdown), scheme members should be allowed additional time to process the complaint and determine the origin of the cause. This should be clearly outlined to consumers at the time of lodging their initial complaint to the stakeholder.

**18. What time limit should apply for making a complaint?**

Complaints must be filed no later than 12 months after the last sector on the issued ticket\*. This is to ensure currency of complaints being filed. The longer it takes for a complaint to be filed, the greater the risk of an airline not being able to effectively identify the root cause of the issue and track the steps taken to address the issue at the time. Should the complaint be filed a long time after the matter at hand, there is a risk of being outside the parameters of data kept by the airline.

\*If a consumer is flying from Point A to Point B on 1 October and returning from Point B to Point A on 8 October, irrespective of whether their issue was on the first or second flight, the 12-month count would start from 8 October.



**19. What should be the maximum monetary amount the ombudsperson is able to award?**

For international travel, monetary amounts should be consistent with the Montreal Convention, which is the exclusive international framework in place for compensation for delays in international travel). The Montreal Convention which requires that damages awarded be demonstrated and not compensatory. IATA urges the Ombuds Scheme to follow this approach.

**20. What regular publications should the Aviation Industry Ombuds Scheme produce?**

In order to report the effectiveness of the Ombuds Scheme, the ombudsperson should be seeking to produce an annual report of its activities, including audited accounts to ensure cost effectiveness and cost recovery.

The Ombuds Scheme should avoid any additional reporting that does not provide explicit benefits to consumers or duplicates existing reporting. IATA welcomes the Government's commitment to reviewing reporting requirements and separate consultations that may result from this requirement. It is IATA's view that any reporting should focus explicitly on the scheme and its efficacy, as we do not view duplication of existing reporting requirements as being beneficial.

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

The decision of each claim shall be kept confidential between parties. Without mutual consent, the content of decision or settlements shall not be disclosed.

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

Any powers to require scheme participants to provide information to the Ombuds scheme should be strictly limited and linked to specific need. There is no evidence that providing general information on such metrics is of particular interest or benefit to consumers.

Provision of reasons for disruptions is a challenging area, as reasons provided in real time may be different from the root cause of the issue once investigated. Given the complexity of air operations, providing root cause information in real time can be challenging. Stakeholders should therefore have a reasonable timeline, for example of 30 days, to submit the requested information. Information sharing protocols should be streamlined, for example based on standard industry / IATA codes where applicable.

Any information provision requirement should apply to all stakeholders, not just airlines. As discussed in the responses to other questions, aviation is a complex ecosystem. Complaint resolution will only be partial at best if it is only airlines that are communicating disruption information when airports, ANSPs, ground handlers, customs and security can also be sources of disruption.

**23. What enforcement arrangements are appropriate to achieve compliance with the Aviation Industry Ombuds Scheme?**

IATA is of the view that the Ombuds Scheme should follow both better and responsive regulation principles<sup>13</sup> whereby there is consistency and coherence, proportionality, and clarity around the requirements on all stakeholders.

Should it be found that a stakeholder does not cooperate with the Ombuds Scheme or meet the obligations of the ombudsperson's decision (i.e. any amends that have been deemed appropriate), they should be reminded of their requirements under the Ombuds Scheme and in extreme cases may be referred to other bodies.

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<sup>13</sup> Good Regulatory Practices. ICAO. Available at: [https://www.icao.int/sustainability/Pages/regulatory\\_practices.aspx](https://www.icao.int/sustainability/Pages/regulatory_practices.aspx)  
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