

A silhouette of an airport scene at sunset. An airplane is flying in the upper left. In the foreground, the tail and wing of a large aircraft are visible on the right. Several tall, thin light poles with multiple lamps are scattered across the middle ground. The sky is a warm, golden-orange color, and the ground is dark. The text is overlaid on the lower half of the image.


The Aviation Industry Ombuds Scheme Consultation Paper Submission

OCTOBER 2024

MELBOURNE AIRPORT

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1.

**Executive
summary**

1. Executive summary

Australia Pacific Airports (Melbourne) Pty Ltd (Melbourne Airport) welcomes the opportunity to provide this submission to the Australian Government's consultation paper on the Aviation Industry Ombuds Scheme.

The Australian aviation industry is a large ecosystem made up of dominant domestic carriers, international airlines, major, metropolitan, regional and remote airports, government agencies like Airservices Australia and the Australian Border Force, as well as service providers who manage ground handling, security, parking and cleaning. The impact each has on consumers varies widely. The role of airports is to provide the infrastructure to facilitate air travel. The development and maintenance of this infrastructure is done through agreements with airline partners. These agreements include specified service levels that airports must meet and provide a basic measure of whether airports are fulfilling their obligations and providing a positive passenger experience.

Melbourne Airport supports the introduction of the Aviation Industry Ombuds Scheme as an important mechanism for enhancing consumer protections and improving the overall transparency of the aviation sector. However, it is essential that the scheme recognises the primary commercial relationship in the industry: the one between consumers and airlines. While airports play a crucial role in the aviation ecosystem, they are not the primary service providers to consumers, and this should be reflected in the scope, focus and funding model for the scheme.

To ensure the scheme's effectiveness, we recommend a funding model based on the user-pays principle. All scheme members should contribute to the scheme's costs in proportion to their involvement in consumer-facing issues. The funding model should incentivise compliance, rewarding members who demonstrate best practices and strong consumer service records while imposing penalties on those who do not. This approach promotes fairness and encourages active participation in the scheme without creating undue financial burdens for scheme members who invest in their customer service functions.

The scheme's governance must reflect the diverse roles and interests of all stakeholders in the aviation sector, including airports, airlines, and consumer representatives. Equal industry representation is critical to ensure that the scheme remains balanced and that decisions are made with the input of all affected parties.

In terms of enforcement and compliance, the activities undertaken by the Ombuds Scheme should emphasise collaboration and procedural fairness. All scheme members should be given ample opportunity to address any compliance concerns before formal enforcement actions are taken. A tiered enforcement approach, starting with guidance and voluntary compliance, is crucial to fostering cooperation and minimising the need for penalties.

Finally, we recognise the intention of the scheme is to be a dispute resolution body of last resort. It is important to underscore that the purpose of the Aviation Industry Ombuds Scheme is to support consumers in accessing their existing rights under the Australian

Consumer Law (ACL). The Ombuds role should be to facilitate consumer access to remedies within this legal framework, without creating additional regulatory burdens or duplicating existing protections. By focusing on efficient dispute resolution and fair processes, the scheme can strengthen the aviation industry's commitment to consumer rights while ensuring that scheme members are treated equitably.

Melbourne Airport is committed to supporting a fair and effective Ombuds Scheme that benefits both consumers and industry participants. We welcome the opportunity to work with the government to deliver this important initiative.



2. Design of the Aviation Industry Ombuds Scheme

2. Design of the Aviation Industry Ombuds Scheme

Melbourne Airport acknowledges the difficulties consumers currently have in accessing their rights under the *Competition and Consumer Act 2010* when dealing with airlines. The introduction of the Aviation Industry Ombuds Scheme should not take away from the need to address the underlying causes of cancellations and delays across Australia's aviation network - constrained airport infrastructure and resourcing issues at Airservices Australia.

In advance of the Aviation Industry Ombuds Scheme being introduced, Melbourne Airport recommends the Government ensure that Airservices air traffic control capabilities are returned to adequate levels across the country to improve outcomes for the travelling public. Based on data published by Airservices, in financial year 2023-24, just one per cent delays were attributed to airports while 11 per cent were attributable to Airservices¹.

The purpose of the scheme should be to provide a fair, independent and accessible external dispute resolution service for consumers who have been unable to resolve their complaints with an airline, airport or Airservices Australia. While the consultation paper appears to exclude Airservices from the scope of the Ombuds Scheme, Melbourne Airport submits that this would result in perverse outcomes for consumers given:

- Airservices is a core part of the aviation industry along with airlines and airports.
- Airservices is responsible for delays and cancellations across the network.
- Under current legislation, Airservices is subject to the jurisdiction of the Aircraft Noise Ombudsman which suggests that the Government acknowledges that its operations should be subject to independent scrutiny.
- Consumers should not be penalised for issues caused by Airservices when an avenue for restitution will exist if those same issues were caused by another party (namely, airlines or airports).

Given its purpose, the Ombuds Scheme's objectives should be:

- To provide an alternate dispute resolution service for aviation customers who have been unable to resolve their dispute directly with an airline, airport or Airservices.
- To act impartially, independently and effectively in acquitting its functions.

¹ Airservices Australia, *Australian Aviation Network Overview Financial Year 2024*, July 2024.

The scheme should also comply with the government's Benchmarks for Industry-based Customer Dispute Resolution² which outlines six key benchmarks for such bodies:

- 1. Accessibility:** The office makes itself readily available to customers by promoting knowledge of its services, being easy to use and having no cost barriers.
- 2. Independence:** The decision-making process and administration of the office are independent from participating organisations.
- 3. Fairness:** The procedures and decision-making of the office are fair and seen to be fair.
- 4. Accountability:** The office publicly accounts for its operations by publishing its final determinations and information about complaints and reporting any systemic problems to its participating organisations, policy agencies and regulators.
- 5. Efficiency:** The office operates efficiently by keeping track of complaints, ensuring complaints are dealt with by the appropriate process or forum, and regularly reviewing its performance.
- 6. Effectiveness:** The office is effective by having an appropriate and comprehensive jurisdiction and periodic independent reviews of its performance.

These benchmarks are accepted by many similar bodies across various industries including the exemplar organisations identified in the consultation paper including the Telecommunications Industry Ombudsman and the Australian Financial Complaints Authority.

What powers and functions should the ombudsperson have?

When determining the powers and functions of the ombudsperson, it is important to consider the additional regulatory and administrative burden that will be placed on scheme members. Both airports and airlines undertake regular reporting on financial performance and quality of service to the ACCC. As such, Melbourne Airport recommends that additional reporting to the ombudsperson on matters outside of specific complaints, should be limited to what is already provided to the ACCC.

To discharge its obligations, government should consider the following powers and functions for the scheme:

² Australian Government, *Benchmarks for Industry-based Customer Dispute Resolution*, 2015.

Investigative powers:

The ombudsperson should have the authority to investigate complaints made by consumers that are covered under its statutory remit. This could include the power to:

- **Request Information:** The ombudsperson should be able to request relevant information from members to investigate complaints.
- **Conduct Independent Investigations:** When necessary, the ombudsperson should be able to initiate independent investigations into complaints made by consumers.

Mediation and dispute resolution:

A key function of the ombudsperson is to act as an impartial mediator, helping resolve disputes between consumers and airlines or airports. Where appropriate, this should include:

- **Facilitating Negotiations:** The ombudsperson should help facilitate discussions between parties to reach voluntary and mutually acceptable resolutions.
- **Providing Binding Decisions:** to support consumers accessing their rights, the ombudsperson will be able to make binding decisions.

Appeals and review:

Scheme members should have the right to appeal decisions made by the ombudsperson if they believe the decision was unfair or incorrect. This process should include:

- **Independent Review Panel:** Establishing an independent body to review appeals and complaints about the ombudsperson's decisions.
- **Suspension of Enforcement:** Allowing enforcement actions (e.g., penalties or publication of non-compliance) to be suspended pending the outcome of an appeal.
- **Appropriate Release on Decision:** Once a final decision has been made and any appeal has been concluded, the matter should be finalised with no option for the complainant to raise the same issue in an alternative forum.

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

Melbourne Airport supports the establishment of a governing board for the Aviation Industry Ombuds Scheme with an independent chair and industry and consumer representatives. There should be an equal number of industry and consumer representatives with the industry representatives evenly split between airports and airlines. The government could also consider whether it is appropriate to have

additional independent directors who have governance experience as is the case with the board of the Telecommunications Industry Ombudsman.

Industry representatives should be elected by members of the scheme with an equal number of representatives representing airports and airlines. Consumer representatives should be appointed by the board based on their knowledge and experience of consumer interests.

In line with other ombuds schemes, there should be a maximum term length for board members. For example, the Telecommunications Industry Ombudsman Constitution specifies that Board members are appointed for a period of three years.³

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

The governing board should have the usual powers and functions relating to:

- Financial stewardship as required under the Australian corporation's law
- Managing the business, affairs and property of the organisation
- Setting the strategy for the organisation
- Appointing the independent chair
- Appointing directors when vacancies arise
- Ensuring the independence of the ombudsperson

The Aviation Industry Ombuds Scheme should have a constitution which sets out the specific powers and functions of the board.

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?

Melbourne Airport recommends that a single Aviation Industry Ombudsperson should be appointed with responsibility for both customer issues and aircraft noise. While the scope of the Aviation Industry Ombuds Scheme is broader than the existing Airline Customer Advocate (ACA), the number of complaints received by the ACA is still a useful baseline to assess the potential future demand for the scheme.

The ACA's 2023 Annual Report notes that it received 1,408 eligible complaints in 2023⁴. In 2022 this number was 1,286 and in 2021 it was 599⁵. The current Aircraft Noise Ombudsman handled 438 actionable complaints in the 2023-24 financial year

³ Telecommunications Industry Ombudsman, Constitution of Telecommunications Industry Ombudsman Limited, p 17.

⁴ Airline Customer Advocate, Annual Report 2023, p 4.

⁵ Airline Customer Advocate, Annual Report, 2022, p 4.

(10 carried forward from 2022-23 and 428 received in 2023-24)⁶. In 2022-23 it handled 549 actionable complaints and in 2021-22 it handled 790 actionable complaints. This suggests that if a joint ombuds scheme had existed during this time, it would have dealt with, on average, 1,690 complaints over a 12 month period.

In comparison, the Telecommunications Industry Ombudsman dealt with 66,388 complaints in 2022-23⁷, the Australian Financial Complaints Authority received 96,987 complaints in 2021-22⁸ and the Energy and Water Ombudsman NSW received 17,852 complaints in 2022-23⁹. Notwithstanding differences between industries, customer numbers and complexity of complaints, it does not appear that the potential volume of complaints that the Aviation Industry Ombuds Scheme and the Aircraft Noise Ombuds Scheme are likely to receive warrant two separate ombudspersons to be appointed.

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?

As previously stated, Melbourne Airport recommends that Airservices Australia be included as a member of the Aviation Industry Ombuds Scheme given their central role in the industry and the impact their operations have on delays and cancellations experienced by travellers.

All airlines that operate Regular Public Transport (RPT) services in Australia should be members of the scheme. Airports with at least 400,000 annual passenger movements should also be included. Based on 2023 data from Airservices Australia¹⁰, this threshold would include the 20 busiest airports in the country by passenger movements. When the Aircraft Noise Ombudsman is brought into the fold, this membership requirement may need to be broadened to include high activity general aviation airports which facilitate large numbers of aircraft movements but little to no passenger movements.

In the interests of fairness for consumers, voluntary membership of the scheme should be allowed.

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

The funding arrangements for the scheme should be governed by the user pays principle to ensure that heavy users of the scheme pay their fair share and that there is no cross-subsidisation across industry sectors. We would expect that the funding model would be heavily based around variable fees based on complaint volumes which would

⁶ Aircraft Noise Ombudsman, Annual Report 2023-24, p 6.

⁷ Telecommunications Industry Ombudsman, Annual Report 2022-23, p 74.

⁸ Australian Financial Complaints Authority, Annual Report 2022-23, p 6.

⁹ Energy and Water Ombudsman NSW, Annual Report 2022-23, p 5.

¹⁰ Airservices Australia, Movements at Australian Airports <<https://www.airservicesaustralia.com/aviation-reporting/movements-at-australian-airports/>> September 2024.

incentivise members to invest in their internal dispute resolution systems and enables them to reduce their fees and charges by improving their internal systems.

Given it will not be possible to determine these variable fees before the commencement of the scheme, it is appropriate that the government support the establishment of the scheme and its initial years of operation. This is also appropriate given the role that Airservices and the Australian Border Force play in impacting passengers.

It is also important to consider how scheme members will recover the costs of funding the Ombuds Scheme. It is likely that airlines will simply pass these new costs onto customers by increasing airfares. Airports on the other hand have long-term agreements with airlines (usually over a least five years) and there may be significant delays in the ability of airports to recover these costs depending on where they are in their cycle of airline agreements. As such, a phased implementation and government contribution to the funding of the scheme is appropriate.

Funding models of this nature can be complex, particularly given the size, scale and scope of the scheme is yet to be determined. The funding model should be developed through a separate process utilising suitably qualified experts, once the full parameters of the scheme have been confirmed.



3.
**Complaint
handling**

3. Complaint handling

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

The Aviation Customer Rights Charter should provide the basis for matters that the Ombuds Scheme is authorised to consider. The primary commercial relationship that underpins the aviation industry is between airlines and consumers. This has been acknowledged in section 3.2 of the consultation paper which outlines the expected matters to be included in the Rights Charter.¹¹ These being:

- Customers' entitlements to refunds for flights that are disrupted, cancelled or unreasonably delayed, including circumstances where airlines must provide a refund in cash or the original form of payment rather than a travel voucher
- Appropriate and prompt timeframes and methods for providing refunds
- The length of flight delays that are considered unreasonable
- Reasons for disruptions, delays and cancellations that are considered within the airline's control
- Rules in relation to communicating with customers, including in frontline positions
- Other obligations that airlines may have to their customers when flights are disrupted, cancelled or delayed, such as providing support to make alternative travel arrangements.

It is reasonable that the scheme would also be able to receive complaints in relation to:

- Other matters addressed by the ACL
- Matters included in the airlines' contracts with their customers
- Lost and damaged baggage, consistent with airlines' obligations under the *Civil Aviation (Carriers' Liability) 1959*.

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

Airports already receive complaints relating to non-compliance with disability access standards through the Australian Human Rights Commission (AHRC). Overlap between the remit of the scheme and the AHRC needs to be carefully considered. In Victoria, the Victorian Civil Administrative Tribunal (VCAT) also accepts applications relating to the *Equal Opportunity Act 2010*. How the scheme interacts with state anti-discrimination legislation such as the Victorian *Equal Opportunity Act 2010* should also be considered by government.

¹¹ Australian Government, The Aviation Industry Ombuds Scheme - Consultation paper, p 20.

It is important that complainants are not able to “forum shop” between different dispute resolution mechanisms to ensure the efficacy of the Ombuds Scheme and prevent the possibility of double recovery for the same matter.

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

The Aviation Industry Ombuds Scheme should be focused exclusively on supporting consumers to access their rights under the ACL. As such, only consumers should be eligible to make complaints under the scheme. Under the ACL, consumers are defined as a person who acquires a service for an amount that does not exceed \$40,000 and is acquired for personal, domestic or house use or consumption.

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

The complaint resolution process outlined in the consultation paper appears to be generally appropriate for a scheme of this nature. The foundational principle of the scheme should be to ensure that consumers are able to exercise their rights under the ACL rather than for the scheme to be directly involved in investigations and decisions.

This principle will be realised if scheme members are afforded ample opportunity to resolve complaints without the direct involvement of the ombudsperson. If this scheme is properly established with the necessary incentive structures in place, then airlines and airports will be motivated to address complaints in a timely and efficient manner.

The process detailed in the consultation paper follows general practice in similar schemes and should be applied to the aviation industry.

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?

The scheme should only accept complaints from consumers after the complainant has lodged their complaint with the relevant scheme member and has received a response. After receiving a response from a scheme member, consumers should be required to lodge a complaint with the Ombuds Scheme within three months to ensure timely resolution of matters for all parties.

Scheme members should be required to respond to complaints within 40 business days.¹² This time period should be paused in instances where further information is requested of the complainant.

Many airports across Australia utilise external service providers for key operations such as parking, security, cleaning and facility maintenance. As such, sufficient time will be required to implement the necessary systems and processes to ensure proper oversight and engagement with these providers when addressing complaints referred through the Ombudsman Scheme. This transition period is essential to establish clear communication channels and ensure that complaints passed on to third-party providers are handled efficiently and in compliance with the scheme's requirements.

¹² Please refer to the submission from the Australian Airports Association (AAA) for global comparisons of similar schemes.



4. Guidance and reporting

4. Guidance and reporting

What regular publications should the Aviation Industry Ombuds Scheme produce?

The primary objective of the Aviation Industry Ombuds Scheme should be to ensure that consumers are able to access their rights under the ACL through the investigation and resolution of complaints. Melbourne Airport submits that the resources of the scheme should be primarily devoted to its complaints handling function.

We acknowledge there is some merit in the Ombuds Scheme issuing reports but believe that an annual report is sufficient to adequately discharge this requirement. Such an annual report should include:

- High-level summary of statistics on complainants and complaints that were received, investigated and closed over the previous financial year including the issue and what sector of the industry the complaints related to.
- Other insights relating to how complaints were received and location of complaints.
- Statistics on complaint resolution including how many complaints were received, time taken to resolve complaints and what outcomes were achieved.
- Analysis of statistics and trends in complaints relating to the aviation industry.

The scheme should also provide guidance material on its website to support customers understanding what complaints the scheme can receive, how to make a complaint and what remedies they can expect. We anticipate that this material would be prepared in advance of the scheme being established rather than being regular publications.

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

Melbourne Airport emphasises the importance of ensuring procedural fairness for all members of the Aviation Industry Ombuds Scheme by requiring fair and proper procedure to be used when making decisions.¹³ Melbourne Airport submits that the following principles should be incorporated by the scheme to ensure procedural fairness for all parties:

- Adequate notice is provided to all parties who will be affected by a decision.
- Scheme policies ensure all parties' substantive, procedural, and relational needs are addressed.

¹³ Ombudsman Western Australia, Guidelines: Procedural fairness (natural justice), April 2019, p 1.

- Parties affected by a decision are afforded the opportunity to provide information for consideration by the ombudsperson and to participate in the decision-making process.
- Decisions are made within a reasonable time.
- Meaningful and easy to understand reasons are provided for decisions.
- All parties affected are made aware of how final decisions will be made.
- Parties are given ample opportunity to review data and information relevant to them that will be made public.
- Parties are informed of their rights to appeal and the process that will be followed.

In relation to specific processes that should be adopted to ensure procedural fairness, Melbourne Airport recommends the following:

Advance notice of publication:

- Scheme members should be given adequate prior notice of the intention to publish any data or information that relates to them.
- This should include details of the specific data or information proposed for publication, the intended timing of publication and the context in which the information will be released.
- This would allow members adequate time to prepare, review, and respond to the publication of sensitive or adverse information.

Right to respond:

- The scheme should offer members an opportunity to provide a response or clarification before data or information is published.
- This response process should include a clear deadline for submission of responses, allowing sufficient time, a structured format in which members can clarify inaccuracies, provide context, or dispute the findings and the option for the member's response to be published alongside the original data, ensuring balanced representation.
- This would allow members the opportunity to provide necessary context to support the publication of data and information.

Confidentiality protection:

- Where publication of certain data may involve sensitive commercial, operational, or security information, the scheme should provide safeguards for confidentiality, with non-identifying data or aggregated information published where appropriate and clear guidelines on which types of data can be anonymised or withheld from publication in the interests of privacy, security or competitive fairness.

Transparency and consistency in publication criteria:

- The scheme should establish clear, transparent criteria on what data and information will be published and under what circumstances.
- These criteria should be communicated to all scheme members and applied consistently.
- This ensures procedural fairness by providing predictability and minimizing arbitrary or inconsistent decision-making in the release of information.

Appeals process:

- There should be an established appeal process whereby members can challenge the decision to publish specific data, particularly where they believe the information is materially incorrect, misleading, or unfair.
- The appeal process should be independent and accessible, provide members with a reasonable timeframe to lodge appeals and include provision for the delay or suspension of publication until the appeal is resolved.



| 5. Scheme compliance

5. Scheme compliance

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

The enforcement arrangements adopted by the Aviation Industry Ombuds Scheme need to balance promoting compliance, accountability, proportionality and fairness for consumers and members alike. Melbourne Airport recommends the following enforcement measures for the scheme:

Incentivising compliance:

- Consistent, widespread compliance with obligations under the Aviation Customer Rights Charter, ACL and other relevant legislation is the ultimate outcome the scheme is trying to achieve.
- Putting in place appropriate incentives to help achieve this goal is potentially more advantageous than specific enforcement arrangements.
- One way this can be done is through a well-structured funding model which adopts the 'user pays' principle and ensures that members that have the highest numbers of complaints, pay the most.

Tier approach to enforcement:

- Proportionality should be a key guiding principle for the scheme's enforcement arrangements. As such, the enforcement framework should adopt a graduated approach to addressing non-compliance. This approach could include the following stages.
- **Education and guidance:** Initially, the scheme should focus on educating and advising members about their obligations and the importance of compliance. This could include the provision of regular updates on obligations under the scheme and publication of guidance material.
- **Warnings and Notices:** For initial breaches, a formal warning or notice should be issued to the non-compliant member, outlining the issue and providing a reasonable timeframe for rectification.
- **Penalties:** For repeated or major breaches, the scheme could escalate enforcement to more serious penalties and sanctions.

Dispute resolution and mediation:

- The enforcement framework should include a process for dispute resolution and mediation where compliance is disputed. This should involve:
- **Mediation before Enforcement:** Offering airports the opportunity to resolve issues through mediation before formal enforcement is triggered.

- **Fair and Independent Processes:** Ensuring the dispute resolution process is conducted by an independent body, allowing for impartial and equitable outcomes.

Appeals process:

- Members should also have the right to appeal enforcement decisions. The appeals process should:
 - Be independent and transparent.
 - Provide clear timelines for lodging and resolving appeals.
 - Allow for the suspension of enforcement actions (such as the imposition of penalties or publication of non-compliance) until the appeal is resolved.

Consistency across the industry:

- Enforcement should be consistent across all scheme members to maintain fairness and credibility. This means:
 - **Standardised Enforcement:** The same rules, penalties, and processes should apply to all members.
 - **Regular Review of Enforcement Practices:** The scheme should periodically review and update its enforcement practices to ensure they remain relevant, proportionate, and effective.

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