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Mr Brendon Buckley Assistant Secretary

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Submitted via web portal <https://www.infrastructure.gov.au/have-your-say/establishing-aviation-industry-ombuds-scheme>

Dear Brendon

The new Aviation Industry Ombuds Scheme

Thank you for the opportunity to respond to the **consultation paper** on the new **Aviation Industry Ombuds Scheme**. Whilst noise management, the regulation of non-passenger aviation, aviation maintenance and workforce are all important, PWDA has focussed our feedback the passenger-related elements of the Ombuds Scheme.

What goals should the Ombuds Scheme have?

The Aviation Ombuds Scheme should have the goals of:

- providing efficient, effective remedies to people who sustain damage* related to their journey by air similar to **EU Air Passenger Rights**
- compelling transparent communication about flight delay and cancellation
- mandatory and standard compensation and remedies, by all airlines, for most damage, without the need for customers to take action
- requiring mandatory annual reporting of flight cancellations and reasons

- compelling airlines to provide appropriate assistance to passengers who have reduced mobility or a disability

*Damage may be due to flight delay, being denied boarding, loss of or damage to luggage, or other improper treatment and physical harm of a passenger.

What rules should we have to manage the Ombuds Scheme?

The Ombuds Scheme should set automatic compensation triggers for delayed or cancelled flights similar to [EU Air Passenger Rights](#) where:

“Passengers who cannot board must be offered:

- (i) assistance (meal, telephone calls and accommodation if necessary),
- (ii) the choice between either being reimbursed within seven days (and, if necessary, a free flight to the initial point of departure) or being rerouted or continuing their journey as soon as possible, or at a mutually agreed later date, and
- (iii) an immediate predetermined sum in compensation as follows:

Flights ≤ 1 500 km	Flights 1 500-3 500 km	Flights EU ≥ 1 500 km
€250 (€125 if rerouted and arriving less than two hours late)	Flights ≥ 3 500 km €400 (€200 if rerouted and arriving less than three hours late)	€600 (€300 if rerouted and arriving less than four hours late)”

NB: At current exchange rates €100 = AUD\$162

This has the dual effect of; removing the need for most customers to take personal action, and it acts as a deterrent to ‘ghost flights’ and bad behaviour on the part of airlines that has been seen in Australia. European [legislation](#) protects passengers but also allows airlines to seek compensation where the acts of another have caused them damage.

PWDA would also recommend that a compensation scheme be developed [similar to the EU](#) for damaged or lost luggage, where airlines are liable for up to €1300 unless the

reason for the loss was a defect in the luggage. However, for assistive technology we would recommend an entitlement to the cost of replacement or repair, including interim provision of a comparable loan device.

Who should run the Ombuds Scheme, and what powers should they have?

PWDA recommends the scheme be run independently by government or a government established body, independent from airlines or airports. This organization should have the authority to investigate, to issue fines, and in serious cases to ground aircraft. We agree that the management of customer issues should be separate from aircraft noise.

Which airlines and airports should be part of the Ombuds Scheme?

All international and domestic airlines should be covered under the scheme, and all airports that take paying passengers. Airlines and airports should not be included in the scheme if they are exclusively devoted to:

- freight,
- military activity,
- flying doctor services,
- emergency flights to provide workers or supplies,
- livestock transport,
- the transport of time critical items such as donated organs.

These types of activities should be able to be treated separately.

Should we bring some airlines and airports into Ombuds Scheme slowly over time?

Smaller airports in rural and regional areas may need to be brought in more slowly, and the scheme may need to be adjusted so that it does not deter airlines from flying to remote communities, or into areas beset with seasonal turbulence. Private airports and airstrips, and facilities used exclusively to train pilots, for military purposes or for sports such as skydiving ought not to fall under the Ombuds Scheme.

How should the airlines and airports pay for the Ombuds Scheme?

A small levy could be charged at the point of purchase to run the administration of scheme and independent investigation. In cases where damage was caused by negligence or poor performance on the part of an airline the responsibility for providing a remedy or the cost of compensation should be born by them. This is similar to the EU **Air Carriers are responsible for the obligations**. Under that **scheme**

“...extraordinary circumstances are deemed to exist where the impact of an air traffic management decision in relation to a particular aircraft on a particular day gives rise to a long delay, an overnight delay, or the cancellation of one or more flights by that aircraft, even though all reasonable measures had been taken by the air carrier concerned to avoid the delays or cancellations.”

What is good about other Ombuds Schemes in Australia or overseas?

The **current Ombuds schemes** operating in Australia for Financial Complaints, Energy and Water, Fair Work, Produce and Groceries, Public Transport and Telecommunications do not usually provide remedies for ordinary people in the short term. It can be difficult to get complaints acted on, or any form of rectification or redress for the individual. PWDA prefers the stipulated compensation and regulations in the EU, for the useful and prompt remedies provided to consumers.

Australian Ombuds schemes do have investigative functions, and PWDA supports this for the Aviation sector. We also support allowing the scheme to fine those responsible where negligence or deliberate rule-breaking occurs.

Complaints management

PWDA recommends placing a positive obligation on airlines and airports to inform passengers of their rights and to provide compensation, similar to the EU. A passenger or their representative (parent, carer, advocate) should be the one to complain in most circumstances where compensation is sought for damage, cancellation or delay of a flight. In most cases meal payments, accommodation, an alternative flight or penalty payment should be processed immediately, and everything resolved within no more than 7 days.

Where an issue significantly impacts a person's safety, health or wellbeing, this must be prioritised.

Where an airline or airport is in dispute over who is responsible for the damage, the Ombuds Scheme should compensate passengers, then adjudicate the matter between these parties.

The Ombuds Scheme should manage complaints about airlines and airports related to:

- passenger travel
- travel booking
- check-in and security screening
- passenger transition through the airport, to their flight, to and between interchanging flights, or from a flight to another transport mode
- the carriage of passenger luggage, assistance devices and assistance animals
- the carriage of companion animals
- treatment of passengers by airline and ground staff
- communication with passengers about their travel and any complaint raised
- breaches of privacy related to travel, not covered by ordinary privacy laws
- the management of passenger information related to their travel.

Complaints should be made by or on behalf of individual people, about damage or loss to them, their luggage, assistance animals or assistive technologies. Non-profits or disability representative organisations may assist a person in preparing their complaint. For bookings via third parties such as travel agents, individuals may complain about issues related to aviation services, but if the error occurred as a result of the action of the travel agent, the airline will not be liable.

Reporting and information sharing

When the Ombuds Scheme shares guides for passengers they must include accessible formats, Easy Read, Auslan, and translation into community languages. Airlines must be required to report annually against their obligations, and the Ombuds Scheme should publish independent performance reports that show how well an airline complied with its

obligations, what proportion of flights were as scheduled. For the flights that did not occur as scheduled, reporting should also make clear what proportion were due to issues beyond the control of the airline (such as storms, pandemic infection control, terrorism or 'extraordinary circumstances').

Once established, PWDA recommends an annual review of the operation of the Ombuds Scheme and its reports by a community panel that includes people with disability, to ensure that it is operating accessibly, equitably and effectively.

Yours sincerely



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