

Department of Infrastructure, Transport,  
Regional Development, Communications & the Arts.  
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Australia

Dear Sir/Madam

**RE: THE AVIATION INDUSTRY OMBUDS SCHEME – CONSULTATION PAPER**

Perth Airport is Australia’s fourth largest major airport and plays a pivotal role in keeping Western Australians connected to the rest of the nation and the world.

Perth Airport is also critically important to the Western Australian resources sector and its FIFO based workforce.

In FY24, a record 16.1million passengers passed through Perth Airport’s terminals.

Perth Airport welcomes the opportunity to comment on the proposed Aviation Industry Ombuds Scheme.

**Objectives of the Ombuds Scheme**

The critical question that must be at heart of this consultation process is “what is the problem we are trying to solve?”

The Ombuds Scheme cannot seek to be “all things to all people”. Importantly, its scope should be appropriately focussed on compensation associated with the provision of air transport services and not unduly extend into compensation for the activities associated with travel, such as holiday bookings.

Its purpose and intent must be clearly defined and communicated. Failure to do so will lead to an inefficient and ultimately ineffective process.

There is no question that Australian travellers lost confidence in the aviation sector during the Covid-19 pandemic and, particularly, as Australia emerged from the pandemic.

During the pandemic, consumer frustration and anger was directed at the cancellation of flights (primarily due to government-imposed travel restrictions) and the failure of airlines to provide refunds for those cancelled flights.

As demand for travel surged when restrictions were lifted, airlines (and their suppliers) struggled to provide consistent service, often due to Covid-related staff absences.

This again led to a surge in cancelled or significantly delayed flights. Once again passengers were angry and frustrated at the refusal of airlines to provide refunds for cancelled flights.

While airport charges form a relatively small part of any airfare, it is important to note that this is not passed on to the airport until sometime after the flight has been taken. Perth Airport does not receive any income from an airline that cancels a flight as there are no chargeable passengers for invoicing purposes.

In other words, airports did not receive or hold on to any funds from passengers affected by cancelled flights either during or emerging from the Covid pandemic.

This reflects the fact that the commercial relationship exists between passengers and airlines, not passengers and airports.

A review of media coverage of aviation issues over the past 24-36 months shows that the key issue of concern for consumers was the failure of airlines to provide refunds for cancelled flights.

Of the major domestic airlines (who, according to the ACCC, control 95% of the market), Qantas and Jetstar reportedly held more than \$570million in unused travel credits due to cancelled flights, while Virgin reportedly held credits worth almost \$280million.

The two major airlines were therefore holding on to a combined \$850million of passengers' money for services they had not delivered.

The public anger over this issue was significantly compounded when the ACCC took action against Qantas for charging more than 8,000 passengers for tickets on flights the airline knew it had already cancelled.

The groundswell of community outrage over the refusal of airlines to provide refunds has provided the impetus for a consumer protection mechanism such as the proposed Ombuds Scheme.

Perth Airport therefore recommends the clear focus of the proposed scheme should be based on the primary commercial relationship between the passenger and the airline and not extend beyond the agreed conditions of carriage.

Recognition of this commercial relationship will ensure the scheme then remains focussed on ensuring passengers receive full and timely refunds for cancelled flights.

### **Powers and Functions**

The Ombuds Scheme should have a strong focus on cost effectiveness and prevention of "scope creep".

The powers and functions of the Ombudsperson should be limited to areas identified in the Aviation Customer Rights Charter and consumer guarantee issues under Australian Consumer Law.

The Aviation White Paper included references to the scheme being able to "direct airlines and airports to provide specific remedies to customers."

The use of the term "specific remedies" will raise false expectations among consumers as to what they may be eligible to receive when a flight is cancelled.

As noted above, in relation to cancelled flights the remedies should primarily focus on timely refunds and not extend beyond the agreed conditions of carriage. For example, such remedies should not cover the cost of any international "broken ticket" connection or (destination) accommodation or holiday costs.



### **Governance arrangements**

It makes sense for the scheme to have a governing board and for that board to include at least one representative with airline experience, along with at least one representative with airport experience. These representatives should not be current employees/board members of airlines or airports.

The board should be responsible for ensuring the scheme remains focussed on its primary purpose, delivers cost-effective solutions, and ultimately reduces the number of complaints it handles through education of airlines, airports, and consumers.

Perth Airport does not believe it is appropriate to include the Aircraft Noise Ombudsman within the same framework as the Aviation Industry Ombuds Scheme.

The Aviation Industry Ombudsperson will be dealing with consumer complaints of a commercial nature about their air transport experiences. The Aviation White Paper clearly states the Aircraft Noise Ombuds Scheme “will be established independently to investigate how Airservices Australia responds to noise complaints.”

These are fundamentally different concepts and issues. It is preferable that the Government fund a stand-alone Ombuds Scheme to deal with the monitoring of the performance of a government agency.

### **Requirement to be members**

Given the primary commercial relationship between airlines and passengers, it is recommended that all RPT airlines (domestic and international) be required to be a part of the scheme.

The consultation paper notes that: “The inclusion of airports in the ombuds scheme will mean that the ombudsperson can consider complaints about airports made by their customers, and direct airports to provide certain remedies to their customers.”

The paper references examples of where airlines have failed consumers in relation to “refunds or redeeming travel credits for cancelled or significantly delayed flights.”

But the paper does not identify what sort of complaints against airports could be potentially considered.

As noted above, the consumer’s commercial relationship for travel is with the airline, not the airport. The airline, in turn, has a commercial relationship with the airport, with the airport providing a range of aeronautical services (terminal, airfield etc) to the airline.

As such, it is not clear what airport/consumer issues the ombuds scheme intends to address.

One area where there is a commercial relationship between consumers and airports is the provision of car parking. But at Perth Airport, only one in every ten passengers uses car parking. The average price paid across all parking types is less than \$50, and this is inflated by the large number of FIFO resource sector workers using long term parking options at Perth Airport.

Given the impetus behind the Ombuds Scheme's establishment was the failure of airlines to provide full and timely refunds to consumers for cancelled flights, the inclusion of car parking disputes would appear to be an inefficient, even wasteful allocation of resources.

On the basis that airport charges contribute a relatively small portion of an airfare and that these funds are not passed on to airports until after a flight has operated, there needs to be a different approach for the inclusion of airports as members.

Small regional and remote airports should not be included in the scheme as the costs would be onerous.

The Government could consider a trigger point for inclusion based on annual passenger numbers and, consistent with the consultation paper, also consider a staged roll-out that captures the busiest airports first.

A clear issue that needs to be addressed is that of Federal Government agencies, especially Airservices Australia. As the Australian Airports Association has noted, more than one in ten flight delays can be attributed to Airservices Australia.

### **Funding arrangements**

The Government should look to fund the establishment costs of the Ombuds Scheme. This will help avoid any tendency to "gold plate" the structure. This would allow the scheme to be operational prior to the passage of legislation.

The Government should also consider funding the first 12 months of operation after the passage of legislation to allow for an accurate assessment of the expected ongoing costs of the scheme. This would then form the basis for determining the best model to allocate costs to scheme members.

Scheme participants should then be expected to fund the reasonable costs of the scheme's operations.

As noted previously, it is essential that the scheme (under the direction of its board) takes a sensible and targeted approach to its responsibilities and avoids scope creep. Members should not be expected to fund expansions of the scheme beyond its original and stated intent.

In terms of revenue generation, it is not unreasonable to explore a model that focuses on complaint numbers and escalation rates. However, this would be predicated on the scheme having a rigorous set of processes to weed out vexatious or ineligible complaints. It also needs to be recognised that a complaint against an airport involving a \$20 car park charge is of a different order of magnitude than a complaint against an airline involving a \$700 airfare.

The paper's suggestion of following a funding model of other ombuds schemes where members are charged "based on customer numbers" is highly problematic. An airline customer is also an airport customer. Given that the scheme is primarily being established in response to poor airline behaviour in terms of customer refunds, a charge based on the number of customers would see airports being forced to over-subsidise the cost of a scheme designed to address behaviour beyond an airport's control.



These issues would support the proposal for government to fund the first year of the scheme (post-legislation) and then determine a fair model of charging based on the level and distribution of complaints.

Perth Airport also notes that the consultation paper gives no consideration to the additional costs imposed on members from having to administer complaints with the expectation of suitably qualified staff and documented complaint resolution processes. It is reasonable to expect a significant increase in the number of complaints, many of which will be frivolous or unreasonable but will still need to be dealt with by airports and airlines at their cost.

This highlights the critical need for a clear statement by the Ombuds Scheme about what issues and remedies will not be eligible.

### **Complaint eligibility**

This area is critical in ensuring the proposed scheme can operate effectively and efficiently.

Without tight and clearly defined eligibility criteria, the scheme will be swamped with an unworkable number of claims, many of which will be outside the airlines' conditions of carriage.

As noted above, consumers will expect and seek the widest possible range of compensation, including for matters beyond the contractual responsibilities of airlines or airports (e.g. compensation for missing international "broken ticket" connections.)

The Aviation Consumer Rights Charter will define the obligations of industry to consumer, indicating which areas could be eligible for complaints.

It is just as critical that the Ombuds Scheme, particularly at its outset, communicates very clearly what matters will not be considered. This must be central to the Scheme's education and public information efforts.

The list of issues identified in Section 3.2 of the consultation paper provide a reasonable basis for the Aviation Consumer Rights Charter.

These should be reinforced with clear communication from the Ombuds Scheme that remedies available to consumers are strictly limited to the conditions of carriage or the relevant consumer law and will be solely based on the concept of refunds of monies paid.

There should be no scope within the scheme to allow for awarding of additional damages or compensation for these matters.

The consultation paper lists "lost and damaged baggage" as a potential eligible complaint area.

While it is sensible to cover lost luggage, the inclusion of damaged luggage will open the scheme to a significant number of frivolous complaints, many of which cannot be fairly or reasonably resolved.

Historically, the purpose of luggage was to carry and protect personal items – meaning that while the luggage may be damaged, the personal items were safe.

This concept has changed significantly with many travellers now seeing luggage as either a status or fashion item. Some luxury brand luggage items can retail in excess of \$10,000 -to- \$20,000 (or more). This creates an unrealistic expectation around the avoidance of even minor damage.

Airport and airline experience shows that this unrealistic expectation is not confined to owners of luxury luggage.

It would seem an inefficient use of the scheme's time and resources to allow it to become bogged down in arguments about what is an acceptable level of damage to a suitcase, regardless of the items original cost to the consumer. The scheme would also be required to complete the impossible task of determining if the damage was pre-existing or actually caused by an airport or airline.

On this basis, Perth Airport strongly recommends that damage to luggage be excluded from the scheme.

Perth Airport agrees with the consultation paper's suggestions that there must be strict time limits for the lodgement of claims, anonymous claims should not be accepted, and that matters subject to ongoing legal disputes cannot be considered.

Perth Airport urges caution and further consideration on the proposal to have the Ombuds Scheme investigate non-compliance with the new aviation-specific disability standards. While we are not strictly opposed to the concept and are mindful of the potential benefits, there is a potentially significant overlap with the current role of the Human Rights Commission which must be addressed.

### **Complainant eligibility**

Perth Airport recommends that the Ombuds Scheme only consider complaints from consumers. This is consistent with the view of the Aviation White Paper and the consultation paper that the scheme will largely address matters covered by consumer guarantees under the Australian Competition Law.

### **Complaint resolution process**

The process needs to be clear, streamlined, and contain tight timelines.

The suggestion in the consultation paper that consumers first be directed by the scheme to the airline/airport to try to resolve a dispute is sensible. However, it needs to be reinforced with a clear understanding of the scheme's obligation to rule out any complaint that falls outside the guidelines or is considered frivolous, unreasonable or vexatious.

The rest of the proposed model appears both cumbersome and inefficient. Of concern is the implication that if the Ombuds Scheme accepts a complaint, the onus will be on the airline or airport to resolve the matter in favour of the consumer. This will ultimately lead to airlines and airports paying out to consumers – regardless of the validity of their claims - simply to avoid going through further stages of the process.



Of significant concern is the statement that “the government considers it appropriate that there be a maximum amount the ombudsman is able to award, which could differ depending on the nature of the complaint.”

Consistent with the views expressed in the Aviation White Paper, Perth Airport believes that remedies should be limited to a refund of monies paid by the consumer.

It is essential that government understands that airport charges are a very small component of an overall airfare. Unlike airlines, the potential value of compensatory payouts for cancelled flights would enormously outweigh any revenue earned by the airport. This payout risk would, to an extent, already be factored into airfares but is not currently incorporated into airport charges.

### **Publications by the Ombuds Scheme**

The Ombuds Scheme should keep a focus on cost control.

Too many government agencies produce documents for the sake of producing documents. These will only add costs to the scheme, which will be borne by airports and airlines.

The consultation paper suggests a number of issues (complaint volumes, resolution rates, etc) which could be worthy of publications. All of these issues can adequately be covered in an annual report, which needs to be produced anyway, at no additional cost.

The most essential publication or information campaign for the scheme will be to educate consumers on what they can or can't lodge claims for.

### **Aviation Rights Charter**

As noted above, Perth Airport generally concurs with the items suggested as potential inclusion in the Charter in Section 3.2.

### **Show Cause arrangement**

While a stated policy objective of the Aviation White Paper, this measure is not as clear cut as it appears.

The aviation sector is a dynamic industry with multiple players involved in ensuring the safe and efficient arrival and departure of aircraft.

Any “show cause” arrangement will somehow need to factor in the multiple interdependencies of these players.

Any reporting of cancellations or delays should include instances where government agencies (e.g. Airservices Australia) are responsible. As noted above, the AAA reports that Airservices Australia is responsible for more than one in ten flight delays/cancellations.

Similarly, there will be disputes about whether an airline or an airport is responsible for the delay or cancellation. For example, airports provide the infrastructure for the processing of baggage (e.g. baggage belts), but that infrastructure is then used by ground handlers who are contracted by the airlines. In the event of a baggage belt failure leading to a cancellation or delay of a flight, airlines will point to the provider of that infrastructure as being the cause.

However, it may be that the baggage belt failure was due to an overload of the system because the ground handling company (contracted by the airline) had not provided enough staff to off-load bags.

### **Conclusion**

Perth Airport is generally supportive of the Federal Government's proposal for an Aviation Industry Ombuds Scheme but is also mindful of the need for the scheme to be targeted and efficient, while avoiding scope creep.

The key consumer driver behind the proposed scheme has been the failure of airlines to provide timely and full refunds of airfares in the event of cancelled or significantly delayed flights.

There must be a tightly focussed complaint eligibility criteria to avoid the scheme being bogged down by frivolous or unreasonable complaints.

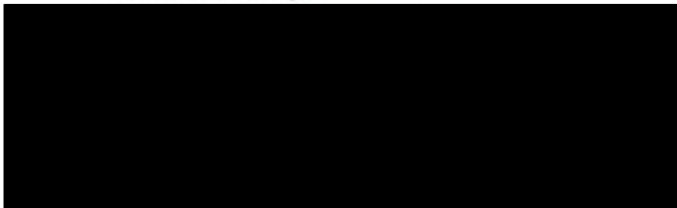
Remedies should be strictly limited to refunds of monies paid to either airlines or airports and be determined in accordance with the conditions of carriage or relevant consumer law.

The Ombuds Scheme should play a leading role in ensuring these limits are understood by consumers, thereby ensuring consumer expectations of the scheme remain reasonable.

The costs imposed by the scheme should not be disproportionately carried by airports.

Perth Airport would welcome the opportunity to provide further information on our submission if required and we look forward to ongoing consultation of this important policy proposal.

Yours sincerely,



Matt Brown  
**GENERAL MANAGER CORPORATE AFFAIRS**