

BCA

Business Council of Australia

Aviation Industry Ombuds Scheme

Submission

October 2024

The Business Council of Australia (BCA) represents over 130 of Australia's leading businesses. Our members include some of the largest companies in the aviation industry. We champion the role that responsible businesses play in generating sustainable economic growth and advocate for policy settings that are in the national interest.

We welcome the opportunity to provide a submission to the Department of Infrastructure, Transport, Regional Development, Communication and the Arts on the design and implementation of the new Aviation Industry Ombuds Scheme. The BCA acknowledges the Government's decision in the Aviation White Paper to establish an industry Ombuds Scheme, and this submission responds to the consultation paper on the Scheme.

The focus in developing the Ombuds Scheme should be on ensuring that customers have a positive, efficient experience when engaging with the Scheme in the handling of their issue, while not creating excessive new regulatory burden and significant cost for industry. The aviation industry is complex. There are many parties involved which could impact customers, some of which are beyond the proposed Scheme's remit that will need to be carefully navigated in establishing the Scheme.

Before establishing the Scheme, the Government should undertake a Regulatory Impact Analysis, so that the cost to industry and consumers is understood and considered. This is particularly important at a time when there is ongoing community pressure to ensure lower prices for air transport.

This submission will focus on addressing the questions raised in the consultation paper. The BCA has engaged with our members in the aviation industry, and incorporated our experience across broader regulated sectors, such as telecommunications and financial services, in preparing this submission.

Recommendations

- The governing board should have industry, consumer, and independent representatives, with an independent chair.
- There should be two separate ombuds people – one for consumer matters and one for noise matters.
- The customer charter should focus on existing consumer rights, placing them in an aviation context.
- Reporting should not be duplicated and should not create a third reporting regime (noting the existing Australian Competition & Consumer Commission (ACCC) and Bureau of Infrastructure and Transport Research Economics (BITRE) reporting requirements).
- The 'show cause' arrangement must be tightly targeted to focus only on gathering information related to a complaint to avoid creating a major new reporting burden.
- Membership should capture all airlines and all airports with regular passenger transport services. It should also capture Airservices Australia.
- Membership should not be phased, but rather start in totality from day one.
- The Scheme should be funded based on volume of genuine complaints, with a baseline funding amount from government for non-complaint functions (such as any reporting).
- The proposed multi-stage complaints handling process is supported, giving business the opportunity to take ownership and resolve the issue first.
- Reasonable timeframes are needed given the difficulty in investigation increases the further from the event.
- The customer complaints element of the Ombuds Scheme should be limited to personal purchases.
- There must be reasonable limits and scope, tied to consumer law, on the ability to direct refunds and payments.

Governance

- The governing board should have industry, consumer, and independent representatives, with an independent chair.
- There should be two separate ombuds people – one for consumers matters and one for noise matters.

Getting the governance right will be important in both ensuring the Ombuds Scheme is responsive to customer needs, giving customers confidence in the Scheme, and in creating a system that operates well in the context of the complex commercial realities of the aviation industry.

The Telecommunication Industry Ombudsman provides a good example for the board structure for such a scheme, with representatives with industry experience (such as those previously part of airline or airport senior leadership) as well as customer advocates, together with an independent chair, and other experienced independent members with a background in governance or commercial issues. From an industry perspective it will be important that airlines and airports are represented separately on the board. The Government should also consider how authorities such as Airservices Australia, which impact both noise and, potentially, aircraft delays, is represented.

The role of the customer ombuds person and the noise ombuds person is sensibly separated into two positions, given their very different focuses and potentially different set of stakeholders.

The Aviation Customer Rights Charter

- The customer charter should focus on existing consumer rights, placing them in an aviation context.

Ultimately, the shape and fitness for purpose of the ombuds scheme will in part depend on the customer charter it is implementing. We acknowledge that the customer charter will be developed as part of a subsequent consultation process, but this is an important missing context for the current consultation on the ombuds scheme.

The BCA's view is that the charter should focus on the existing rights of consumers, such as delays, disruptions, and luggage, as provided for in domestic legislation and international treaties. The charter should act to help customers understand their rights clearly in an aviation context, in an easy to access plain English way. This will address the concern that consumers are not across their rights or are not able to access them, instead empowering them to avail themselves of appropriate redress.

This includes Australian Consumer Law, the Civil Aviation (Carriers Liability) Act, and the Montreal Convention. The scheme should however exclude claims for passenger injury or death under Montreal Convention and equivalent domestic provisions in Civil Aviation (Carriers Liability) Act.

The development of the charter itself should be the subject of fulsome engagement with industry, and any amendments to the charter once established should also require a proper consultation process.

Reporting

- Reporting should not be duplicated and should not create a third reporting regime (noting the existing ACCC and BITRE reporting requirements).
- The 'show cause' mechanism must be tightly targeted to focus only on gathering information related to a complaint to avoid creating a major new reporting burden.

The government currently has reporting requirements for the aviation industry implemented by both the ACCC and BITRE. Adding new reporting requirements to be implemented under the Ombuds Scheme risks simply layering on additional and partly duplicative requirements across three different government agencies.

This is inefficient and simply creates additional cost and complexity to operating in the aviation sector in Australia.

The Government should limit the data requested to what is absolutely required related to the Ombuds Scheme complaint function; because the collection of information is neither cost free for companies or for government. Alternatively, if the BITRE and ACCC reporting schemes are retained, then the Ombuds Scheme should avoid being given responsibility for any reporting that duplicates existing data.

There needs to be consultation with industry on any new reporting requirements, such as the 'show cause' provisions. It needs to be very targeted in scope, given that in Australia there are 1.5 million flights across a year,¹ and so reporting detail on even a fraction of these will create a new burden on industry that should be avoided.

Membership

- Membership should capture all airlines and all airports with regular passenger transport services. It should also capture Airservices Australia.
- Membership should not be phased, but rather start in totality from day one.

The membership of the Ombuds Scheme needs to be broad in incorporating all airlines that operate in Australia, and all airports that have regular passenger transport services. This is necessary so that customers have certainty that they are covered by the scheme irrespective of the airport or size of operator they are flying with. In respect to any noise complaint elements of the Scheme, general aviation airports may also need to be covered even if they do not have regular passenger services. Excluding smaller operators will create confusion and a poor customer experience for the public, so there should be consistency across the industry.

For the same reason, the Scheme should also be stood up in totality from day one rather than with a phased membership. That is, there should not be a phased approach in terms of when participants come on board. If the scheme is going to be successful, customers need to have confidence that they are covered from day one, rather than having a dichotomy of those parts of the sector that are covered and those that are not covered.

Government agencies such as Airservices Australia must also be part of the scheme. They are responsible for addressing many noise complaints and can also be the cause of delays or cancellations.

The Government will need to consult with both airlines and travel agency representatives to establish how issues around travel agency bookings, ticketing, and refunds that involve travel agencies (particularly if refunds have been issued by an airline but not received by a customer, or if fault rests with an agency) is resolved.

Funding

- The scheme should be funded based on volume of genuine complaints, with a baseline funding amount from government for non-complaint functions (such as any reporting).

We support a funding model that is based on volume of genuine complaints and that provides an incentive for participants to address complaints before they are escalated to the Ombuds Scheme. By 'genuine complaints', we mean that parties should only be required to make a payment if the complaint is taken up by the ombuds scheme (the customer has tried to resolve directly, complainant is not vexatious) and it is directed at the correct party.

¹ Airservices Australia

Furthermore, given the Government proposes that the Ombuds Scheme undertake tasks that go beyond customer complaints, covering both noise complaints, and potentially reporting, and other regulatory functions, the government should provide a base level of funding to implement those elements.

Efficient operation of the Scheme will be essential so that unnecessary costs are not imposed on Scheme participants. The inclusion of industry representation on the board will be important in helping achieve this.

Complaints handling

- The proposed multi-stage complaints handling process is supported, giving business the opportunity to take ownership and resolve the issue first.
- Reasonable timeframes are needed given the difficulty in investigation increases the further from the event.
- The customer complaints element of the Ombuds Scheme should be limited to personal purchases.

The three-stage model proposed in the consultation paper, where a business is given the opportunity to work directly with a customer to attempt to resolve complaints first, before being referred to the Ombuds Scheme and going through the Scheme's process is supported. There should be reasonable time limits on how long after an event a complaint can be made given the ability to investigate the issue diminishes with time. Businesses need to be afforded time to respond before a complaint can be escalated to the Ombuds Scheme. This is especially the case given the intricacies of businesses having to deal with third parties that may not be covered by the Scheme such as codeshare partners or overseas airports.

As an example, a complaint should be made within 12 months of an event occurring. A business should have at least eight weeks from receiving a formal complaint, in the first instance, to investigate before a complaint is escalated for consideration by the Ombuds Scheme.

The Scheme should focus on individual consumers rather than involving itself in business-to-business disputes. Businesses will generally have the resources to pursue other avenues of rectification outside the Ombuds Scheme.

For areas handled by existing regulators, such as privacy, these should not be moved across to the Ombuds Scheme. Rather, their existing specialist regulators should retain responsibility.

Powers

- There must be reasonable limits and scope, tied to consumer law, on the ability to direct refunds and payments.

The issuing of binding decisions by the Ombuds Scheme should be a last resort of the complaints resolution process. Remedies should be in line with limits in existing laws, and further should be limited to actual losses directly incurred by a customer and directly linked to provision of the service (such as air fares paid or checked-in baggage); but not other opportunities missed such as hotel bookings or events.

Going beyond this will inevitably lead to higher fares, as aviation services will need to incorporate a risk premium into their costs. Customers have other remedies – such as travel insurance – which they can decide to avail themselves of based on their individual travel circumstances.

The Ombuds Scheme should neither have the power to give any binding operational directions in respect to operation of an aviation service, nor should it be able to require payment between businesses. Rather, it should be focused on enforcing rights under the customer charter, which should be linked back to existing customer rights.

The Government needs to consider how disruptions caused by Airservices Australia are handled. In August 2024, Airservices Australia's own reporting indicated it was responsible for almost 10 per cent of delays. This type of delay should not fall on business to cover when the government is responsible.

BUSINESS COUNCIL OF AUSTRALIA

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