

Submission in response to The Aviation Industry Ombuds Scheme – Consultation Paper

Virgin Australia Holdings Pty Ltd - and its related entities (collectively **Virgin Australia**) - is a Brisbane based, privately owned airline company, operating a domestic and short-haul international passenger airline. Virgin Australia also provides charter and regional flight services from its base in Western Australia through Virgin Australia Regional Airlines (**VARA**), Virgin Australia Cargo, and a loyalty program, Velocity Frequent Flyer (**VFF**).

Virgin Australia maintains a robust global network, encompassing a total of 638 destinations.¹ Virgin Australia itself directly serves 39 ports, while customers benefit from access to an additional 599 global destinations through partnerships with leading airlines including United Airlines, Singapore Airlines, Air Canada, Hawaiian Airlines, Etihad Airways, Virgin Atlantic, South African Airways, and Qatar Airways.

Subject to its comments below, Virgin Australia supports the introduction of an Aviation Industry Ombuds Scheme (**AIO**) to manage customer complaints for the Australian aviation industry. Virgin Australia submits that the underlying framework to the AIO and the Aviation Customer Rights Charter must effectively reflect the existing legislative framework, being the Australian Consumer Law (**ACL**), the *Civil Aviation (Carrier's Liability) Act 1959* (Cth) (**CACL Act**) and the relevant international conventions. The AIO will have an important role in making decisions which enforce the Charter and educating aviation consumers on their rights under the legislation.

To ensure that the AIO should be inclusive and accessible for all aviation customers in Australia, airports, airlines, travel agents and Air Navigation Service Provider (**ANSP**) should all be considered “members” of the scheme, and be engaged with the AIO in order to respond appropriately to consumer complaints where they are at fault for delays or cancellations and other customer issues.

Critically, Virgin Australia notes the AIO should be cost-efficient and appropriately scaled to industry needs to ensure unnecessary bureaucracy costs are not burdening members, particularly small players or challengers. Balancing this with appropriately appointing staff with specialised knowledge and expertise will be integral to the success of the AIO.

Virgin Australia also notes that further consultation with industry will be required in respect of several key elements of the scheme (particularly the Charter, the AIO fee structure and the Show Cause reporting process) to ensure the settings are correct and the Scheme achieves its intended purpose. This is particularly important when considering the challenges experienced in some overseas jurisdictions, where attempts to improve aviation dispute resolution processes has in fact resulted in poor outcomes for airline customers, including through higher fares and no improvement in operational performance of airlines².

Virgin Australia thanks the Australian Government for the opportunity to provide this submission in response to the Aviation Industry Ombuds Scheme – Consultation Paper (**Consultation Paper**). Virgin Australia would welcome the opportunity to provide further clarification on any of the matters raised in this submission.

¹ As at 30 June 2024.

² IATA. Willie Walsh Report on the Air Transport Industry. 5 June 2023. <https://www.iata.org/en/pressroom/2023-speeches/2023-06-05-01/>



Design of the Aviation Industry Ombuds Scheme

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

Consistent with its submission in response to the Aviation Green Paper,³ Virgin Australia considers that the objectives of the AIO should be to:

- provide a dispute resolution service, that is conducted in a way that adheres to the Australian Government's benchmark for industry-based consumer dispute resolution (i.e., accessible, independent, fair, accountable, efficient, and effective);
- allow for an efficient resolution of disputes within clearly defined time parameters;
- provide certainty of outcomes for consumers by having the authority to make binding decisions relating to the dispute;
- be staffed by qualified personnel with knowledge of the Australian Consumer Law (ACL), other relevant legislative frameworks that may be raised in complaints submitted to the AIO, and expertise in consumer dispute management;
- educate consumers, so that consumers have a clearer understanding of their rights; and
- be established and managed with cost efficiency as a key consideration to not create an unnecessary cost burden which will disproportionately impact smaller industry members, hurting competition.

Furthermore, Virgin Australia considers the AIO should aim to be inclusive and covering all aspects of the Australian aviation ecosystem that contribute to delays, cancellations and customer issues, including airports, airlines, air navigation service provider and travel agents.

2. What powers and functions should the ombudsperson have?

Virgin Australia considers the TIO a good model on which to base the AIO's powers and functions. Under this model, the AIO will have clearly defined powers and functions, including a complaints handling function for eligible complaints about aviation services (and the ability to make binding decisions in relation to those complaints), a reporting function and a consumer education function, covering consumer awareness of their rights under the ACL, and other relevant legislative frameworks (e.g. the Montreal Convention).

Power to resolve disputes under an Aviation Customer Rights Charter

Virgin Australia considers that the AIO should have the power to resolve disputes in line with an agreed Aviation Customer Rights Charter which is developed in consultation with industry (**Charter**). The Charter should (among other things) set a standardised interpretation of aviation customers' rights under the ACL, including with respect to what constitutes a major and a minor failure to provider services in accordance with the Consumer Guarantees, what events which cause flight delays and cancellations are within the member's control and a clear set of guidelines for compensable costs.

³ Virgin's submission in response to the Aviation Green Paper.
<https://www.infrastructure.gov.au/sites/default/files/documents/agp2023-submission-c223-virgin-australia.pdf>. Refer to pages 66-67.



Virgin Australia welcomes the Government's comment that further industry consultation will be undertaken in respect of the Charter in 2024-25. It submits that this separate and robust industry consultation will be critical to ensure the settings in the Charter on these issues appropriately reflect AIO members' obligations and the uncertain and challenging operational environment of the aviation industry. Importantly, and consistent with the design of other ombuds schemes (including the TIO), the AIO should not itself have the power to establish or vary the Charter (see below).

Power to make binding decisions

Virgin Australia submits that the AIO should have the power to make binding decisions for eligible complaints that align with members' obligations under the ACL and the requirements of the Charter. Where appropriate, the AIO should be empowered in the Charter to make binding decisions that require a member to provide a refund (or a travel credit, if the consumer elects), and pay compensation for financial loss, in accordance with the requirements of the ACL and up to the financial limit agreed for the Scheme (please refer also to Virgin Australia's response to question 19 on page 13 below).

Virgin Australia considers it would also be useful for the AIO to accept written submissions from members concerning binding decisions where a member is of the view that a decision is erroneous. Given the complexity of the relevant legal framework that the AIO will be applying to eligible complaints, it may be appropriate for AIO members to share feedback to the AIO or raise an issue with the relevant regulator when the reasons underlying binding decisions are not aligned with the application of the relevant laws, and should not be used as precedent for future decisions.

To facilitate resolution of complaints, the AIO should be empowered to make information requests in relation to specific complaints. The process for information requests should be designed in a way that ensures quick resolution for customers and minimises the administrative burden on members. This could include, for example, standardised information request templates for common complaints. Guardrails should be implemented for information requests to ensure that the AIO's functions do not extend beyond the intended scope – for example, Virgin Australia considers that it would be appropriate for the AIO to be empowered to require information regarding airline / airport schedules and operational data for specific complaints, but that it should not be empowered to request commercially sensitive information.

Power to refer systemic issues to regulators

Virgin Australia agrees that the AIO should be empowered to refer instances of systemic misconduct that may raise concerns under the *Competition and Consumer Act 2010* (Cth) (**CCA**) to the Australian Competition and Consumer Commission (**ACCC**).

No power to vary or enforce the Charter

The Consultation Paper suggests that the AIO would have a role in establishing the Charter and updating it from time to time.

Noting that further consultation with industry on the Charter will be undertaken, Virgin Australia does wish to make the point in this submission that the AIO should not have the power to publish or vary the Charter that it is expected to enforce. As a decision-making body, such a power would raise significant issues of independence in institutional design. Comparable ombuds schemes do not have equivalent powers to publish or vary the rules that they enforce. The Consultation Paper states that the proposed approach to the Charter "*will be consistent with the approach taken in other industries such as telecommunications, which relies on the Telecommunications Consumer Protection Code*". However, the TIO does not itself have any role in setting the Telecommunications Consumer Protections Code – this Code is established pursuant to an industry led process that is overseen by the ACMA, pursuant to Part 6 of the *Telecommunications Act 1997* (Cth). Virgin Australia is not aware of any ombuds scheme in Australia (including those involved in



handling complaints in relation to telecommunications, water and energy) which has the power to establish rules which it hears complaints against.

To maintain independence of the AIO, Virgin Australia submits that the Charter should instead be established by the ACCC with input from other relevant Government agencies where required (for example, the Australian Human Rights Commission should be consulted where the Charter refers to the rights of customers with disabilities). The AIO and ACCC should engage with AIO members through a consultation process when establishing the Charter. In setting the Charter, the ACCC should have regard to the importance of competition between airlines to provide service to customers over and above their strict legal rights – Virgin Australia agrees with the statement in the Aviation White Paper (page 56) that airlines compete on these service offerings, and that this benefits consumers.

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

Virgin Australia supports the proposal to establish a board that oversees the AIO (including appointing an ombudsperson). Virgin Australia considers it appropriate that the board be staffed by representatives from industry and consumer backgrounds, with an independent chairperson.

Virgin Australia considers that it would be beneficial for the AIO to have clearly documented roles and responsibilities of the board, which could be in a similar form to the Charter for the TIO Board of Directors.⁴ Virgin Australia also considers that a framework should be put in place to facilitate major decision making by the board in relation to, for example, funding.

Virgin Australia considers that it cannot provide further detailed submissions on the composition of the board while the AIO is in the design phase, but will do so at the appropriate time.

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

Virgin Australia considers that the TIO board powers and functions provide an appropriate model for the AIO. In particular, Virgin Australia considers it would be appropriate for the AIO board to have the following responsibilities:

- Setting the strategic direction for the AIO and ensuring adherence to that direction.
- Appointing key office holders, including the ombudsperson.
- Managing risk including, for example, ensuring the ombudsperson's independence.
- Managing the financial position of the AIO, including approving budgets and capital expenditure using an agreed framework.
- Managing, overseeing and reporting on operational performance of the AIO.
- Advising the ombudsperson.

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?

⁴ The Charter TIO Board of Directors. https://www.tio.com.au/sites/default/files/2024-03/Board%20Charter%20-%20Adopted%20%20February%202024_FINAL.pdf.



As covered in Virgin Australia's Aviation Green Paper submission, Virgin Australia supports the Aircraft Noise Ombudsman becoming independent of Airservices Australia to reduce conflicts of interest and ensure independence.⁵ However, Virgin Australia's considers aviation consumer issues and aircraft noise to be two very separate issues, likely to be raised by different stakeholders and with different outcomes (i.e., aviation consumers are usually passengers on an aircraft, whereas aircraft noise stakeholders are usually affected by the levels of noise generated by aircraft flying near them (and are usually the public)). In Virgin Australia's experience it is unlikely that there would be overlap between complaints about aviation consumer issues and aircraft noise. Due to the vast differences between air noise and aviation consumer issues, the Aircraft Noise Ombuds may require separate objectives, powers, governance arrangements and workforce skillsets. Virgin Australia considers that further consultation would be required before establishing a novel, two ombudsperson AIO.

If two ombudspersons are appointed, Virgin Australia's position is that the cost of operating the aircraft noise complaints ombuds scheme portion should be funded by Airservices Australia, given that flight path management is controlled by Airservices Australia, not airlines or airports.

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?

Virgin Australia considers that all airports and airlines operating regular passenger transport (**RPT**) services in Australia should be required to be members of the AIO, regardless of customer numbers. Virgin Australia considers that this will benefit all consumers travelling by air, because they will have access to the same dispute resolution mechanisms.

Virgin Australia has provided initial submissions regarding the funding structure of the AIO in response to question 8, which includes that the proportion of funding paid by each member should be based on a percentage of the eligible complaints made to the AIO that relate to that member. For smaller airports and airlines, Virgin Australia expects that complaint numbers would likely be limited and so the fee structure should reflect this, ensuring fairness for those members.

Virgin Australia considers that travel agents should be included as members of the AIO, given the high proportion of travel that is booked via travel agents in Australia. The Australian Travel Industry Association (ATIA) stated that over 90% of all corporate travel, and at least 70% of all international travel is booked via a travel agent.⁶ Travel agents can be responsible for issues resulting in disrupted travel for customers, such as incorrect names on tickets which can cause potential denial of travel at check-in, or failing to make customer-requested schedule changes or cancellations resulting in additional costs for the customers.

Virgin Australia considers that ANSPs (i.e. Airservices Australia) should be included as a member of the AIO for consumer issues. Airservices Australia is a critical part of the Australian aviation ecosystem and a contributor to aviation customers' disruptions, given the volume of air traffic control delays and cancellations.

Virgin Australia considers that the AIO should not accept complaints about charter services. This is because for charter services, the terms for compensation in the event of delays and cancellations are dealt with by a contract between the airline and the charter client.

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

⁵ Virgin Australia's submission in response to the Aviation Green Paper. Virgin's submission in response to the Aviation Green Paper. <https://www.infrastructure.gov.au/sites/default/files/documents/aggp2023-submission-c223-virgin-australia.pdf>. Refer to pages 14-17.

⁶ Australian Travel Industry Association. Submission to the Aviation Green Paper consultation. 2023. <https://www.infrastructure.gov.au/sites/default/files/documents/aggp2023-submission-c211-australian-travel-industry-association.pdf>.



Virgin Australia does not support a phased approach to the application of the AIO based on member type. To ensure a consistent consumer experience and reduce any confusion related to the rollout, Virgin Australia considers that the AIO should apply to all AIO members at the same time.

However, Virgin Australia considers that, in the event the Aircraft Noise Ombudsman is incorporated into the AIO, a phased approach to the two ombudspersons (aviation consumer issues and aircraft noise) could be beneficial. This may help to ensure a smooth roll out with the ability to test systems, processes and operating models with the aircraft noise ombudsperson before reaching scale with the aviation consumer issues ombudsperson.

Alternatively, the rollout could be phased based on complaint type within the aviation consumer issues ombuds scheme. Starting with complaints about refund requests, flight disruptions and mishandled baggage would result in the key customer issues being resolved by the AIO (>80% of the Airline Customer Advocate (ACA) eligible complaints in 2023 fell inside these categories⁷) while ensuring there is sufficient time to successfully scale up the AIO.

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

Regardless of the specific funding mechanism adopted, the funding for the AIO must be proportionate to the issue that the AIO is put in place to resolve.

For example, the TIO handles a very large number of complaints relative to the number of complaints handled by the ACA and the ACCC in relation to aviation. In FY24, the TIO handled 56,718 eligible complaints⁸ compared to the 1,408 eligible complaints received by the ACA in 2023⁹. Furthermore, there are many more telecommunications companies than there are airlines or airports. On that basis, Virgin Australia expects that the funding required for the AIO would be significantly less than the approximately \$30 million required for the TIO¹⁰.

Virgin Australia's initial view is that the funding arrangements for the AIO should be split between members of the AIO, based on the proportion of eligible complaints made in relation to that member. The fee payable per complaint could be scaled to reflect the level of escalation of the complaint – for example, a complaint that is resolved between the member and the consumer should “cost” less than a complaint that requires a binding decision by the ombudsperson. However this approach is only feasible, provided that the finances of the AIO are well managed and there are guardrails to ensure there is no incentive for members to settle complaints unnecessarily early to avoid the higher funding costs associated with an escalated complaint.

Further, Virgin Australia considers that:

- the set-up costs associated with the AIO and those incurred prior to the AIO being established by legislation in 2026 should be covered by the Federal Government;
- the costs associated with the aircraft noise aspect of the AIO, if included in the AIO, should be funded by Airservices Australia, given that flight path management is controlled by Airservices Australia, not airlines or airports;
- travel agents should be required to pay fees for complaints where the travel agent is at fault; and

⁷ ACA. 2023. Annual Report. https://www.airlinecustomeradvocate.com.au/lib/Docs/AnnualReport/Annual_Report_2023.pdf

⁸ TIO. FY24. Annual Report https://www.tio.com.au/sites/default/files/2024-09/TIO%20Annual%20Report_2023-2024.pdf

⁹ ACA. 2023. Annual Report. https://www.airlinecustomeradvocate.com.au/lib/Docs/AnnualReport/Annual_Report_2023.pdf

¹⁰ TIO. FY24. Financial Report. <https://www.tio.com.au/sites/default/files/2024-09/TIO%20Financial%20Report%202024.pdf>



- the Federal Government and / or Airservices Australia should be required to pay fees for complaints related to their services including air traffic control caused delays and cancellations.

Virgin Australia welcomes the opportunity for further consultation on the funding arrangements for the AIO once design features of the scheme are confirmed.

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?

Virgin Australia supports the AIO being modelled on the features of the TIO, including those mentioned in other sections of this submission. In Virgin Australia's view, the TIO provides a good representation of an ombuds scheme that works effectively and where consumers receive timely, efficient and appropriate outcomes. Importantly, one key feature of the TIO is that it does not itself set or establish rules, but hears complaints based on existing sources of obligation such as the ACL (please refer to Virgin Australia's comments in relation to the Charter at question 2).

Virgin Australia's view is that the TIO operates as an efficient dispute handling mechanism, due to the large proportion of complaints (~86% in FY23) that are resolved prior to escalation and the small number of binding decisions (10 in FY23) that are made by the ombudsperson¹¹. The design of the TIO provides an effective forum for handling of low-level consumer law complaints outside of the involvement of the ACCC, state fair trading bodies or other forums which might otherwise hear the complaint or dispute (for example, state or territory Civil and Administrative Tribunals).

In addition to the features of the TIO, as a new ombuds scheme, the AIO should aim to utilise technology and digital platforms (other than via email or letters), and designed in a way that maximises automation where possible to reduce costs. Virgin Australia's experience is that some international complaints handling bodies (such as the Canadian Transportation Agency) are utilising or introducing online portals to make the engagement process more accessible to consumers and members. Designing a fit-for-purpose technical solution will ultimately improve engagement from members, improve response times and provide customers with an efficient dispute resolution experience.

Virgin Australia observes that the UK Aviation Alternate Disputes Resolution (**ADR**) process has a narrow set of criteria for eligible complaints, which is an important feature for a dispute resolution or complaints handling body which aims to effect timely resolution of disputes. The UK Aviation ADR can hear complaints in relation to:¹²

- Flights delays or cancellations;
- Destruction, damage, loss, or delayed transportation of baggage;
- Destruction, damage, or loss of items worn or carried by the passenger;
- Problems faced by disabled passengers or passengers with reduced mobility when using air transport services; and

¹¹ TIO. FY23. Annual Report. https://www.tio.com.au/sites/default/files/2023-10/TIO_2022-23%20Annual%20Report_fa.pdf

¹² Alternative Dispute Resolution for Aviation. <https://www.aviationadr.org.uk/complaints-we-can-deal-with/>.



- Any disputes arising where the consumer alleges that the business is not trading fairly (such disputes must be specific to the fairness of a particular contract term or commercial practice in relation to the customer's individual circumstances).

Providing clear eligibility criteria for complaints, as the UK Aviation ADR does, is critical to setting expectations with consumers who are utilising the ADR process. The result is that largely, consumers will only submit their complaint for determination, and use resources, if they believe that they are eligible for a remedy under the criteria. This also assists in ensuring consumer complaints are resolved fast and efficiently, because assessors will receive similar complaints and can apply the relevant legal framework expeditiously and appropriately due to familiarity of the circumstances. Notably the UK Aviation ADR resolves cases within its mandated 90-day determination period, and only a tiny fraction of its decisions are escalated to an independent assessor or the Civil Aviation Authority.

Complaint handling

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

Virgin Australia considers that the following types of complaints should be eligible for consideration by the AIO. These categories cover the majority of the complaints that are submitted through the ACA and reflect a large portion of the complaints that are received by Virgin Australia directly:

- Flight disruption (delays or cancellations);
- Requests for refunds;
- Mishandled baggage;
- Fare inclusions and fees (relating to, for example, incorrect charges, not the setting of prices);
- Airport services (including security services);
- Paid flight ancillary services (e.g. paid seating upgrades); and
- Flight related issues caused by travel agent services.

Virgin Australia notes the Government will conduct a separate consultation on the options for the AIO to investigate non-compliance with the new aviation-specific disability standards, as mentioned in the Government's Consultation paper.

Virgin Australia considers that the following types of complaints should not be eligible for consideration by the AIO:

- Complaints about customer service where the customer suffered no direct financial loss;
- Complaints where the member has already met the guidelines within the Charter;
- Complaints about a member's general policy or commercial practice;
- Frivolous or vexatious complaints;



- Anonymous complaints;
- Complaints relating to non-flight-related Frequent Flyer transactions (such as E-store transactions) or Frequent Flyer benefits (such as Points or Status Credit earn, lounge access, free-of-charge upgrades);
- Complaints about third party ancillary services such as travel insurance or car hire services;
- International flights (operated by partner airlines) that do not depart or arrive in Australia;
- Complaints that have been settled under another scheme, or that is already being heard by another body / the subject of legal proceedings; and
- Complaints regarding bodily injury or death.

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

Virgin Australia does not support the AIO being able to accept complaints relating to breach of privacy. It strongly considers that the Office of the Australian Information Commissioner (**OAIC**) is best placed to handle privacy complaints in relation to aviation, and that the AIO will better function with a narrower remit, from an efficiency and specialisation perspective.

Privacy complaints in an aviation setting can be extremely complex and can arise in a wide range of circumstances. The *Privacy Act 1988* (Cth) is principles-based, and its application is often nuanced, with limited case law that can assist decision makers with correctly interpreting some aspects of the law. The OAIC has personnel who have specialised knowledge of privacy, the appropriate application to complex matters, and the enforcement priorities and policies of the OAIC. In the absence of embedding this proficiency, there is a risk that unhelpful and incorrect legal precedent is set through its decisions. Additionally, due to the complexity of privacy complaints and the level of investigation required by a member, it may be hard for members to meet the AIO's required timeframe for responding to complaints, when the subject is a privacy concern.

However, if privacy complaints were to be considered by the AIO, then Virgin Australia considers that industry consultation is required, including to consider the following:

- the AIO has appropriately trained staff with sound knowledge of the Privacy Act who are able to handle privacy complaints;
- the scope of privacy complaints able to be handled by the AIO should be narrow to straightforward matters, and where a privacy complaint is highly technical or requires specialised knowledge, it is referred to the OAIC;
- a longer timeframe for complaint resolution through the AIO would be required for members to have an appropriate amount of time to investigate the complaint; and a privacy complaint cannot be managed by the AIO or the OAIC at the same time. Further, where a customer elects to submit a complaint through the AIO and it is resolved, the customer cannot then seek further remedies via the OAIC.

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?



Virgin Australia recommends that the AIO should require travel agents be members of the AIO and the AIO should have the authority to accept and resolve complaints for bookings made through a travel agent. Allowing the AIO to hear complaints regarding travel agent bookings will provide customers with a more comprehensive aviation dispute resolution scheme.

For cases where a flight is booked via a travel agent but the airline has caused the issue, the airline should be responsible for responding to and resolving the complaint, where it is fair and reasonable to do so.

However, there are often instances where an airline member has caused an issue, but a travel agent is responsible for providing the customer with a resolution (e.g. processing a refund for a customer), or a travel agent has caused the issue which is the subject of a complaint. Virgin Australia considers that the AIO should require travel agents to be required to respond to these complaints, as it would not be fair or reasonable to assign complaints to airline members. This is because, from a practical perspective, the travel agent maintains control of and responsibility for a booking when a customer books a ticket via a travel agent. The travel agent is often required to process refunds if customers are so entitled. Additionally, a customer's contact information is sometimes not provided to the airline by a travel agent, and so some remedies and communications are not possible without direct involvement by the travel agent.

If travel agents are excluded from the AIO, then Virgin Australia considers that any complaints relating to errors or issues caused by a travel agent should be ineligible complaints.

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

Virgin Australia considers the following complaint schemes have the potential to overlap with the AIO:

- The ACCC and state consumer protection agencies such as NSW Fair Trading and Consumer Affairs Victoria;
- If privacy complaints are eligible for the AIO, the OAIC;
- Small claims courts and tribunals, such as the state and territory Civil and Administrative Tribunals;
- As identified in the Aviation White Paper, the Australian Human Rights Commission in relation to discrimination (for example, on the grounds of sex, disability, race or age). State based anti-discrimination boards may also have some overlap with the AIO; and
- Overseas bodies which have complaint handling mechanisms, such as the United States Department of Transportation and Canadian Transportation Agency.

Virgin Australia submits that an effective way of dealing with potential areas of overlap would be for the AIO to adopt a similar approach to the arrangements in place between the TIO and the ACCC. Under this arrangement, the ACCC and TIO have entered a memorandum of understanding (**MOU**) which expressly provides for mechanisms to avoid duplication between the two bodies.¹³ Under this model, where a complaint has not first been raised with the TIO, then the ACCC directs complaints to the TIO. Virgin Australia suggests that a similar arrangement with the ACCC, Australian Human Rights Commission, the OAIC (should the AIO hear privacy complaints) and other bodies could be useful in the aviation context, to avoid potential duplication of functions.

¹³ The MOU is accessible here <https://www.tio.com.au/sites/default/files/2020-05/EO%20-%20ACCC%20-%20TIO%20-%20Memorandum%20of%20Understanding%20-%20signed%20by%20TIO%20and%20ACCC.pdf>.



Virgin Australia considers that clearly defined rules for engagement will be critical to avoid inefficiencies caused by overlapping schemes; for example, if customers choose to file their complaint with the AIO, they will be excluded from bringing the same complaint in another forum.

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

Virgin Australia considers that customers, or nominated representative of customers (such as family or friends), should be eligible to make complaints to the AIO, subject to the exclusions below.

Virgin Australia supports aligning the definition of eligible consumers with the definition under the ACL, because it expects that most of the complaints referred to the AIO will be related to the ACL. Doing so would exclude customers that are outside of the ACL definition of a consumer (for example, if services have been purchased which are valued at over \$100,000) or consumers that wish to make a non-ACL related complaint and which fall outside of the definition of consumer under the ACL.

Virgin Australia submits that small businesses should not be able to seek resolution of complaints through the AIO. This is because aviation services, unlike telecommunications or financial services, are always delivered to the end consumer. During travel, consumers may be offered remedies directly to immediately assist (e.g. Virgin Australia's Rapid Rebook tool provides flight options, hotel organisation and transport vouchers for eligible customers in a flight disruption).

Virgin Australia submits that travel agents should not be able to make complaints about airlines or airports on behalf of their customers, as remedies that would be provided to resolve a complaint should be provided to and accepted by customers (not travel agents).

Charter clients should not be eligible to make complaints to the AIO as flight disruptions on charter services are covered by commercial agreements between the airline and the charter clients.

Virgin Australia notes that parties not eligible to submit complaints through the AIO may still have recourse to other dispute resolution mechanisms, including relevant state Offices of Fair Trading and consumer tribunals.

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?

If small businesses are eligible to make complaints to the AIO, Virgin Australia considers that eligibility of small businesses and NFPs should be aligned with the definition used by the TIO which generally hears complaints from small businesses and NFPs that have up to \$3,000,000 annual turnover and no more than 20 full-time employees. This definition ensures that only true "small businesses" and NFPs would be eligible to utilise the AIO, noting the main objective of the Scheme is to facilitate a timely resolution of complaints for consumers.

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

Virgin Australia agrees that one of the key objectives of the AIO should be the fast and efficient resolution of complaints. To facilitate this, Virgin Australia considers that the AIO should encourage all parties (including complainants) to be open to resolution of the complaint at the initial stage of the complaint resolution process. If well designed, the Charter should be referred to in the early stages to help consumers understand their rights and lead to fast resolutions, before these matters progress to binding decisions.



In the last six months to September 2024, Virgin Australia has responded to 93% of complaints within 10 business days¹⁴. Of these complaints, 76% were resolved in the first response with over 90% resolved by the second response¹⁵. However, Virgin Australia notes that longer time periods are often required when handling complex complaints which may involve third parties or during periods of peak disruption where thousands of customers may be impacted at once due to extreme weather events or other issues (e.g. the CrowdStrike issue in July 2024).

Virgin Australia considers that the AIO should adopt the complaint resolution process set out below:

- 1 The customer contacts the member directly to make a complaint.
- 2 Following two unsatisfactory responses from the member or no response from the member within 8 weeks (matching the UK Aviation ADR¹⁶), the customer can lodge the complaint with the AIO and the AIO will open a case for that complaint.

The proposal to require two unsatisfactory responses from the member before progressing to the AIO is intended to ensure that all relevant information is shared between the parties before utilising the AIO's resources. In Virgin Australia's experience, customers can submit complaints with little information, and additional information is needed before Virgin Australia can appropriately assess a customer's claim. Without the requirement to receive two unsatisfactory responses from a member, customers may submit a very simple complaint with little or no information which the member could use to resolve the complaint, and when the member requests additional information from the customer, this could be construed as an unsatisfactory response, enabling the customer to proceed to the AIO. Virgin Australia expects that this would result in a higher number of complaints being submitted through the AIO which could have effectively been resolved with the member directly without the need for utilisation of AIO resources.

- 3 The AIO will review the complaint to ensure that it meets the eligibility criteria.
- 4 If the AIO determines the complaint is eligible, then the complaint will be sent to the member who will review the matter and propose a resolution to the customer.
- 5 If the customer is unsatisfied by the member's proposed resolution, then the complaint will be escalated to an AIO "Dispute Specialist", who will review and make a non-binding recommendation that will be communicated to the customer and the member.
- 6 If either the customer or the member is unsatisfied with the recommendation, then the complaint can be escalated to the ombudsperson for a binding decision.

Virgin Australia considers it critical that employees of the AIO who are responsible for making binding decisions or who support the review process have relevant expertise, including by having an appropriate level of training in the relevant regulatory frameworks and application of the Charter once drafted. Aviation is a complex industry as are the regulatory frameworks that apply to it. Multiple stakeholders across the aviation ecosystem including airlines, airports, Airservices Australia and third-party contractors are involved in delivering air travel, with the performance of each of those stakeholders relevant to the overall experience of consumers. Ensuring AIO employees are appropriately qualified to manage complaints will ensure fair outcomes for both consumers and members.

¹⁴ Virgin Australia Guest Relations data from March to September 2024 (inclusive).

¹⁵ Virgin Australia Guest Relations data from March to September 2024 (inclusive).

¹⁶ UK Aviation ADR. 2024. <https://dashboard.aviationadr.eu/webform.php>



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 in deciding if a complaint was resolved within a reasonable time?

When considering a reasonable time for complaint resolution, it is important to consider the complexity of the case, the number of parties involved and how long after travel the complaint was initially lodged. For example, a complaint involving multiple parties and flights or multiple issues to be resolved will usually be more complex to investigate, as will a complaint which involves a long delay between the complaint being lodged and the date of travel.

Considering the complexity of some complaints and to ensure a streamlined approach for customers, Virgin Australia submits eight weeks is a reasonable maximum period that the member should be given to resolve any type of complaint before it can be raised with the AIO (with the exception of privacy complaints which are discussed earlier in the submission). This time period is reflective of Virgin Australia's experience in managing a wide range of complaints, including complaints involving international codeshare partners, or multi-party and multi-issue complaints. Members should aim to give initial responses within 10 business days and provide the customer with appropriate updates throughout the process.

Virgin Australia expects that most complaints will be responded to and resolved much sooner. For example, over the last six months to September 2024, 93% of Virgin Australia's complaints were responded to within 10 business days¹⁷. However, complex complaints and periods of significant disruptions (such as major weather events which impact many customers at once) will require the additional time of eight weeks. Eight weeks is consistent with the UK Aviation ADR process.

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

Virgin Australia considers that the appropriate time limit for making a complaint to the AIO is 12 months from completion of the last leg of travel. This will support the key objectives of the AIO, which is to provide fair and timely resolution of complaints, noting the passage of time impacts a member's ability to thoroughly investigate issues which are the subject of the complaint.

Furthermore, given that aviation complaints are centred around specific events not ongoing services there is a significant difference between the nature of services offered by the aviation sector and services covered by other industry ombuds schemes, such as the TIO, which relate to services delivered on an ongoing basis as part of a continuing relationship between the supplier and customer. Virgin Australia considers that this should be reflected in the time limit on complaints.

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

Where the Montreal Convention or the CACL Act apply to a customer's complaint, the relevant caps on liability should be applied to the award of any compensation.

Virgin Australia supports a limit on monetary amounts that the AIO can award for cases not covered by relevant liability caps. This maximum monetary amount should be consulted on further as part of the Charter consultation process. Relevant considerations when setting this maximum should be historical compensation amounts (over 99% of Virgin Australia's complaint payments in FY24 were valued under \$5,000¹⁸) and other Australian Ombuds schemes (e.g. Energy and Water Ombudsman Victoria (**EWOV**) has

¹⁷ Virgin Australia Guest Relations from March – September 2024 (inclusive).

¹⁸ Virgin Australia Guest Relations data from FY24



authority to make decisions to a value of \$20,000 unless all parties agree to a higher value that is not more than \$50,000.)

Virgin Australia does not consider that the AIO should be empowered to award monetary amounts for non-financial loss. Any determination on the issue of non-financial loss in legal proceedings usually involves a complex analysis based either on legislation or legal precedent.

Guidance and reporting

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

While the AIO's primary function will be the resolution of complaints, Virgin Australia sees the AIO having an important role in educating the travelling public about their rights under the ACL and the Charter, and the operation of the ombuds scheme itself. Virgin Australia also sees value with the Department's stated intention of improving transparency of already publicly available information as a means of helping to restore consumers' trust and confidence in the aviation industry. However, Virgin Australia submits that this should be carried out in a manner that compliments, rather than duplicates, existing reporting frameworks such as the ACCC's Airline Monitoring reports and should have regard to procedural fairness in any reporting.

Virgin Australia supports the AIO publishing regular reports, including:

- Public guidance - The AIO should publish information for consumers to help understand their rights under the ACL and the Charter, what they are entitled to during a disruption, and how complaints should be handled by members. This information should be accessible.
- Annual reports - Similar to other Ombuds Schemes, an annual report should be published to ensure transparency and accountability. This should include data and analysis related to complaint volumes, escalation and resolution rates, and complaint processing times, as well as analysis of any trends or systemic issues.

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

To ensure procedural fairness for members, Virgin Australia submits that the AIO should provide the opportunity for members to submit a claim for confidentiality before publishing certain data and information. This is consistent with the approach the ACCC takes when making information about airlines public under its current monitoring role and provides an appropriate level of protection for members where the publication of such information has the potential to cause members undue commercial or operational harm.

The subject of these matters will often be complex and impact a number of internal stakeholders. Virgin Australia recommends that members be given at least 10 business days to consult on the release of information as set out above, so that members can effectively respond to the consultation and where relevant, submit a confidentially claim.



Show cause arrangement

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

Virgin Australia and other major domestic airlines operating RPT services in Australia already provide on-time performance (i.e., delay and cancellation) (**OTP**) data to the Bureau of Infrastructure and Transport Research Economics (**BITRE**) and the ACCC, which they publish monthly and quarterly, respectively.

In relation to the aggregate reporting of delay and cancellation reasons (i.e. the 'Show Cause' arrangement), Virgin Australia supports using the existing BITRE reporting process and definitions to avoid duplicating processes and requiring members to report to the AIO as well as BITRE and the ACCC. The AIO should be empowered to request the relevant data from BITRE.

Virgin Australia considers that the AIO should only be empowered to request OTP data from airlines where the data it seeks relates to a specific complaint made to the AIO. This will reduce the likelihood of over-reporting to multiple bodies and will ensure that the required resourcing by members to support the AIO is not amplified.

Virgin Australia understands that the Australian Government will separately consult the industry on the arrangements for reporting flight delay and cancellation data. Virgin Australia supports the need for consultation on this issue to ensure industry alignment (e.g. to IATA delay codes¹⁹) and ensure consistent use throughout the industry (e.g. consistent treatment of root cause delays and multiple reason delays).

Scheme compliance

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

Virgin Australia considers that the AIO should refer instances of non-compliance with an AIO binding determination with the AIO to existing regulatory bodies for enforcement / compliance with the AIO. For example, it could refer to the ACCC to enforce a decision made by reference to the Australian Consumer Law. Virgin Australia suggests that this could be done so via memorandums of understanding with those bodies, or in the legislation that establishes the AIO.

Virgin Australia does not consider it appropriate for the AIO to be vested with additional enforcement powers such as the ability to issue infringement notices because the AIO would be fundamentally a complaint handling body, not a body that makes findings of fact or law regarding contraventions.

As noted earlier in this submission, Virgin Australia considers that systematic issues identified by the AIO should be referred to the relevant body, such as the ACCC to investigate and take appropriate enforcement action where relevant.

¹⁹ IATA. 2024. [IATA delay codes | Aviation Intelligence Portal \(ansperformance.eu\)](https://www.iata.org/en/pressroom/2024/01/01/iata-delay-codes-portal).

