



Australian Government

Department of Infrastructure, Transport,
Regional Development, Communications and the Arts

The Aviation Industry Ombuds Scheme – Consultation paper

Consultation paper

August 2024



Ownership of intellectual property rights in this publication

Unless otherwise noted, copyright (and any other intellectual property rights, if any) in this publication is owned by the Commonwealth of Australia (referred to below as the Commonwealth).

Disclaimer

The material contained in this publication is made available on the understanding that the Commonwealth is not providing professional advice, and that users exercise their own skill and care with respect to its use, and seek independent advice if necessary.

The Commonwealth makes no representations or warranties as to the contents or accuracy of the information contained in this publication. To the extent permitted by law, the Commonwealth disclaims liability to any person or organisation in respect of anything done, or omitted to be done, in reliance upon information contained in this publication.

Creative Commons licence



With the exception of (a) the Coat of Arms; (b) the Department of Infrastructure, Transport, Regional Development, Communications and the Arts photos and graphics; (c) content supplied by third parties; (d) content otherwise labelled; copyright in this publication is licensed under a Creative Commons BY Attribution 4.0 International Licence.

Use of the Coat of Arms

The Department of the Prime Minister and Cabinet sets the terms under which the Coat of Arms is used. Please refer to the Commonwealth Coat of Arms - Information and Guidelines publication available at <http://www.pmc.gov.au>.

Contact us

This publication is available in Word and PDF format. All other rights are reserved, including in relation to any departmental logos or trademarks which may exist. For enquiries regarding the licence and any use of this publication, please contact:

Email: aviationconsumer@infrastructure.gov.au

Website: www.infrastructure.gov.au/Aviation-Ombuds-Scheme

Acknowledgement of Country

First Nations people have the oldest continuing cultures in the world. It is fitting to reflect on the thousands of generations of traditional knowledges that First Nations people hold, and generously share.

We acknowledge the diversity of First Nations cultures, languages and practices across the country and the resilience of First Nations people in keeping these alive. In delivering this consultation paper, we recognise the importance of listening to the voices and perspectives of local First Nations people and responding to the uniqueness of each place.

We thank First Nations people for their continuing custodianship of, and care for, the Country that we live and work on today.

Table of Contents

Acknowledgement of Country	3
Introduction	5
Decision to establish an Aviation Industry Ombuds Scheme	5
Decision to establish an independent ombuds scheme for aircraft noise	6
Next steps	6
Have your say	7
1. Design of the Aviation Industry Ombuds Scheme	10
1.1 Objectives of the ombuds scheme	10
1.2 Powers and functions of the ombudsperson	11
1.3 Governance arrangements	12
1.4 Requirements for airlines and airports to be members of the ombuds scheme	12
1.5 Funding arrangements	13
2. Complaint handling	15
2.1 Complaint eligibility	15
2.2 Complainant eligibility	16
2.3 Complaint resolution processes	17
3. Guidance and reporting	19
3.1 Publications by the ombuds scheme	19
3.2 Aviation Customer Rights Charter	20
3.3 Procedural fairness	20
4. Show cause arrangement	21
4.1 Reporting of reasons for flight delays and cancellations	21
4.2 Ombudsperson's power to request additional information	21
5. Scheme compliance	22
5.1 Enforcement action	22
Consultation questions	23

Introduction

The Australian Government's 2024 Aviation White Paper: *Towards 2050*, announced the establishment of a new Aviation Industry Ombuds Scheme for Australia (see Box 1).¹

The new ombuds scheme will improve outcomes for the travelling public by clarifying and upholding the rights of aviation customers, and establishing an independent mechanism to resolve customer complaints about the aviation industry. In the future, the ombuds scheme will also incorporate the functions of the existing Aircraft Noise Ombudsman (ANO), which is currently established within Airservices Australia. This will increase the independence of the ANO.

The purpose of this consultation paper is to seek input from interested stakeholders on the design and implementation of the new ombuds scheme. This consultation process builds on the input received by the government through the Aviation White Paper process, which heard from a wide range of stakeholders about gaps and inadequacies in the existing consumer protection arrangements for aviation customers.

Responses to this consultation paper will inform the development of policy and legislation to establish the new Aviation Industry Ombuds Scheme. The government is seeking informed views, data and analysis, including from the aviation industry, aviation customers, and other interested stakeholders.

In establishing the new Aviation Industry Ombuds Scheme, the government will also consider the examples of existing industry ombuds schemes, and similar bodies, in Australia and overseas (see Box 2).

Decision to establish an Aviation Industry Ombuds Scheme

The Australian Government's decision to establish the ombuds scheme was informed by the views of Australian aviation customers, consumer advocates, the aviation sector, and experts in consumer protection and complaints handling.

Submissions received through the 2024 Aviation White Paper process made clear that aviation consumers are dissatisfied with how Australian airlines and airports have interpreted their obligations to customers, and how the industry has responded to customer complaints. These issues were particularly acute during the reopening period following the COVID-19 pandemic, when there were historically high rates of delayed and cancelled flights.

Aviation customers have existing legal rights and protections under the Australian Consumer Law (ACL), enacted through the *Competition and Consumer Act 2010* (Cth). The ACL is a national law and is jointly administered by the Australian Competition and Consumer Commission (ACCC) and state and territory consumer protection agencies. The ACL contains consumer guarantees that set out basic rights and obligations that businesses must meet when supplying products or services, including flights and other aviation services. For example, the ACL contains guarantees that services will be rendered with due care and skill,² be fit for purpose,³ and be supplied within a reasonable time.⁴ The ACL also provides that appropriate remedies, including refunds, will be available to affected customers when service providers do not meet these obligations, including when services are not delivered within a reasonable time.

However, submissions received through the Aviation White Paper process identified a range of instances where aviation customers' rights have not been upheld in practice. For example, despite the protections of the ACL, submissions described situations where customers experienced difficulties accessing remedies, such as refunds, or redeeming travel credits for cancelled or significantly delayed flights.

¹ Department of Infrastructure, Transport, Regional Development, Communications and the Arts, *Aviation White Paper: Towards 2050*, August 2024.

² *Competition and Consumer Act 2010* (Cth) sch 2 ('Australian Consumer Law'), s 60.

³ Australian Consumer Law, s 61.

⁴ Australian Consumer Law, s 62.

Submissions also reported long delays in airlines' responsiveness to complaints, and unsatisfactory outcomes from complaints referred to the industry-led dispute resolution body – the Airline Customer Advocate (ACA). The ACA was established in 2012 to provide complaint resolution services to customers of major Australian airlines (Qantas, Jetstar, Rex and Virgin Australia). Rex withdrew from the scheme in mid-2024. The ACA is funded and managed by participating airlines. It was originally established in response to the Australian Government's 2009 Aviation White Paper, which found that the aviation industry needed to "establish a mechanism for consumers to have unresolved complaints examined by a third party, such as an industry ombudsman, independent of the airline involved."⁵

The 2009 Aviation White Paper went on to state that "the Government will monitor the industry's efforts to develop proposals to better handle consumer complaints ... and will consider a more interventionist approach should this become necessary."⁶

Following the 2024 Aviation White Paper consultation process, the Australian Government has formed the view that the aviation industry has not consistently met its obligations to customers, and that the ACA has not delivered a sufficiently effective complaint resolution service. In this context, the government has decided to establish a new independent body to more effectively protect the rights of aviation customers and resolve customer complaints – the Aviation Industry Ombuds Scheme.

Decision to establish an independent ombuds scheme for aircraft noise

The existing Aircraft Noise Ombudsman (ANO) was first established in 2010, in response to the 2009 Aviation White Paper.⁷ The ANO conducts administrative reviews of how Australia's air navigation service providers – Airservices Australia and the Australian Defence Force – handle complaints about aircraft noise.

While the ANO is functionally independent from the operations of Airservices Australia, it sits inside the Airservices Australia organisation and reports to the Board of Airservices Australia and the Chief of Air Force. This reporting arrangement creates the potential for conflicts in the ANO's role, and can undermine public confidence in its findings and recommendations. Aviation White Paper submissions from community groups, airlines and airports raised concerns about the ANO's perceived independence.

The government has decided to structurally separate the ANO from Airservices Australia and the Australian Defence Force, to increase its independence and to enhance community trust and confidence in its findings. The government has decided to transfer the functions of the ANO to the Aviation Industry Ombuds Scheme at the time that the Aviation Industry Ombuds Scheme is established in legislation.

The government will consult affected stakeholders on the arrangements for transitioning the functions of the ANO into the independent Aviation Industry Ombuds Scheme through a separate process.

Next steps

The Aviation Industry Ombuds Scheme will be established by legislation in 2026 (see Figure 1).

To support improved outcomes for aviation consumers in the short term, the government will appoint an interim ombudsperson within the Department of Infrastructure, Transport, Regional Development, Communications and the Arts.

Because it will not be established by legislation, the interim ombudsperson will have a limited set of powers and functions. During 2024-25, the interim ombudsperson will:

- work with industry and consumer groups to develop a draft Aviation Customer Rights Charter (as discussed in section 3.2 of this consultation paper)
- investigate and report on industry customer service standards and complaints handling

⁵ Australian Government, *National Aviation Policy White Paper – Flight Path to the Future*, December 2009, p 87.

⁶ Australian Government, *National Aviation Policy White Paper – Flight Path to the Future*, December 2009, p 87.

⁷ Aircraft Noise Ombudsman, [About Us](#)

- establish systems and processes to accept and respond to customer complaints about the aviation industry, with complaints handling expected to commence in 2025.

The consultation questions posed in this paper relate to the design of the independent, legislated Aviation Industry Ombuds Scheme, not the interim ombudsperson in the department.

Have your say

This consultation paper sets out key questions related to the design and functions of the Aviation Industry Ombuds Scheme. Responses to the consultation paper will inform the detailed policy design and legislation to establish the ombuds scheme.

There will be further opportunities for affected parties to input to specific aspects of the design and implementation of the ombuds scheme.

Submissions in response to the consultation paper are due by 17 October 2024. To make a submission, visit the Department of Infrastructure, Transport, Regional Development, Communications and the Arts' website: www.infrastructure.gov.au/Aviation-Ombuds-Scheme.

Box 1: Aviation White Paper initiatives

Initiatives that are part of this consultation process

The 2024 Aviation White Paper announced that the Australian Government will:

Initiative 1. Legislate for an **Aviation Industry Ombuds Scheme**, which will have the power to direct airlines and airports to provide remedies to consumers and investigate customer complaints about airlines' and airports' conduct, with penalties for non-compliance. The enabling legislation for the ombuds scheme will outline requirements for airlines and airports to become members of the scheme, as well as the compliance and enforcement mechanisms. The ombudsperson will issue guidance on appropriate consumer conduct by airlines and airports, publish independent reports on the industry's complaints handling, make recommendations to the government for policy or regulatory change, and refer instances of systemic misconduct that may raise concerns under the *Competition and Consumer Act 2010* (Cth) to the ACCC for investigation and enforcement.

Initiative 3. Adopt a 'show cause' arrangement, requiring airlines to report the reasons for delays and cancellations as part of the airlines' regular reporting of flight data to the Bureau of Infrastructure and Transport Research Economics (BITRE). The ombudsperson will also have powers to request additional information from airlines in relation to specific flights. Regular reporting of additional data about industry performance and conduct will increase transparency and public accountability for on-time performance, and support the government to identify if further regulatory action is required.

Related Aviation White Paper initiatives

The Aviation White Paper also announced several related initiatives that the government will consult on separately:

Initiative 2. Deliver a new **Aviation Customer Rights Charter**, to be produced by the ombuds scheme, setting out the fair and appropriate treatment of customers by airlines and airports. The charter will outline minimum customer service levels, give customers greater certainty about what they can expect when flights are

cancelled and delayed, and when passenger journeys are disrupted, including in relation to the prompt payment of refunds, across all fare types.

The interim ombudsperson will consult on development of the charter in 2024-25.

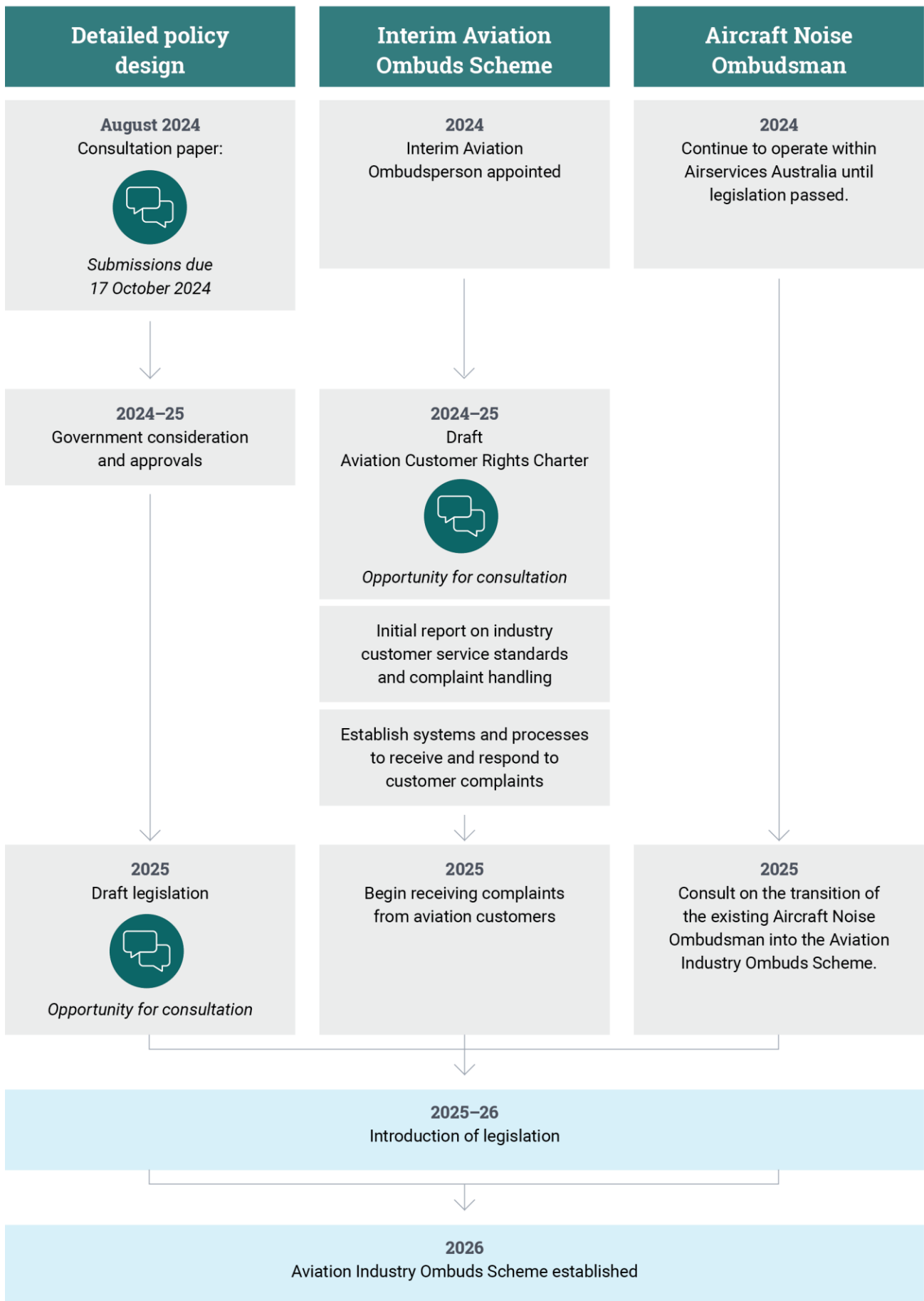
Initiative 4. **Make new aviation-specific disability standards** as a schedule to the Disability Standards for Accessible Public Transport 2002 under the *Disability Discrimination Act 1992* (Cth). The aviation-specific disability standards will affirm the rights of people with disability during air travel and the obligations that airlines and airports have to provide equal access. The Australian Government will co-design the aviation-specific disability standards with people with disability and consult industry on the draft standards in 2025.

In the future, the government will consider options for the Aviation Industry Ombuds Scheme to investigate noncompliance with the new aviation-specific disability standards, and will consult affected stakeholders on these options through a separate process. This consultation paper does not seek stakeholder views on the ombuds scheme's role in relation to disability access.

Initiative 32. **Create an independent Aircraft Noise Ombuds Scheme** as part of the Aviation Industry Ombuds Scheme. The Australian Government will establish the Aircraft Noise Ombuds Scheme independently of Airservices Australia, as part of the Aviation Industry Ombuds Scheme. The Aviation Industry Ombuds Scheme will have the power to conduct independent investigations into aircraft noise complaints handling, publish reports and make recommendations to government about the handling of noise complaints, community consultation processes and the presentation of noise related information.

The government will consult affected stakeholders through a separate process on the arrangements for transitioning the functions of the existing Aircraft Noise Ombudsman into the independent Aviation Industry Ombuds Scheme.

Figure 1: Implementation of the Aviation Industry Ombuds Scheme



1. Design of the Aviation Industry Ombuds Scheme

Key points:

- This consultation paper seeks stakeholder feedback on key design features of the Aviation Industry Ombuds Scheme.
- Some design features may be set out in the enabling legislation for the ombuds scheme, or supporting legislative instruments.
- The government is interested in stakeholders' views on:
 - the objectives of the ombuds scheme
 - the powers and functions of the ombudsperson
 - governance arrangements
 - requirements for airlines and airports to be members of the ombuds scheme
 - cost recovery arrangements to fund the ombuds scheme.

1.1 Objectives of the ombuds scheme

The government considers it important for the Aviation Industry Ombuds Scheme to have clear stated objectives. The objectives will help to: clarify the purpose of the ombuds scheme, make it accountable for its actions, and manage and meet the expectations of aviation customers and the industry.

The objectives of the ombuds scheme may be set out in enabling legislation.

Having regard to the objectives of existing industry ombuds schemes in Australia, potential objectives of the Aviation Industry Ombuds Scheme could include, for example:

- to provide an alternate dispute resolution service for aviation customers who have been unable to resolve their dispute directly with an airline or airport
- to receive, investigate, make decisions relating to, give directions relating to, and facilitate the resolution of complaints by aviation customers about airlines and airports
- to exercise such jurisdiction, powers and functions as may be conferred on the ombuds scheme by any legislation or instrument
- to act impartially, independently and effectively in acquitting its functions.

The ombuds scheme will also take on the functions and powers of the existing Aircraft Noise Ombudsman (ANO), which may require additional stated objectives to be set out in enabling legislation.

This consultation paper seeks stakeholder views on the most appropriate objectives for the ombuds scheme, to give effect to the government's commitments in the Aviation White Paper, and to meet the expectations of aviation customers and the industry.

Consultation question

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

1.2 Powers and functions of the ombudsperson

The 2024 Aviation White Paper announced that the Aviation Industry Ombuds Scheme will:

- Deliver an external dispute resolution service in relation to airlines' and airports' conduct in a way that is accessible, independent, fair and accountable
- direct airlines and airports to provide specific remedies to customers
- issue public guidance on airlines' and airports' obligations to their customers, consistent with relevant legislation
- publish reports on airline and airport conduct, and make policy recommendations to the Australian Government
- refer instances of systemic misconduct that may raise concerns under the *Competition and Consumer Act 2010* to the ACCC for investigation and enforcement.

To give effect to these commitments, some specific functions and powers of the ombudsperson are expected to be set out in enabling legislation or instruments.

As described in the 2024 Aviation White Paper, decisions made by the ombudsperson will be binding on airlines and airports (but not on consumers, who will retain their rights to pursue action through a relevant court or tribunal if they are unhappy with an ombuds scheme outcome). To acquit this function, the ombudsperson may require specific powers to make binding directions to airlines and airports that are members of the scheme, with scheme members having a legal obligation to comply with directions of the ombudsperson.

The ombuds scheme will have a role in educating aviation customers about their consumer rights, and informing them about the conduct and performance of airlines and airports. To acquit this function, the ombudsperson may require specific powers to collect, analyse, share and publish certain data and information. The ombuds scheme will also be responsible for administering a 'show cause' arrangement (as discussed in section 4), which may require powers for the ombudsperson to direct airlines to provide certain information to the ombuds scheme about the reasons for flight delays and cancellations.

Although the ombuds scheme is not an enforcement body, it will have a role in identifying conduct by airlines and airports that may warrant enforcement action by the appropriate regulator. To acquit this function, the ombudsperson may require specific powers to collect, compile and share information to be used for enforcement purposes.

The ombuds scheme will also take on the functions of the existing Aircraft Noise Ombudsman (ANO), which may require certain relevant powers and functions to be set out in legislation or instruments.

This consultation paper seeks stakeholder views on the specific powers and functions required by the ombudsperson to give effect to the government's commitments in the 2024 Aviation White Paper.

Consultation question

2. What powers and functions should the ombudsperson have?

1.3 Governance arrangements

The Aviation White Paper announced that the Aviation Industry Ombuds Scheme will be established by legislation, as an independent body. In developing legislation to establish the ombuds scheme, the government will need to set out the governance and reporting arrangements for the ombuds scheme.

Most other industry ombuds schemes, and similar complaints handling bodies, that exist in Australia have governing boards, with some board members appointed as industry and consumer representatives, and with an independent chair. Some also have additional independent board members. Boards of industry ombuds schemes typically have the power to appoint key officeholders, including the relevant ombudsperson. Boards also typically have responsibility for corporate governance, including the setting of budgets and membership fees, but do not have a day-to-day role in managing the scheme.

The government sees merit in establishing a governing board to oversee the Aviation Industry Ombuds Scheme, including appointment of the ombudsperson.

Given the Aviation Industry Ombuds Scheme's two distinct remits: protection of aviation consumer rights and overseeing the handling of noise complaints, the government also sees merit in appointing two individual ombudspersons within the scheme – one with responsibility for aviation consumer issues, and the other with responsibility for aircraft noise.

The ombuds scheme will have a role in providing certain information to relevant regulators, such as the ACCC. To facilitate this role, the ombuds scheme may need to agree memoranda of understanding with relevant regulators and other bodies, to guide the exchange of information.

This consultation paper seeks stakeholder views on appropriate governance arrangements for the Aviation Industry Ombuds Scheme.

Consultation questions

3. What governance arrangement should be adopted for the Aviation Industry Ombuds Scheme?
4. If a board is established to govern the Aviation Industry Ombuds Scheme, what powers and functions should the board have?
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?

1.4 Requirements for airlines and airports to be members of the ombuds scheme

As set out in the Aviation White Paper, the government will require that both airlines and airports be members of the Aviation Industry Ombuds Scheme.

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. It will also facilitate the proposed future role of the ombuds scheme in investigating noncompliance with the new aviation-specific disability standards, which will apply to both airlines and airports.

The Aviation White Paper commits that both domestic and international airlines will be subject to the ombuds scheme. Given that international airlines (when operating services departing from Australia) are required to comply with the ACL, the government considers it appropriate that international airlines be members of the ombuds scheme designed to protect consumer rights consistent with the ACL. However, the application of the scheme to international airlines will need to have regard to Australia's international obligations, including under relevant treaties and international air services agreements, which may require additional policy considerations.

Given the different considerations that will arise when applying the scheme to certain categories of airlines and airports, there may be benefits to commencing the scheme in stages. However, this would increase implementation timeframes.

The government also recognises there may be reasons for certain airlines or airports to be exempt from the ombuds scheme, such as due to low passenger volumes. Any airlines and airports that are exempted from the requirement to join the scheme could have the option to join voluntarily.

The government expects that airlines and airports exempted from the scheme would nevertheless have regard to the Aviation Customer Rights Charter (as discussed in section 3.2) when determining their conditions of carriage.

In line with the future transition of the functions of the ANO into the Aviation Industry Ombuds Scheme, it may also be appropriate for air navigation service providers (including Airservices Australia and the Australian Defence Force) to be members of the ombuds scheme. This issue will be considered through a separate consultation process.

This consultation paper seeks stakeholder views on the implementation of requirements for airlines and airports to become members of the Aviation Industry Ombuds Scheme.

Consultation questions

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

1.5 Funding arrangements

As set out in the Aviation White Paper, the costs of operating the Aviation Industry Ombuds Scheme will be met by the aviation industry. The government intends that payments by scheme members will fund the scheme's operations.

Funding from industry will support the sustainability and independence of the scheme and allow for an equitable distribution of costs to those industry participants that generate the costs. Certain funding arrangements could also incentivise scheme members to resolve complaints directly with customers to reduce the cost of administering the scheme.

There are a range of different funding arrangements that apply to industry ombuds schemes and similar bodies in Australia, including combinations of:

- annual membership fees
- charges based on business size (measured either by revenue or customer volume)
- charges based on complaints volume and complaint escalation rates.

The government will conduct more detailed consultation with relevant industry participants on specific funding arrangements in 2025.

This consultation paper seeks stakeholders' high level views on how funding arrangements for the ombuds scheme should operate.

Consultation question

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

Box 2: Existing industry ombuds schemes and similar bodies

In consulting on the design of the Aviation Industry Ombuds Scheme, the government has considered a number of other similar schemes, in particular, the Telecommunications Industry Ombudsman (TIO), state Energy and Water Ombudsman schemes (New South Wales, Victoria, Queensland, South Australia and Western Australia) and the Australian Financial Complaints Authority.

These consumer-focused ombuds schemes have structures and complaint resolution methods considered relevant to the Australian aviation industry. All are industry-led schemes, except the Energy and Water Ombudsman of Queensland (EWOQ), which is a government-led scheme.

These schemes have common features that the government considers may be appropriate for informing the design of the Aviation Industry Ombuds Scheme, including:

- **A governing board**, responsible for determining the business affairs, goals, budgets and overall strategy of the scheme. All boards are composed of an independent chair and an equal number of industry and consumer representatives. The TIO Board has two additional independent directors.
- **Board appointment of the ombudsperson** and other key office holders (except for the EWOQ where the Minister appoints the ombudsman and the Energy and Water Ombudsman of Western Australia (EWOWA) where the ombudsperson is the Western Australian Ombudsman).
- **An independent ombudsperson** (except for the EWOWA), responsible for the day-to-day management of the scheme (including complaint handling) and the organisation's day to day operations.
- **Costs recovered from scheme members**. The schemes charge fees, which are a combination of membership fees (usually based on customer numbers) and fees for complaint handling (based on the number of complaints and level of complaint escalation).

In establishing the new Aviation Industry Ombuds Scheme, the Australian Government sees merit in adopting similar features to these other industry ombuds schemes, tailored to the specific circumstances of the aviation sector. The government will also consider examples from aviation consumer protection regimes in other markets where appropriate.

This consultation paper seeks stakeholders' views on features of existing industry ombuds schemes and similar bodies, in Australia and overseas, which should be considered in the design of the Aviation Industry Ombuds Scheme.

Consultation question

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?

2. Complaint handling

Key points:

- This consultation paper seeks stakeholder feedback on how the Aviation Industry Ombuds Scheme should receive, handle and resolve complaints made by aviation customers.
- The government is interested in stakeholders' views on:
 - types of complaints that should be eligible for consideration by the ombuds scheme
 - what should be out of scope for the ombuds scheme's consideration
 - who should be permitted to make a complaint to the ombuds scheme
 - what processes the ombuds scheme should adopt to consider and resolve complaints.

2.1 Complaint eligibility

Determining which complaints the Aviation Industry Ombuds Scheme can investigate, and which complaints it cannot, is important for the ombuds scheme to be effective. Clear guidance on complaint eligibility provides clarity and fairness to customers and the industry, avoids duplication with other complaints handling bodies, promotes efficiency, and reduces the potential for litigation.

The government considers it appropriate that the Aviation Industry Ombuds Scheme be authorised to consider complaints in relation to any matters set out in the Aviation Customer Rights Charter (see section 4.2). In addition, the government considers it may be appropriate that the ombuds scheme is able to receive complaints in relation to:

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

The government will consult separately in the future on complaint eligibility in relation to the ombuds scheme's proposed aircraft noise and disability access functions.

Similar to arrangements adopted by some other industry ombuds schemes, the government is also considering whether the Aviation Industry Ombuds Scheme should become the external dispute resolution scheme for breaches of privacy by scheme members, subject to approval of the Office of the Australian Information Commissioner under section 35A of the *Privacy Act 1988*.

It is proposed that the ombuds scheme not be permitted to consider complaints that fall outside its defined remit. It may also be appropriate to impose other limits on complaint eligibility, for example in relation to complaints made after a certain period of time has elapsed, frivolous or vexatious complaints, complaints that are the subject of ongoing legal proceedings, and/or anonymous complaints.

The Aviation Industry Ombuds Scheme will only be able to consider complaints against members of the scheme. The government does not propose that travel agents and other third parties that sell aviation services will be required to join the ombuds scheme. However, the government is interested in stakeholder views on how the design and operation of the ombuds scheme could affect travel agents, and how the ombuds scheme should handle complaints about airlines and airports in relation to services purchased through travel agents or other third parties.

The government also intends to avoid or minimise overlaps in the remit of the Aviation Industry Ombuds Scheme and other government or industry bodies that handle consumer complaints. Overlapping remits could lead to confusion, inefficiency, and/or forum shopping by customers.

The government is aware that the proposed future remit of the ombuds scheme in investigating noncompliance with the new aviation-specific disability standards could overlap with the Australian Human Rights Commission's existing role as the complaint handling body for disability discrimination. The government will consider how to manage this potential overlap in remits through future consultation on the ombuds scheme's role in relation to disability access.

This consultation paper seeks stakeholders' views on the types of complaints that should be eligible for consideration by the Aviation Industry Ombuds Scheme.

Consultation questions

10. What types of complaints should be eligible for consideration by the Aviation Industry Ombuds Scheme, and what types of complaints should not?
11. Should the Aviation Industry Ombuds Scheme be able to accept complaints relating to breaches of privacy by members of the scheme?
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?
13. What existing complaints schemes or processes have the potential to overlap with the Aviation Industry Ombuds Scheme?

2.2 Complainant eligibility

Decisions on the eligibility of complaints that can be considered by the Aviation Industry Ombuds Scheme will largely determine who is eligible to make a complaint. However, it may also be appropriate to set out specific criteria for complainant eligibility.

As the Aviation Customer Rights Charter will largely address matters covered by the consumer guarantees under the ACL, one option under consideration is that only consumers (as defined in the ACL) can make complaints to the Aviation Industry Ombuds Scheme. The ACL defines a consumer as a person who acquires a service for an amount that does not exceed \$40,000 and is of a kind acquired for personal, domestic or household use or consumption.

Businesses customers and not for profit organisations (NFPs) are not covered by the consumer guarantees under the ACL. Therefore, if complainant eligibility is limited to consumers, businesses and NFPs would not be eligible to make a complaint to the ombuds scheme. However, there may be reasons for allowing small businesses and NFPs to make complaints under the scheme. It may be more expeditious, fair and cost efficient for small businesses and NFPs to resolve disputes with airlines and airports using the ombuds scheme, rather than relying on litigation. Such an approach would be consistent with complainant eligibility for some other ombuds schemes or similar bodies.

If small businesses and NFPs are eligible to make complaints to the ombuds scheme, these entities would need to be defined for eligibility purposes. A definition could be based on the number of employees, annual turnover, or some other metric.

This consultation paper seeks stakeholders' views on who should be eligible to make a complaint to the Aviation Industry Ombuds Scheme.

Consultation questions

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

2.3 Complaint resolution processes

Complaint-handling is the core business of Aviation Industry Ombuds Scheme. The government intends that the ombuds scheme will adopt a best practice industry dispute resolution process, tailored to the specific characteristics of the aviation sector.

The government has considered examples of complaint resolution processes adopted by other industry ombuds schemes, and similar bodies, which typically follow a complaint escalation process with the following elements:

1. attempt to resolve the complaint directly between the business and customer
2. referral of the complaint to the ombuds scheme
3. case management and binding decision by the ombudsperson.

The government sees merit in the Aviation Industry Ombuds Scheme adopting a similar complaint resolution process.

Stage 1: attempt to resolve the complaint directly between the business and customer

The Aviation Industry Ombuds Scheme is intended to be a dispute resolution body of last resort. Before the ombuds scheme accepts a complaint, it is proposed that complainant be required to contact the airline or airport to seek to resolve the complaint directly.

Airlines and airports that are members of the ombuds scheme would be expected to have documented complaint-resolution processes in place, and would not be permitted to charge a customer for considering a complaint. Scheme members would also be expected to have suitably qualified staff to receive and consider complaints.

It is proposed that members would be given a reasonable time to resolve the complaint, before it is escalated to consideration by the ombuds scheme. The amount of time that is considered reasonable could depend on the complexity of the complaint and the level of information provided by the complainant to support resolution of the complaint.

Stage 2: referral of the complaint to the ombuds scheme

If a customer is unable to resolve a complaint directly with an airline or airport that is a member of the ombuds scheme, or the member does not respond in a reasonable time, it is proposed that the customer can refer the complaint directly to the ombuds scheme.

To provide certainty for airlines and airports, and to increase the likelihood that evidence is available to support consideration of a complaint, the government considers it appropriate to impose a time limit for making complaints to the ombuds scheme. This is a common feature of other industry ombuds schemes. The government is seeking stakeholder views on what would be an appropriate time limit, and if there should be circumstances where complaints can be accepted outside the time limit.

It is proposed that the ombuds scheme would have discretion not to consider certain complaints, including because the complaint is frivolous or vexatious, or because the complainant does not cooperate reasonably.

Where the ombuds scheme does accept a complaint, it is proposed that it would refer the complaint back to the scheme member for resolution in the first instance – with the member given a reasonable time to resolve the complaint. It is also proposed that the ombuds scheme adopt systems to refer complaints to the member that should have been made directly to the member in the first instance, a ‘No Wrong Door’ policy.

Stage 3: case management and binding decisions

If parties to a complaint are unable to reach a satisfactory resolution directly, it is proposed that the ombuds scheme work with the parties to resolve the complaint. Similar to other industry ombuds schemes, in the first instance this could involve a ‘case management’ process.

As part of case management, the ombuds scheme would ask the parties to explain their positions and provide relevant information. If information was not provided voluntarily by the scheme member, it is proposed that the ombuds scheme have powers to require the member to provide the requested information within a specified timeframe. If a complainant failed to provide information in a timely manner, the ombuds scheme could decide not to pursue resolution of the complaint further. The case management process could involve a number of methods to resolve a dispute, including conciliation, investigation, shuttle negotiation, mediation or recommending an outcome.

If either party rejects the recommended outcome of case management, it is proposed that the complaint would proceed to a decision by the ombudsperson, which could include a determination that the scheme member pay money to the complainant for losses incurred.

The government considers it appropriate that there be a maximum monetary amount that the ombudsperson is able to award, which could differ depending on the nature of the complaint.

This consultation paper seeks stakeholders’ views on the processes the Aviation Industry Ombuds Scheme should adopt to resolve customer complaints.

Consultation questions

16. What complaint resolution process should the Aviation Industry Ombuds Scheme adopt?
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?
18. What time limit should apply for making a complaint?
19. What should be the maximum monetary amount the ombudsperson is able to award?

3. Guidance and reporting

Key points

- The Aviation Industry Ombuds Scheme will publish guidance material for customers and the aviation industry, and produce reports about the aviation industry's performance and conduct.
- The ombuds scheme will produce an Aviation Customer Rights Charter to provide clarity on the minimum standard of consumer protections that apply to all airlines operating in Australia. This consultation paper is not seeking stakeholder views on the content of the Charter.
- The consultation paper seeks stakeholder feedback on:
 - regular publications that should be produced by the ombuds scheme
 - processes the ombuds scheme should adopt to provide procedural fairness to airlines and airports when publishing information about those airlines and airports.

3.1 Publications by the ombuds scheme

As announced in the Aviation White Paper, the Aviation Industry Ombuds Scheme will:

- issue public guidance on airlines' and airports' obligations to their customers, consistent with relevant legislation
- publish reports on airline and airport conduct and make policy recommendations to the Australian Government.

Issuing public guidance and reports is a key function of the ombuds scheme, to foster a culture of accountability, transparency and continuous improvement in the Australian aviation industry. Publications will play a key role in educating the public about the ombuds scheme, enabling customers to make informed air travel decisions, and incentivising airlines and airports to avoid inappropriate practices that could cause reputational damage if publicised.

Publications by the ombuds scheme may include:

- annual reports
- reports containing data and analysis about complaint volumes, complaint escalation and resolution rates, and complaint processing times
- analysis of statistics and trends in the aviation industry
- guidance materials.

This consultation paper seeks stakeholders' views on regular publications that should be produced by the Aviation Industry Ombuds Scheme.

Consultation question

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

3.2 Aviation Customer Rights Charter

The Aviation White Paper commits that the Aviation Industry Ombuds Scheme will produce an Aviation Customer Rights Charter, which will provide practical information about the obligations that the industry has to its customers. The charter will be informed by consumer guarantee rights under the ACL and other relevant legislation.

The charter will set out what the ombudsperson considers to be fair and reasonable conduct by airlines and airports, which would be expected to include matters such as:

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

The charter will be updated from time to time as the ombudsperson makes decisions on individual complaints and identifies common and emerging issues in the sector. Consistent with the approach taken in other industries such as telecommunications, which relies on the Telecommunications Consumer Protection Code, the charter will complement, not replace, consumers' existing rights under the ACL.

The purpose of the charter is to provide clarity on the minimum standard of consumer protections that apply to all airlines operating in Australia.

The government expects that any airlines and airports exempted from the scheme would nevertheless have regard to the Aviation Customer Rights Charter when determining their conditions of carriage.

Airlines will continue to have the option to offer services and remedies over and above their obligations under the charter, and the government considers it appropriate that airlines can choose to compete on these service offerings.

The interim ombudsperson will consult separately on a draft Aviation Customer Rights Charter in 2024-25. This consultation paper is not seeking stakeholder views on the content of the Charter.

3.3 Procedural fairness

Consistent with the common law legal principle of procedural fairness, the government considers it appropriate that the Aviation Industry Ombuds Scheme provide a reasonable opportunity for airlines and airports to respond to any information that might adversely affect them, before the information is published.

The government proposes that ombuds scheme members should be given reasonable notice of particular data or information to be published that might adversely affect them, and a reasonable opportunity to directly address the data or information. What is reasonable may depend on the type of data or information in question.

The government does not expect procedural fairness requirements would be adopted that would significantly affect the ability of the ombuds scheme to perform its functions.

This consultation paper seeks stakeholders' views on how the ombuds scheme should seek to ensure procedural fairness.

Consultation question

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

4. Show cause arrangement

Key points

- The Aviation White Paper announced a new ‘show cause’ arrangement for delayed and cancelled flights, to increase the level of public information about the reasons for delays and cancellations, and to support the Aviation Industry Ombuds Scheme’s consideration of customer complaints.
- The consultation paper seeks stakeholder feedback on how the show cause arrangement should operate, including what powers the ombudsperson should have to require airlines to provide information about the reasons for delayed and cancelled flights.

4.1 Reporting of reasons for flight delays and cancellations

Flight cancellations and delays are a major contributor to consumer dissatisfaction with airlines, particularly when consumers do not know the reasons for the cancellations and delays. Increasing the level of public information about the reasons for flight cancellations and delays will inform consumers’ travel choices and sharpen incentives for the aviation industry and government to address the sources of cancellations and delays within their control.

The Aviation White Paper announced that the government will introduce a ‘show cause’ arrangement for delayed and cancelled flights. Airlines will be required to report the reasons for cancellations and delays of flights as part of their regular reporting of flight data to BITRE, within the Department of Infrastructure, Transport, Regional Development, Communications and the Arts.

The department will consult the industry on the arrangements for reporting flight delay and cancellation data, through a separate process. In designing the reporting requirements, the government will consider the costs and benefits of imposing reporting obligations on airlines, including which airlines are required to report data.

The government will also consider the interaction between this reporting requirement and the reforms to the Sydney Airport Demand Management framework, announced by the government in February 2024.

4.2 Ombudsperson’s power to request additional information

To acquit its roles in investigating customer complaints and reporting on the conduct of the aviation industry, the Aviation Industry Ombuds Scheme may need to access more detailed information about the reasons for flight delays and cancellations than is reported to BITRE.

To facilitate this, the Aviation White Paper announced that “where appropriate, the ombudsperson will also have the power to audit reasons for delays and cancellations, and to request additional information from airlines about specific delays or cancellations that are subject to a customer complaint to the ombuds scheme.” This power of the ombudsperson may be set out in enabling legislation or instruments.

This consultation paper seeks stakeholders’ views on the powers that the ombudsperson should have to require airlines to provide information about the reasons for delays and cancellations of flights.

Consultation question

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

5. Scheme compliance

5.1 Enforcement action

As set out above, the legislation establishing the Aviation Industry Ombuds Scheme is expected to impose certain requirements on the aviation industry, including requirements for:

- airlines and airports to become members of the ombuds scheme (unless exempt)
- scheme members to comply with directions from the ombudsperson to provide data and information to the scheme
- scheme members to provide remedies to customers, following a final decision by the ombudsperson about a customer complaint
- scheme members to make payments to fund the operations of the scheme.

Where an airline or airport fails to comply with a requirement of legislation, enforcement action may be required. A government entity would be responsible for taking enforcement action.

The legislation may prescribe civil offences for non-compliance with the scheme, and may also include options for the department to issue infringement notices or take court action. The government will consult on the detail of civil offence provisions as part of the legislative drafting process.

The government is seeking stakeholders' views on appropriate compliance and enforcement arrangements for the Aviation Industry Ombuds Scheme.

Consultation question

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

Consultation questions

Design of the Aviation Industry Ombuds Scheme

2. What should be the objectives of the Aviation Industry Ombuds Scheme?
3. What powers and functions should the ombudsperson have?
4. What governance arrangement should be adopted for the Aviation Industry Ombuds Scheme?
5. If a board is established to govern the Aviation Industry Ombuds Scheme, what powers and functions should the board have?
6. 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?
7. 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?
8. Should the government adopt a phased approach to the application of the Aviation Industry Ombuds Scheme to different categories of airlines and airports?
9. How should funding arrangements for the Aviation Industry Ombuds Scheme operate?
10. 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?

Complaint handling

11. What types of complaints should be eligible for consideration by the Aviation Industry Ombuds Scheme, and what types of complaints should not?
12. Should the Aviation Industry Ombuds Scheme be able to accept complaints relating to breaches of privacy by members of the scheme?
13. 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?
14. What existing complaints schemes or processes have the potential to overlap with the Aviation Industry Ombuds Scheme?
15. Who should be eligible to make complaints to the Aviation Industry Ombuds Scheme?
16. 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?
17. What complaint resolution process should the Aviation Industry Ombuds Scheme adopt?
18. How much time should an airline or airport have to resolve a complaint, before the complaint is considered by the Aviation Industry Ombuds Scheme? What factors should be considered by the Ombudsperson when deciding if a complaint was resolved within a reasonable time?
19. What time limit should apply for making a complaint?
20. What should be the maximum monetary amount the ombudsperson is able to award?

Guidance and reporting

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

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

Show cause arrangement

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

Scheme compliance

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