



29 September 2025

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

Email: aviationconsumer@infrastructure.gov.au.

Submission on the aviation consumer protection consultation paper

Thank you for the opportunity to provide feedback on the proposed aviation consumer protection scheme. This letter covers CHOICE's feedback on the ombuds scheme and supporting regulatory framework. We will provide a separate submission about the details of the Aviation Consumer Protection Charter.

CHOICE has long advocated for the creation of a genuinely independent aviation ombuds scheme. Done well, an aviation ombuds has the potential to deliver meaningful improvements for aviation consumers. However, the design must meet best-practice standards if it is to win consumer trust.

As CHOICE has previously recommended, we urge the Government to consider the [Benchmarks for Industry-based Customer Dispute Resolution](#) and look closely at existing schemes like the Australian Financial Complaints Authority (AFCA) and the Telecommunications Industry Ombudsman (TIO) when designing the new aviation ombuds.

The governance of the ombuds and clarity around the effect and approach to decision making by the ombuds are the key areas for attention. In particular, we recommend the legislation establishing the new aviation consumer protection scheme should ensure:

1. strong, independent governance of the ombuds scheme through a board with **equal consumer and industry representation**;

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2. that the standard to be used for determinations by the ombuds is relevant laws (including the Charter), good industry practice and **what is fair and reasonable in the circumstances**;
3. the ombuds is empowered to help **resolve systemic issues for all affected consumers**, not just report systemic issues to regulators; and
4. that determinations of the ombuds are **binding on airlines and airports**.

Governance - the deciding issue

At this stage, our biggest concern is that the governance arrangements for the scheme remain undecided. Appropriate governance arrangements are the foundation of any effective dispute resolution scheme. Without a credible structure, no amount of detail elsewhere will make the system work. While other matters can be refined over time, if the governance is weak the scheme will be set up to fail. The ineffective airline customer advocate demonstrates this clearly. The entirely airline run scheme was never going to work - we can't repeat this mistake.

The proposed governance structure outlined in the consultation paper suggests that the ombudsperson and scheme would be accountable to the Minister. That is, it would effectively be a Government agency. We are very concerned about this proposal.

CHOICE will find it difficult to support a scheme without strong, independent governance through a board with equal consumer and industry representation. This is how other ombuds schemes in Australia operate and we expect the same for the aviation ombuds.

Clarify the decision making approach and powers

Fair and reasonable in all the circumstances

Existing industry based ombuds schemes take an approach to decision making based on what is "fair and reasonable in all the circumstances"¹. We believe this approach is also essential to the fair operation of any aviation ombuds.

¹ See, for example, TIO Complaint Handling Procedures, p6 available at: https://www.tio.com.au/sites/default/files/2025-06/TIO%20Complaint%20Handling%20Procedures%202025.pdf?utm_source=chatgpt.com

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While the consultation paper acknowledges the aviation ombuds would be able to have regard to matters outside the Charter, it is not clear what standard should then be used. The legislation should be clear that the standard to be used is relevant laws (including the Charter), good industry practice and what is fair and reasonable in the circumstances.

Systemic issues

The consultation paper acknowledges the ombuds would have a role in respect of identifying systemic issues and reporting this to the regulator. This role should go further: the ombuds should be empowered to help **resolve systemic issues on behalf of all affected consumers**. This could be based on AFCA's role to support financial firms to remediate systemic issues.²

Many airline or airport issues are likely to affect a group of consumers - eg everyone on a particular flight. The ombuds should be able to ensure all of these consumers receive an appropriate remedy through an appropriate redress scheme - this is more efficient than requiring the regulator to pursue this, or requiring each affected consumer to make a complaint.

Binding determinations

To be effective, ombuds determinations must be binding on industry members. There must be consequences if airlines or airports do not comply with a determination. We believe this may be what is proposed - as the consultation suggests the regulator would be able to take action against an airline or airport that does not comply with a determination - but we recommend that this is put beyond doubt in the legislation.

Other issues to clarify

The remainder of this letter highlights other areas where we see additional opportunities to clarify or sharpen the proposals.

Scope of complaints that can be considered

Broadly, we support the proposed definitions of airline service and airport service. We would not support any exclusion of certain services (eg inbound international flights) as this will create complexity and uncertainty for consumers about their rights.

² See Systemic issues: <https://www.afca.org.au/about-afca/systemic-issues>

We are concerned about the proposed broad exclusion of areas such as privacy, customer service issues not relating to/before a purchase and marketing issues as this is likely to lead to significant uncertainty about the status of certain complaints. Often these issues may be pertinent to a complaint that is otherwise squarely within jurisdiction. For example, it has been reported that a proposed new airline Koala Airlines will offer a "guaranteed cash refund policy" - if there are disputes about a consumer's entitlement to these refunds, it is likely that consideration of Koala's marketing information will be relevant. A better approach would be to include the areas of privacy, customer service and marketing, while giving the ombuds discretion to exclude individual matters that are more appropriately handled elsewhere.

Transparency

Transparency is essential to building consumer and industry confidence in the new ombuds scheme. The scheme should be required to publish determinations and systemic issue reports. It should also publish data about complaints that allows consumers to compare airline performance. At minimum, the scheme should be empowered to collect and publish at least as much data as the current Airline Customer Advocate, and ideally more, to drive competition on service quality.

Independent review

There is no reference to periodic, independent reviews of the scheme in the consultation paper. Regular independent review is a key benchmark of best practice industry based dispute resolution and will ensure the scheme adapts as the industry and consumer expectations evolve.

The regulator

Above all else, it is essential the regulator with responsibility for the new consumer protection scheme is appropriately resourced.

Given the ACCC already has deep expertise in both consumer protection and aviation markets, there are likely efficiencies in giving the role of regulator to the ACCC or co-locating the new regulator within the ACCC.

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If the Government decides to establish a new regulator, it should ensure that the culture, expertise and approach of the ACCC are built into its foundations by exploring approaches such as secondments and MOUs to support collaboration.

Conclusion

We reiterate that we see the governance and the ombuds scheme's decision making approach and powers as the deciding issues on which our support of the ombuds scheme will turn. A strong and effective governance structure - independent of government, with equal representation of consumer and industry interests - will allow other elements of the scheme to evolve and improve over time.

We again encourage the Government to align the final design with Treasury's benchmarks for industry-based dispute resolution and using proven models like AFCA and the TIO as its guide. CHOICE would welcome further engagement to ensure the scheme's foundations are set right.

Yours sincerely,

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