

August 2022

## AFTA Response to Independent Report for ATAS Charter Review And Proposed Changes to ATAS Charter, Code of Conduct and ACAC Terms of Reference

### Executive Summary

This report details the AFTA Board's response to the 13 recommendations proposed by the ATAS Independent Reviewer, Mr Graham McDonald following a five-month review of the Scheme. Mr McDonald, received 7 submissions from stakeholders and reviewed data collected from a public survey (81 responders) enabling him to conduct this significant review.

The full report was provided to the AFTA Board on 22<sup>nd</sup> June 2022 and the Independent Reviewer briefed the AFTA board on his observations. The Board has carefully considered each recommendation by analysing the impacts on AFTA operations, increasing the effectiveness and appeal of the Scheme and improving the governance and creditability of ATAS.

Of the 13 recommendations, the AFTA Board is accepting 10, declining 2 and accepting with alteration 1.

The AFTA Board has also agreed to additional changes to improve the operational efficiency of the Scheme and these are detailed in section two of this Report. These changes were considered following recommendations of the ACAC Independent Chair Mr Hank Spier and the ATAS Compliance Manager Ms Naomi Menon.

## Recommendation 1

In the event of any conflict between the operation of non-AFTA membership terms and conditions and the ATAS Charter and Code, the ATAS Charter and Code provisions are to prevail.

### **Rationale –**

*The Board accepts and agrees that ATAS accreditation status should not be determined by other codes of provisions.*

BOARD RESPONSE: **ACCEPTED**

Proposed Change to ATAS Charter	
<b>Addition</b> <b>CI 2.1(c)</b> <b>Page 7 Charter</b>	Entities that choose not to be <b>AFTA</b> members may still apply to be <b>ATAS</b> Participants but must also demonstrate membership of an industry body, association or other relevant travel industry association. <b>In the event of any conflict between the operation of any non-AFTA membership terms and conditions and this Charter, the ATAS Charter and Code provisions are to prevail.</b>

## Recommendation 2

Replace the reference to 'AFTA' in the acronym of ATAS (AFTA Travel Accreditation Scheme) with 'Australian' so that ATAS it becomes the 'Australian Travel Accreditation Scheme'.

### **Rationale –**

*This was proposed by AFTA and reflects the broad membership of the Scheme currently.*

BOARD RESPONSE: **ACCEPTED**

Proposed Change to ATAS Charter and Code	
<b>Amend</b> <b>CI 1, 9 and similar</b> <b>E.g. Page 4</b>	Replace ' <b>AFTA</b> Travel Accreditation Scheme' with ' <b>Australian</b> Travel Accreditation Scheme'.

### Recommendation 3

In summary:

- a. AFTA should consider constituting a wholly owned subsidiary company, with a separate board with a broader range of industry and consumer representation, and pass control of the operation of ATAS to that company.
- b. If adopted, this recommendation may involve further more detailed work and it is recommended that an advisory committee constituted along the lines as proposed for the new ATAS subsidiary company board be appointed to further develop the implementation of the new structure and that the committee report to the AFTA Board which would make the final decision.

BOARD RESPONSE: **DECLINED, with a proposed alternate approach**

#### **Rationale –**

*The Board has declined this recommendation on the basis that further consideration is required on this matter. ATAS as a standalone business would not currently have sufficient resources to be a going concern.*

#### **Alternative approach**

Whilst the AFTA Board has rejected this recommendation, there is a clear need to have a wider and more representative voice into the operations and governance of ATAS, beyond the three-year reviews.

The AFTA Board will commit to establishing an advisory committee comprising of a broad representation of member, industry and consumer representatives. The aim of this advisory committee is to identify opportunities to improve the effectiveness, governance of the Scheme and ensuring ATAS continues to add value to industry and consumers.

### Recommendation 4

It is recommended a further right to appeal from the CEO's decision (refer clause 2.4 of ATAS Charter) be introduced but solely limited to determining that natural justice has been extended to an applicant or participant. The Independent Chair of the ACAC, as a stand-alone function should perform this role.

**Rationale –** *The AFTA Board agrees that an independent review of natural justice process will strengthen the ATAS process, which enhances the perception and operation of ATAS.*

BOARD RESPONSE: **ACCEPTED**

<b>Proposed Change to ATAS Charter</b>	
<b>Addition</b>	
<b>CI2.4(c)</b>	An Applicant or Participant may seek a review from the Independent Chair of the ACAC to determine whether the ATAS Compliance Manager and AFTA CEO extended the principles of natural justice and followed due process in making their determinations. Such a review must be requested within 14 days of the AFTA CEO issuing their determination pursuant to cl 2.4(b) above. Where the Independent Chair determines there was an error, they will return it to the ATAS Compliance Manager and AFTA CEO to review their decision and to apply correct procedures and natural justice.

## Recommendation 5

Greater resources should be allocated to the promotion of ATAS to the public.

BOARD RESPONSE: **ACCEPTED**

**Rationale** – The AFTA Board notes, the Independent Reviewer acknowledged the financial impact of COVID-19 on AFTA’s ability to conduct marketing activities of ATAS. While AFTA is not currently in a position to increase the resources for the advertising of ATAS, AFTA will however, continue to seek opportunities to promote ATAS within its current framework of PR activities on radio, TV, online and print.

ATAS travel intermediaries will also be provided promotional material that can be used to promote that they are ATAS accredited. AFTA will continue this dual approach to promote ATAS to the public and its customers directly, which is already a requirement of the ATAS Charter and Code.

## Recommendation 6

Clause 5.1 of the ACAC Terms of Reference be amended to remove the CEO from being a possible ACAC panel member and that the position be filled by an appointed industry member to comply with Treasury’s ‘Benchmark for Industry-based Customer Dispute Resolution’.

**Rationale** – The Board accepts that the underlying principle of Independence in the Benchmark requires the decision-making process and administration to be independent from the participating organisation. Ensuring an independent process with representation from consumer and industry representatives only will enhance the operation and credibility of the Scheme.

BOARD RESPONSE: **ACCEPTED**

Change to ACAC Terms of Reference	
Delete Page 6 ACAC Terms of Reference	Cl 5.1 The membership of the ACAC will consist as follows: <b>AFTA Board Appointee</b> <b>(d) The Chief Executive of AFTA, or any such other person at the discretion of the AFTA Board.</b>

Please also refer to Additional Changes to ACAC Structure detailed further below in ‘Changes to ACAC Terms of Reference #4’. It is proposed the ACAC will consist of an Independent Chair, one (1) consumer representative, one (1) industry representative and one (1) alternate consumer representative and one (1) alternate industry representative.

### Recommendation 7

It is recommended that the terms of reference for the ACAC be amended to provide that appointment to the position of Chair have a minimum requirement of being a lawyer of at least 5 years' experience.

BOARD RESPONSE: **DECLINED**

#### **Rationale –**

*The AFTA Board found it was appropriate that appointments to the position are based on merit. The Board did agree that having a legal qualification would be extremely important in carrying out the duties of this position but that they did not want to make the requirements too narrow by limiting the position to a lawyer with 5 years experience.*

### Recommendation 8

It is recommended that AFTA, ATAS and ACAC assess the Treasury's 'Benchmark for Industry-based Customer Dispute Resolution' and determine what complaint data ATAS releases publicly.

BOARD RESPONSE: **ACCEPTED**

#### **Rationale –**

*The release of data identifying systemic issues that the industry can address is a critical function of ATAS. The decision, of which specific data should be released, should be decided based on what data benefits improving business processes and consumer confidence.*

### Recommendation 9

It is recommended that the ATAS Code be amended to include a provision that participants notify consumers that, while it is not compulsory to do so, there is a free of charge right to appeal an adverse decision to the ACAC, which operates independently of the participant.

BOARD RESPONSE: **ACCEPTED**

#### **Rationale –**

*The ATAS complaint process as detailed in the Code must be implemented as part of achieving and maintaining ATAS accreditation. Increasing the awareness of this independent appeal process at a business level will improve the awareness and credibility of the Scheme.*

*The Board did note, that Under Stage 2, where the ATAS Compliance Manager issues an adverse decision, AFTA has always advised the customer of the right to appeal the decision to the independent ACAC. AFTA intend to continue to notify customers of this right.*

*The below additions in Green are recommended to clarify that Participants must notify customers of their options in relation to the ATAS Complaint Escalation Process in line with this recommendation.*

Change to ATAS Code of Conduct	
<b>Addition of green Page 9 of Code</b>	<p>CI 5.4 ATAS Complaints Escalation Process</p> <p>(a) <b>Our</b> objective is to resolve <b>your complaint</b> as a point of first contact.</p> <p>(b) If <b>you</b> are not satisfied with the outcome <b>we</b> have proposed, <b>you</b> may escalate the complaint to the ATAS Compliance Manager via the online complaint form available at <a href="https://atas.com.au">atas.com.au</a>.</p> <p>(c) <b>If you are not satisfied with the decision of the ATAS Compliance Manager, you may appeal that decision to the free, independent ATAS Complaint Appeal Committee (ACAC).</b></p> <p>(d) <b>We will advise you of these options.</b></p>

#### Recommendation 10

It is recommended that the ACAC Terms of Reference remove the requirement to meet quarterly and be replaced with as often as the Chair directs after consultation with the ATAS Compliance Manager.

BOARD RESPONSE: **ACCEPTED**

#### **Rationale –**

*The AFTA Board agrees that providing the Chair of ACAC and the ATAS Compliance Manager greater flexibility to call meetings will improve the efficiency of the Scheme.*

Change to ACAC Terms of Reference	
<b>Amend to Page 9 TOR</b>	<p>CI 8.1</p> <p>The ACAC will meet at the Chair’s discretion as and when required to be determined by the volume of appeals received.</p>
<b>Delete Page 9 TOR</b>	<p><b>The Chairperson may cancel a meeting if they have determined that there are insufficient matters to warrant a meeting or a quorum cannot be achieved. Any matters listed for a cancelled meeting will be held over until the next meeting.</b></p>

#### Recommendation 11 & 12

- a. It is recommended that the Financial Reporting requirements of the ATAS Charter introduce a requirement for the mandatory keeping of separate client accounts showing deposits and disbursements and that this is demonstrated in the annual financial statements.

- b. It is recommended that all ATAS Participants have their Financial Statements, including a Profit and Loss statement and Balance sheet, prepared and certified by an accountant.

BOARD RESPONSE: **ACCEPTED**

**Rationale –**

- a. *The ATAS Charter currently only stipulates that new applications must demonstrate they have a separate client account. Although this is the case, financial assessments have always monitored this, as one of the tests in Appendix D Financial Solvency, includes a Client Funds test. AFTA accept this recommendation to detail the requirement for a separate client account be added to the Financial Assessment requirement of cl 2.5(g). Publicly listed entities have been excluded due to the higher level of oversight of the ASX and ASIC. The requirements for sole traders requires further investigation and advice.*
- b. *It is appropriate that Financial Statements be prepared by a third party, being a certified accountant. This ensures that an appropriate standard is set for all ATAS participants.*

*By AFTA introducing this standard for all ATAS participants, it further elevates the standard of the industry and meets consumer’s expectations of the desired level of financial management of ATAS Participants.*

**EFFECTIVE DATE:** Compliance with this recommendation is proposed for the 2023 Financial Reports.

Change to ATAS Charter	
Cl 2.5 (g) Addition Page 10	(ii) <b>All Participants must submit Financial Statements (Balance Sheet and Profit and Loss Statement) prepared by a Certified Accountant.</b>
	(iii) <b>All Participants, except for Publicly listed entities and sole traders, must maintain a separate client or trust account to hold client funds separate from operational accounts. Sole Traders will be required to comply with the specific requirements set by the AFTA Board from time to time.</b>

**Recommendation 13**

It is recommended that the ATAS Code of Conduct make the following changes in relation to Terms and Conditions:

- a. Repeal clause 4.1(a) & 4.2

BOARD RESPONSE: **ACCEPTED**

*Rationale* – It is agreed these clauses lack clarity and are legally outdated.

<b>Change to ATAS Code of Conduct</b>	
<b>Repeal 4.1 (a)</b> Page 6	<p><b>4.1(a)</b> On request we will provide to you, or any person, as soon as practicable:</p> <ul style="list-style-type: none"> <li>i) Our standard terms and conditions; and</li> <li>ii) Where available, full details of any standard fees and charges that we may apply.</li> </ul>
<b>Repeal 4.2</b> Page 6	<p><b>4.2</b> Changes to terms and conditions</p> <ul style="list-style-type: none"> <li>(a) We will take reasonable steps to notify you as soon as possible if we intend to introduce or vary a fee or charge, or any other of our terms or conditions.</li> <li>(b) We will take reasonable steps to notify you of the introduction or variation of any government charges that may apply to our services, unless the relevant government agency has already taken such steps.</li> <li>(c) You may be notified either by an advertisement in national or local media, or otherwise in writing no later than the day on which the variation takes effect.</li> </ul>

- b. Replace the repealed clauses with a mandatory requirement that the terms and conditions and a schedule of fees must be provided to the consumer before any contract or agreement to purchase any travel related service is concluded.
- c. It is recommended that the consumer acknowledge receipt of this information and a record of this retained.

BOARD RESPONSE: **ACCEPTED**

*Rationale* -

The Code currently already states that terms and conditions must be “provided at or before the time of sale”. The proposed change below brings this requirement to the top of the list, as it is the most important obligation for Participants to comply with.

In addition, a mandatory Schedule of Fees as part of the Terms and Conditions will address a common complaint raised throughout the pandemic that there was lack of transparency in relation to fees charged by Participants.

The requirement for ATAS Participants to receive acceptance of terms and conditions further elevates the standards of the industry. This will address a common complaint that Participants have not provided their Terms and Conditions to customers. This standard will further assist in building consumer confidence and understanding of the legal contract that they are entering into.

### **Change to ATAS Code of Conduct**



<b>New 4.1</b>	<p>Our terms and conditions will:</p> <ul style="list-style-type: none"> <li>i) Be provided to you before you enter into a sale with us;</li> <li>ii) Require you to acknowledge that you have received and accepted our terms and conditions;</li> <li>iii) Include a Schedule of Fees of any fees we charge you;</li> </ul>
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- d. It is recommended that this section add a requirement for a mandatory statement on itinerary/quotes:
- “We will provide you a Statement as part of all itinerary and quotes that highlights the application of Terms and Conditions of both the Agent and each travel Provider including, but not limited to, the cancellation terms and conditions extending to incorporating information about any applicant refund arrangements”.

BOARD RESPONSE: **ACCEPTED with amendment**

*Rationale-*

The AFTA Board agree with the purpose of this recommendation, which is, to further highlight to customers that numerous sets of terms and conditions may apply to a booking. Whilst this is detailed in the full terms and conditions, it directly brings to a customer’s mind when reading their quote/itinerary that Terms and Conditions of both the Participant and each Travel Supplier will apply. Customers are again reminded of the legal framework of their booking – an important consideration that was raised in the pandemic.

Whilst the AFTA Board agree with adding such a notice on to documents, they disagree that the obligation should be prescriptive (i.e. Have to have exact wording) but instead should be more general in nature. AFTA will provide examples to Participants that they can embed into their quote/itinerary templates, however Agents are also able to edit as they see fit, as long as it meets the below general requirements.

**Change to ATAS Code of Conduct**

<b>New 4.2</b>	<p><b>Our quotes and itineraries</b></p> <p>Where we act as an agent, our quotes and itineraries will include a statement that advises you:</p> <ul style="list-style-type: none"> <li>i) we act as an Agent; and</li> <li>ii) that our Terms and Conditions are in addition to the Terms and Conditions of each Travel Supplier; and</li> <li>iii) that it is the Terms and Conditions of the Travel Supplier that determine the terms of cancellation and refunds, if any.</li> </ul>
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# ADDITIONAL OPERATIONAL RECOMMENDATIONS SEPARATE FROM THE REVIEW

Pursuant to cl 3.5 (a) The AFTA Board, may, from time to time, approve changes to ATAS (including to the Charter and Code) where such changes are, in the opinion of the AFTA Board, necessary or desirable to ensure the scheme’s ongoing effective operation.

The below amendments are recommended for improved efficiency and clarity of the ATAS Charter and ACAC Terms of Reference.

Additional Changes to ATAS Charter		
Item and Clause	Change	Rationale
<b>1.Cl 3.3</b>  <b>Page 14</b>	The <b>AFTA Board</b> will undertake an <del>internal</del> external review of the <b>Charter</b> and <b>Code</b> <del>in-2021-and</del> every 3 years.	The reference to 2021 is outdated and should be more general in nature. The review type should revert to ‘external’ as it was prior to the previous review where it was changed.
<b>2.Cl 3.6(a)</b>  <b>Page 14</b>  <b>Add ‘may’</b>	The <b>AFTA Board</b> will promote <b>ATAS</b> through its distribution channels, such as the <b>AFTA</b> and <b>ATAS</b> websites. This <del>may</del> include: <ul style="list-style-type: none"> <li>i) Information promoting the Charter and Code and how to access these documents;</li> <li>ii) A register of current ATAS Participants;</li> <li>iii) A register of ATAS Participants who have had their accreditation suspended or cancelled for non-compliance with the Charter or Code;</li> <li>iv) A register of ATAS Participants who have voluntarily withdrawn from the scheme.</li> </ul>	To allow discretion to the AFTA Board to operate efficiently the word ‘may’ is to be added.

<p><b>3.Charter and Code – multiple references</b> E.g. See Page 4</p>	<p>Charter and Code Where travel agent referred to replace with ‘Travel intermediary’.</p>	<p>The ATAS Charter defines eligible Participants as ‘Travel Intermediaries’. As such all references should be to that definition rather than ‘travel agent’ which is a type of Travel Intermediary as defined in the ATAS Charter.</p>
<p><b>4. Definitions and Interpretations</b>  Page 18</p>	<p><b>ATAS Compliance Manager</b> means the person to whom has been delegated the role of ATAS Compliance manager. <del>The role is currently delegated to the Head of Compliance and Operations. The Compliance Manager may delegate tasks as he or she sees fit.</del></p>	<p>Delete reference to current title delegated the role as unnecessary.</p>
<p><b>5.CI 2.5 (k)</b>  Page 11</p>	<p><b>Remove</b>  <del>Complaints Handling – Customer Satisfaction, Guidelines for Complaints Handling in organisations</del>  <b>Replace with</b>  Current ‘Australian Standard’ for complaint management in organisations.</p>	<p>The reference to the Australian Standard is outdated as the standard is updated. This change is to put a generic reference.</p>

Additional Changes to ACAC Terms of Reference		
#	Change	Rationale
<p><b>1.Right to appeal</b>  Page 3</p>	<p>Clause 2.1 – Addition in red  The ACAC has the authority to review a complaint appealed by a complainant, <b>an ATAS Participant</b> or referred to it by the ATAS Compliance Manager.</p>	<p>As a matter of fairness, ATAS participants should also be able to appeal an adverse decision to the ACAC. The ACAC Independent Chair has put this recommendation forward.</p>
<p><b>2. Minutes</b>  Page 10</p>	<p>Delete Section 11 – Minutes  <del>1. Minutes for each ACAC meeting will be forwarded to ACAC members within three (3) weeks of the meeting.</del> 2. etc</p>	<p>The ACAC is an appeal body only and is required to issue a written determination on the outcome of any investigation, which is required by the TOR. As such, minutes are not necessary, as</p>

		the written determination is the appropriate record of events and outcome. The recommendation is to delete Section 11.
<p><b>3.Role of ACAC</b></p> <p><b>Page 3</b></p>	<p>Clause 2.4 Amend</p> <p>Take all reasonable steps to ensure the resolution of consumer complaints referred to it under the ATAS Charter and Code.</p> <p><b>Replace with</b></p> <p>Act as an Appeal body to review complaints pursuant to the Stage 3 process of the ATAS Code of Conduct. The ACAC may investigate a complaint de novo.</p>	<p>The function of the ACAC is to review appeals. For clarity, we recommend this change.</p>
<p><b>4. ACAC Structure</b></p> <p><b>Page 6-7</b></p>	<p>Clause 5 Membership and Terms of Office</p> <p>Amend to:</p> <p>The ACAC will consist of an Independent Chair and two (2) Appointed Members. An additional two (2) Alternate Appointed Members will be appointed.</p> <p>Alternate Appointed Members will only participate on the ACAC at the direction of the Independent Chair as required. This will be required when there is a conflict of interest, unavailability or any other reason determined by the Independent Chair.</p> <p>The membership of the ACAC will consist as follows:</p> <p>Independent Chair</p> <p>a) One (1) person with suitable experience in either the travel industry, commerce, legal or public administration. This person will also be the Independent Chairperson of the ACAC.</p> <p>Appointed Members</p> <p>b) One (1) person with relevant experience at a senior level from the</p>	<p>At the recommendation of the ACAC Independent Chair, Mr Hank Spier, it is recommended that the ACAC consist of 3 members with two alternate members.</p> <p>This will allow for operational efficiency and reduce the financial burden to AFTA.</p> <p>Ideally, the ACAC should be an agile function and able to respond to appeals quickly. By reducing the size, it will provide better consumer outcomes with more timely responses to appeals.</p>

	<p>travel industry in Australia, as an industry representative; and</p> <p>c) One (1) person with relevant experience and knowledge as a consumer representative.</p> <p>Alternate Appointed Members</p> <p>d) One (1) person with relevant experience at a senior level from the travel industry in Australia, as an industry representative; and</p> <p>e) One (1) person with relevant experience and knowledge as a consumer representative.</p>	
<p><b>5. Term</b></p> <p><b>Page 7</b></p>	<p>CI 5.2 Amendment</p> <p>Term of appointment: In 2022, Appointed Members will be appointed for a period of one (1) year and Alternate Appointed Members will be appointed for a period of two (2) years. From then on, all appointments will be for a period of two (2) years.</p>	<p>The ACAC was suspended throughout the pandemic and needs to be reconstituted. The appointment period requires to be split to ensure continuity of members moving forward. This is similar to what was put in place to stagger membership periods.</p>