



MAY 2022

Submission to the **ATAS**  
**2022 Charter Review**

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# About

## **About CHOICE**

CHOICE is the leading consumer advocacy group in Australia. CHOICE is independent, not-for-profit and member-funded. Our mission is simple: we work for fair, just and safe markets that meet the needs of Australian consumers. We do that through our independent testing, advocacy and journalism.

## **About CFA**

CFA is the peak body for consumer organisations in Australia, advocating in the interests of Australian consumers. It promotes and supports its members' campaigns and events, nominates and supports consumer representatives to industry and government processes, develops policy on important consumer issues and facilitates consumer participation in the development of Australian and international standards for goods and services.

# Introduction

The 2022 AFTA Travel Agent Accreditation Scheme (**ATAS**) Charter Review is taking place during a critical time for travel agents, travellers and the travel industry as a whole. Last year, CHOICE surveyed over 4,400 Australians who had travel plans disrupted by COVID-19. One of the key findings was that only 23% of Australians felt confident about booking flights, accommodation or other travel services in the next 12 months as a result of their negative experiences with the travel industry over the past two years.<sup>1</sup>

Consumers who had booked through a travel agent were polarised when it came to their view on how their agent had handled their situation. Some people reported very positive experiences with agents who they saw as working hard and effectively to seek refunds during very challenging times for their business. In contrast, many reported very poor experiences with their travel agent. People reported very poor customer service and a sense that they had been let down and charged for services they never benefited from. The respondents were particularly scathing of Flight Centre.<sup>2</sup>

Many survey respondents also reported being told inconsistent information by their agent on the one hand and their supplier, for example, an airline, on the other. This left many feeling like travel and tourism businesses were passing the buck between each other with no one taking ultimate responsibility.

In addition, many people shared situations where the travel agent reported that the supplier had not provided a refund but the supplier said that a refund had been provided to the agent. This left many people feeling that the agent was holding onto their money wrongfully.

Consumer complaints to Australian Consumer Law (**ACL**) regulators, including the Australian Competition and Consumer Commission (**ACCC**) have also surged. The ACCC reported in November 2020 that travel problems topped the list of consumer reports it received in the first ten months of 2020, totalling over 24,000 complaints.<sup>3</sup> This consumer dissatisfaction has clearly not been captured by the ATAS Complaint Appeal Committee (**ACAC**) process, where the last published decision relating to a consumer complaint is from almost three years ago, on 3 June 2019.

While these recent experiences highlight the importance of strong consumer safeguards and complaint mechanisms in relation to travel, it is important to acknowledge the longer term context in which ATAS operates.

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<sup>1</sup> CHOICE, *Consumer Protection for Australian Travellers: a plan for clarity, consistency and fairness* (report), published July 2021.

<sup>2</sup> In the second review of the ATAS Governance scheme, Flight Centre was noted as one of 'the largest players at the travel agents level' (p. 3).

<sup>3</sup> Australian Competition and Consumer Commission, Travel problems top list of COVID-19-related reports (Media Release) accessed at <https://www.accc.gov.au/media-release/travel-problems-top-list-of-covid-19-related-reports>, 1 June 2021

Since the establishment of ATAS as a consequence of the Travel Industry Transition Plan, which dismantled travel agent licensing requirements and the Travel Compensation Fund, CHOICE and CFA have consistently articulated a number of significant flaws in the design and administration of the scheme. These have included:

- a lack of appropriate independence of ATAS from AFTA
- the lack of an appropriately independent and resourced code monitoring function
- the involvement of the AFTA CEO in the governance of ATAS
- inadequate public reporting of data on complaints referred to ATAS and the ATAS Complaint Appeals Committee (ACAC)
- failure of AFTA to comply with the requirements of the ACAC terms of reference when appointing ACAC members
- lack of transparency and rigour in previous Charter review processes
- general failure of ATAS to comply with the commonly accepted benchmarks for industry-based customer dispute resolution, published by Commonwealth Treasury

We note that AFTA is now under new management and welcome the commitment to a review of the Charter and associated documents. Given, however, the nature of our longstanding concerns about ATAS it is important to emphasise that CHOICE and CFA could not support the continuation of ATAS in its current form.

This is an important opportunity to improve ATAS so that it can evolve into a scheme that consumer groups are willing to continue to support through participation in the ACAC and processes such as this review.

We acknowledge that the last two years have been difficult for many travel agents working in the travel and tourism industry. The best way to restore confidence in the industry is to restore consumer trust and confidence through an effective and reliable Charter, Code and complaints resolution system.

## Recommendations

**Recommendation 1:** That the Review apply the *Benchmarks for Industry-based Customer Dispute Resolution* in recommending improvements to ATAS.

**Recommendation 2:** That AFTA should provide ATAS with a sufficient level of funding to promote the complaints service and operate it in a manner that provides consumers with a personalised, tailored and independent response.

**Recommendation 3:** That the ATAS complaints resolution function and ACAC secretariat role be appropriately segregated from AFTA's other operations.

**Recommendation 4:** That the Charter be amended to ensure that reports on complaints referred to ATAS, the outcomes of those complaints and key trends be provided to the ACAC rather than the AFTA Board.

**Recommendation 5:** That the Code be amended to require a participant to advise a consumer of their right to escalate a complaint to ATAS and provide information how to do so, when advising the consumer of the outcome of a complaint.

**Recommendation 6:** That the Charter be amended to require ACAC to publish data on numbers and key trends in complaints referred to ATAS and ACAC.

**Recommendation 7:** That the reconstituted ACAC have the ability to suspend or cancel a participant's accreditation.

**Recommendation 8:** That the role of the ACAC be expanded to include code compliance and monitoring, and that it be provided with sufficient resources to allow it to perform this role effectively, including public reporting.

**Recommendation 9:** That the vacant positions on the ACAC be filled as a matter of urgency and that regular meetings be re-convened in line with the requirements in the ATAS Charter.

**Recommendation 10:** That the ACAC terms of reference be amended to remove the AFTA Board appointee and instead expand the number of industry representatives from one to two.

**Recommendation 11:** That AFTA comply with the appointment process in the ACAC Terms of Reference for all future ACAC appointments.

**Recommendation 12:** That all future reviews of ATAS be conducted in line with appropriate good practice principles, to ensure effective participation from stakeholders including consumer organisations.

**Recommendation 13:** That the AFTA Board publish any proposed changes to ATAS documentation for public comment before they are determined.

## Overview

There are five key areas this submission will provide feedback for the ATAS framework:

1. Applying commonly accepted industry benchmarks
2. Complaints and dispute resolution
3. Governance arrangements
4. ATAS review processes
5. Consumer protections in the future

### 1. Applying commonly accepted industry benchmarks

The *Benchmarks for Industry-based Customer Dispute Resolution (the Benchmarks)*, most recently reviewed and published by Commonwealth Treasury in 2015, provide standards for industry-based dispute resolution in Australia and New Zealand across industries. The benchmarks are complementary to the Key Practices for Industry-based Customer Dispute Resolution which provide dispute resolution schemes with practical ways of implementing the benchmarks.<sup>4</sup>

These documents recognise that industry-based dispute resolution schemes can offer benefits to both consumers and industry but for these benefits to be realised, schemes need to adhere to minimum standards. These are expressed through the six benchmarks for dispute resolution services, in the areas of accessibility, independence, fairness, accountability, efficiency and effectiveness.

We encourage the review to apply the benchmarks as the key reference point for identifying required changes to the ATAS framework. Where relevant, we refer to the relevant benchmarks in this submission.

### Recommendations

**Recommendation 1:** That the Review apply the *Benchmarks for Industry-based Customer Dispute Resolution* in recommending improvements to ATAS.

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<sup>4</sup> <https://treasury.gov.au/publication/benchmarks-for-industry-based-customer-dispute-resolution>, accessed 28 April 2022.

## 2. Complaints and dispute resolution

### Resourcing of the complaints and dispute resolution function

It is undeniable that the travel and tourism sector has faced very significant challenges caused by the onset of COVID-19 and associated public health restrictions. However, this does not justify the inadequate resourcing AFTA has provided to ATAS, which predates the emergence of COVID-19. One of the obligations of the AFTA Board relating to the ACAC is to 'ensure that the ACAC has sufficient resources and funding to carry out its functions in a satisfactory manner'.<sup>5</sup> In our view, ATAS has never had a sufficient level of resourcing to allow it to be an effective consumer protection mechanism.

It is critical for AFTA to provide an operational complaints service that provides an appropriate complaints mechanism for consumers as part of ATAS. The ATAS dispute resolution process has the potential to address consumer detriment with travel agents, improve overall standards in the industry and provide additional protections to consumers who choose to book through an ATAS accredited agent. This requires the scheme to be accessible and independent. Otherwise, it should be wound up.

### Independence of the complaints process

Under the Code, complaints referred to ATAS are currently determined by the ATAS Compliance Manager. Complaints are only referred to the ACAC if the Compliance Manager identifies a compliance breach or the consumer is unhappy with the way the complaint has been handled by AFTA staff and seeks a further review. This fails to provide a suitably independent complaints resolution mechanism (Benchmark 2, Independence and Benchmark 3, Fairness).

The lack of independence is reinforced by the role of the AFTA CEO as articulated in the Charter. The CEO has overall responsibility for ATAS' operation and ensuring that ATAS is aligned with the AFTA Board's strategic direction.<sup>6</sup> It is inappropriate for a complaints resolution scheme to be aligned with the strategy of an industry body and for the CEO of the industry to be responsible for driving this alignment.

Complaints should be handled by staff who are segregated from AFTA's general operations, with the ACAC rather than AFTA overseeing this complaint resolution function. This would not prevent AFTA providing corporate services to ATAS in the interests of operational efficiency but it would ensure an appropriate degree of independence of the complaints resolution function from the industry that is the subject of complaints.

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<sup>5</sup> ATAS Charter, Revision 5, 1 July 2018, at 1.3(a)(ii)

<sup>6</sup> ATAS Charter, Revision 5, 1 July 2018, at 1.2.

## Role of ATAS Complaint Appeal Committee

The ACAC is an independent review body specifically established under ATAS to review and determine customer complaints and allegations of non-compliance with the ATAS Charter and Code. The ACAC reviews complaints elevated to it by the Compliance Manager and can issue binding determinations in relation to complaints.<sup>7</sup>

In situations where both parties cannot come to an agreement, the ACAC should play a vital role in addressing the ATAS participant's compliance with the ATAS Code of Conduct and ensuring a fair outcome for all parties but the current framework does not facilitate this.

It is our understanding that a relatively low number of matters has been referred to the ACAC and that it has not received regular reports numbers and trends of complaints referred to the Compliance Manager. To allow the ACAC to perform its role, it requires regular information and analysis on matters such as the overall volume of complaints, breakdown of complaints by firm or brand, key reasons for complaints, and rates of resolution and further appeal.

Clause 5.4 of the Charter currently requires that the AFTA CEO provide a report to the AFTA Board summarising the outcomes of each complaint investigated. Given that the AFTA Board is composed of AFTA members, this is inconsistent with Benchmark 2, Independence. These reports should be provided by the Compliance Manager (appropriately segregated from AFTA's other operations) to the ACAC.

It is also our understanding that the overall level of appeals to the ATAS has been relatively low over time, which suggests low consumer awareness of appeal rights. Benchmark 1, Accessibility is based on the principle that:

The office makes itself readily available to customers by promoting knowledge of its services, being easy to use and having no cost barriers.

This is likely to be at least partly due to the fact that there is currently no requirement in the Code for participants to advise a consumer of the existence of ATAS when informing them of the outcome of a complaint. This is a basic requirement that applies in other industries with dispute resolution schemes and should be adopted here.

## Publication of complaints information

There is currently limited public data available about how many complaints are made to AFTA, what number of those are resolved, and which matters have been appealed. To the extent there is information on the AFTA website, it is limited to a one-page infographic, last published in 2019.<sup>8</sup>

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<sup>7</sup> ATAS Charter, Revision 5, 1 July 2018, at 1.2 (c)

<sup>8</sup> <https://www.afta.com.au/resources>

This is inconsistent with Benchmark 4, which acknowledges public reporting as an important means of accountability.

We recommend that the review recommend significant improvements to the level of public reporting on enquiries, complaints, breaches and outcomes of investigations.

Information released should include:

- Total number of complaints
- Number of complaints by business and brand
- Rates of resolution and appeal
- Patterns in determinations, including types of resolution determined
- The average time taken to finalise complaints;
- The number of Code breaches identified and reason for them
- Case studies of any major or high events that occurred in the year.
- Any potential systemic issues identified from complaints.

## Recommendations

**Recommendation 2:** That AFTA should provide ATAS with a sufficient level of funding to promote the complaints service and operate it in a manner that provides consumers with a personalised, tailored and independent response.

**Recommendation 3:** That the ATAS complaints resolution function and ACAC secretariat role be appropriately segregated from AFTA's other operations.

**Recommendation 4:** That the Charter be amended to ensure that reports on complaints referred to ATAS, the outcomes of those complaints and key trends be provided to the ACAC rather than the AFTA Board.

**Recommendation 5:** That the Code be amended to require a participant to advise a consumer of their right to escalate a complaint to ATAS and provide information how to do so, when advising the consumer of the outcome of a complaint.

**Recommendation 6:** That the Charter be amended to require ACAC to publish data on numbers and key trends in complaints referred to ATAS and ACAC.

### 3. Governance arrangements

#### Role of the ACAC

Under its Terms of Reference, the role of the ACAC is currently restricted to reviewing complaints referred to it by consumers or the Compliance Manager.

The ACAC was originally constituted as the ATAS Code Compliance Monitoring Committee. When, earlier in the life of ATAS, CHOICE and CFA raised concerns about a lack of powers and resources to perform a code compliance function effectively, AFTA responded by removing code compliance and monitoring from the Committee's role, rather than addressing the problem.

This means that there is now no effective, independent code compliance function. It is entirely inappropriate for AFTA staff or the AFTA Board to perform this role, given that the AFTA Board is composed of industry representatives. The ACCC's Guidelines for developing effective voluntary industry codes of conduct states that an independent review body should be recruited from outside the industry and hold no preconceived ideas about the industry.<sup>9</sup> The monitoring committee must be free from either real or perceived conflict of interest to ensure that it is effective and that the community can have trust in its independence.

In larger industries, the code compliance committee is a completely separate body to the external dispute resolution body. We accept that in a smaller industry, it may be acceptable to combine these functions but if this occurs, it is even more important that they are independent of industry interests.

We also note that similar to reporting on complaints, reporting on ATAS charter activity (including trends in applications and membership) has been limited, consisting of a one-page info-graphic last published almost three years ago, in 2019.<sup>10</sup>

We recommend that the role of the ACAC be expanded to include code compliance and monitoring. Simply amending the Terms of Reference will not be sufficient to deliver this outcome. It will also be necessary to ensure that the reconstituted ACAC:

- has the power to suspend or cancel an ATAS participant's accreditation, rather than this power residing with the AFTA Board
- be required to publish an annual report on changes in ATAS membership
- be required to publish an annual report on its code compliance function
- be provided with sufficient resources to perform these roles.

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<sup>9</sup> <https://www.accc.gov.au/system/files/Guidelines%20for%20developing%20effective%20voluntary%20industry%20codes%20of%20conduct.pdf>, accessed 3 May 2022.

<sup>10</sup> <https://www.afta.com.au/resources>

## Composition of the ACAC

The membership of the ACCMC consists of one industry representative, the AFTA CEO (or another appointee of the AFTA Board), two consumer representatives, and an Independent Chairperson.

The Independent Chairperson and consumer representatives are appointed by negotiation and agreement with CFA. The terms of the most recent consumer representatives, Liza Newby and Jill Toohey, have expired some time ago, and there have been no further requests to the CFA to appoint new members. This should be addressed urgently, and AFTA should ensure that the appointment process is followed in a timely manner when it becomes aware that a position may fall vacant. CFA's established consumer representative nominations and appointment policies and processes provide for an effective and accepted mechanism to appoint qualified consumer representatives.<sup>11</sup> This process should be built in to the formal appointment process for consumer representatives.

As noted above, it is important for ATAS and the ACAC to be independent of industry interests. While it would be consistent with the composition of governing bodies for code compliance and dispute resolution bodies in other industries for the ACAC to consist of equal numbers of consumer representatives and industry representatives, with an independent chair, it is inappropriate for the AFTA CEO to be one of the industry representatives.

On some previous occasions, AFTA has failed to follow the requirements of the ACAC Terms of Reference when appointing an Independent Chairperson, by failing to consult with CFA.<sup>12</sup> It is important for AFTA to comply with these requirements in any future appointments.

## Recommendations

**Recommendation 7:** That the reconstituted ACAC have the ability to suspend or cancel a participant's accreditation.

**Recommendation 8:** That the role of the ACAC be expanded to include code compliance and monitoring, and that it be provided with sufficient resources to allow it to perform this role effectively, including public reporting.

**Recommendation 9:** That the vacant positions on the ACAC be filled as a matter of urgency and that regular meetings be re-convened in line with the requirements in the ATAS Charter.

**Recommendation 10:** That the ACAC terms of reference be amended to remove the AFTA Board appointee and instead expand the number of industry representatives from one to two.

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<sup>11</sup> See: <http://consumersfederation.org.au/representing-consumers/> for further information

<sup>12</sup> Good practice would include CFA consultation in settling a position description, reviewing applications of those that apply (or a summary of a recruiter, input into short-listing and agreeing as to the ultimate appointment.

**Recommendation 11:** That AFTA comply with the appointment process in the ACAC Terms of Reference for all future ACAC appointment.

## 4. ATAS review processes

Previous reviews of the ATAS scheme have been conducted in an unsatisfactory manner.

The Consumers' Federation of Australia (**CFA**) is the peak body for consumer organisations in Australia. This role is explicitly acknowledged in the ACAC Terms of Reference. Despite this, when the second review of ATAS was conducted in 2018, the CFA was not invited to provide feedback nor provide a submission. There were only four submissions that year.<sup>13</sup>

Rather than recognising this as a fundamental flaw in the review process, the review found that:

As the main submissions come from inside the regime it can be assumed that the external stakeholders are generally satisfied with the regime.<sup>14</sup>

The CFA has published a set of good practice principles to guide industry bodies in ensuring effective consumer input in reviews of industry codes. One of the principles outlines good practice in consumer engagement and consultation. This principle specifies that:

'The consultation or consumer engagement process should be meaningful, genuine and efficient. The process should be capable of identifying and examining the issues of concern to consumers of the relevant industry. Generally, this should require an open process at the outset to identify all relevant issues, before narrowing on approaches to address those issues.'<sup>15</sup>

While we acknowledge that AFTA has made an effort to establish the 2022 review in a manner that will facilitate appropriate participation from consumer groups, we seek a commitment that this will be a feature of future reviews.

We also note that any changes to the Charter and associated documents should be the result of a public review process. Currently, clause 3.5 of the Charter currently gives the AFTA Board a broad-ranging power to amend any of these documents, with changes only required to be published after the fact. This is inconsistent with the way that similar processes work in other industries. Any changes should be published for public comment before they are determined by the AFTA Board.

### Recommendations

**Recommendation 12:** That all future reviews of ATAS be conducted in line with appropriate good practice principles, to ensure effective participation from stakeholders including consumer organisations.

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<sup>13</sup> Spier, Hank, *Four Year Review ATAS Charter and Code of Conduct*, p. 8

<sup>14</sup> Spier, Hank, *Four Year Review ATAS Charter and Code of Conduct*, p. 8

<sup>15</sup> <http://consumersfederation.org.au/good-practice-principles/>, p. 3

**Recommendation 13:** That the AFTA Board publish any proposed changes to ATAS documentation for public comment before they are determined.

## 5. Consumer protections in the future

The experience reported by consumers in CHOICE's research makes it clear that current consumer protections have let travellers down. For example, consumers are unaware of the options available to them, which led some to cancel travel arrangements in ways that then affected their ability to obtain a refund. Consumers also find it hard to obtain information on their rights, receive a remedy and lack protection when companies and travel agencies become insolvent. Many of these problems have also affected the ability of travel agents to assist their customers.

For these reasons, outside of amendments to the 2022 ATAS Charter, CHOICE also strongly recommends the following outcomes for the travel industry as a whole:

- Governments should **mandate minimum requirements for travel vouchers/ credits** provided by travel and tourism businesses in lieu of a service, similar to those that apply to gift cards.
- The Federal Government should introduce a **mandatory industry code** applying to all airlines and large travel and tourism businesses taking money from Australian-based consumers.
- The Federal Government should establish a **new travel and tourism industry ombudsman, similar to the Telecommunications Industry Ombudsman** or the Australian Financial Complaints Authority. All airlines, along with large travel and tourism suppliers, large travel agents and large intermediary companies should be required to participate in the industry ombudsman scheme. Smaller travel and tourism businesses should be able to opt-in to the scheme.
- The Federal Government should introduce a **mandatory information standard** on the information that must be provided to consumers at the time they make a travel purchase. This should include what refund a consumer will receive if a business is unable to provide a service, information on how to lodge a complaint and, for travel agents and intermediaries, a breakdown of fees and commissions.
- The ACCC should conduct a **market study** into the travel and tourism sector, with a particular focus on travel agents and intermediaries. The market study should consider issues of competition, independence, contracting practices, pricing transparency and risk allocation through the supply chain.
- Australian governments should establish a **website** that publishes information on domestic COVID-19-related restrictions to provide travel and tourism businesses and members of the public with timely, accurate and consistent information, including information on past restrictions that may have affected bookings.

We would welcome the support of the review and AFTA for these recommendations.