



# Australian Travel Industry Association (ATIA)

Submission on the  
Aviation Industry Ombuds Scheme

October 2024

# 1. Introduction

The Australian Travel Industry Association (ATIA) welcomes the opportunity to make a submission in response to the Aviation Industry Ombuds Scheme Consultation Paper.

The proposed Ombuds Scheme aims to 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 airlines and airports. The establishment of an Aviation Industry Ombuds Scheme is a crucial step forward in improving outcomes for the travelling public, ensuring airlines and airports meet their obligations.

In responding to the discussion paper ATIA has focused on how the ombuds scheme should handle complaints about airlines and airports in relation to services purchased through travel agents or other third parties.

More generally, ATIA is broadly supportive of the proposed powers and functions of the ombuds scheme. In particular, the reports on airline and airport conduct will be useful in fostering a culture of accountability, transparency and continuous improvement in the Australian aviation industry, and the ability to make policy recommendations to the Government based on its experience with instances of airline or airport misconduct is a welcome initiative.

## About ATIA

ATIA is the trusted source for advice and best practice in the travel industry. Our mission is to highlight the integrity of our members through effective approaches in advocacy, industry recognition and awards and ultimately boost the confidence of the travelling public.

ATIA administers the Australian Travel Accreditation Scheme (ATAS), which is the largest and most representative accreditation scheme for travel businesses in Australia. All ATIA members are ATAS accredited and recognised for their highest operational standards including yearly assessment of finances, minimum levels of training, and procedures for dealing with consumer grievances. For 2023 ATAS rejected 25% of applications to join the Scheme. About 85% of consumers are more likely to book with an ATAS-accredited travel agency or tour operator.

Our membership base includes the full spectrum of travel intermediary businesses across Australia including retail, corporate and online travel agents, tour operators, wholesalers and consolidators. Our members range in size from the largest listed organisations such as Flight Centre, Helloworld, Corporate Travel Management and Webjet, through to small independently owned and operated travel businesses.

A large proportion of travel agent members are small to medium businesses, many of whom operate under networks such as Helloworld, Flight Centre Independent, My Travel Group, itravel, Express Travel Group, Travellers Choice and CT Partners. ATIA's membership also includes consolidators, tour operators and wholesalers such as Scenic, APT and The Travel Corporation who are reliant on a reliable and competitive aviation sector to maximize ground expenditure.

ATIA has a total of 1,750 ATAS-accredited member locations throughout Australia.

## 2. Scheme coverage

### Complaint eligibility

ATIA is supportive of the Government's proposal that the scheme should cover airlines and airports, and that travel agents and other third parties that sell aviation services will not be required to join the ombuds scheme. The terms and conditions of a fare are set by the airlines, and the consumer funds are held by the airline, not the travel agent.

In addition, in relation to consumer protections and complaint handling directly in relation to travel agents, ATIA administers the Australian Travel Accreditation Scheme (ATAS), which is the largest and most representative accreditation scheme for travel businesses, including travel agents, tour operators, wholesalers and consolidators, in Australia. There is already a comprehensive and effective scheme covering travel agents.

ATAS was developed with full oversight by the Consumer Affairs Forum and CHOICE and follows the Australian Competition and Consumer Commission (ACCC) best practice for industry codes of conduct. Consumer bodies have direct say and oversight over the complaints process, and industry and consumer bodies have equal voice in the process.

Where a complaint has not been resolved in the initial stages of complaint resolution, it can be escalated to the ATAS Complaint Appeal Committee (ACAC). 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. It is led by Independent Chair Hank Speir, former CEO of the ACCC. The ACAC is a partnership with the Consumer Federation Australia which jointly selects the Chair of the ACAC with ATIA, and appoints the consumer representatives to ACAC entirely at their discretion.

ATIA is committed to continually elevating travel industry standards in Australia by driving increased and continued participation by travel intermediaries (those who buy and sell travel) in ATAS. We have also recently enhanced the Charter and Terms of Reference to allow consideration of non-economic loss, including damages for disappointment and distress.

ATIA agrees that the Aviation Industry Ombuds Scheme should focus on addressing the key policy issue at hand, being the effective resolution of complaints between airlines and consumers.

The Consultation Paper flagged that it may also be appropriate for air navigation services providers such as Airservices Australia to be members of the ombuds scheme. ATIA agrees that Airservices Australia should be part of the scheme, given that its actions directly relate to operational matters that impact travellers.

## Complainant eligibility

The consultation paper seeks stakeholders' views on who should be eligible to make a complaint to the Aviation Industry Ombuds Scheme. In particular, whether small businesses and not for profit organisations should be eligible.

Creating at least two tiers of traveller will add unnecessary complexity and does not achieve the intended outcomes of the Aviation White Paper. One of the central outcomes of creating this scheme is to create a financial cost for the airline and compensation for the impacted traveller. Designing a scheme in which travellers who are working for a business and completing travel are treated differently from those who are travelling without a corporate arrangement risks any ombuds scheme becoming a well-meaning boondoggle program.

### Recommendation 1:

All travellers should be treated equally as part of the Aviation Industry Ombuds Scheme. As such, the ability to make complaints under the Aviation Industry Ombuds Scheme should extend to businesses and not-for-profit organisations.

### 3. Air services purchased through a third party

#### Complaint resolution process

ATIA is broadly supportive of the complaint escalation process as outlined in the consultation paper. Under proposed Stage 1, before a complaint is accepted by the ombuds scheme, it is proposed that the complainant be required to contact the airline or airport to seek to resolve the complaint directly.

Agents frequently attempt to resolve matters with an airline on their client's behalf. It follows that Stage 1 of the proposed process should be satisfied if either the consumer or their agent has attempted to resolve the complaint directly with the airline or airport.

The intent for the ombuds scheme to not cover travel agents should remain, as the terms and conditions of a fare are set by the airlines, and at no point are operational issues or delays caused by agents. However, agents should be notified of complaints involving air services purchased through them, and be permitted to opt in to be present as part of the complaint resolution process where they have been involved in the purchase of air services.

In many cases they will have been involved in the attempted resolution of the matter and can provide additional context. In some instances where the response from the airline has been inadequate, agents have used their own funds. There have also been examples in Tribunal matters where airlines have attempted to incorrectly shift responsibility onto agents, and their presence has been important to enable them to correct the record and to assist the mediator or Member to determine the facts. However, given that the terms and conditions of sale are between the airline and the customer directly, this should be on an opt in basis only.

In addition, agents are often the merchant of record on these transactions and have charge back exposure, and no back to back exposure exists for the airline should a charge back on an agent be approved by the bank or card scheme. Therefore, it is vital for an agent to have the option to be involved in the process.

In relation to the use and distribution of information received as part of the complaint process, appropriate privacy requirements must apply to scheme members, including that any customer information received should only be used for the purposes of the resolution of the complaint and not for marketing or other purposes.

#### Recommendation 2:

Stage 1 of the proposed process should be satisfied if either the consumer or their agent has attempted to resolve the complaint directly with the airline or airport.

#### Recommendation 3:

While the ombuds scheme should not cover travel agencies, they should be notified of complaints involving air services purchased through them, and be permitted to opt in to be present as part of the complaint resolution process where they have been involved in the purchase of air services.

#### Recommendation 4:

Appropriate privacy requirements must apply to scheme members, including that any customer information received should only be used for the purposes of the resolution of the complaint and not for marketing.

## Facilitating remedies

Where a matter relates to air services that have been purchased through a travel agent or other third party, the process for administering a remedy should differ depending on the remedy required.

If compensation is required, this should be paid directly by the airline (or airport) to the consumer. If the remedy involves issuing a refund, this should be processed through the well-established systems already in place.

### Compensation

If compensation is required in relation to an ombuds scheme matter, this should be paid directly by the airline (or airport) to the consumer. There are no current systems in place and the involvement of an intermediary is not necessary in this instance.

### Refunds

There are already well-established systems in place where refunds are required to be facilitated, so refunds should continue to be processed in line with these systems (the IATA BSP), with some additional requirements to ensure fair treatment and prompt receipt of refunds for all parties. This is in line with the processes in place in other jurisdictions, such as Fair Trading matters in the Victorian Civil and Administrative Tribunal.

This is also important so that agents continue to have visibility of matters involving their clients, which is relevant when managing client relationships, arranging future travel, as well as when facilitating air tender processes on behalf of their clients. Agents need to know the status of tickets, whether utilised, refunded or otherwise, as this information directly impacts their ability to meet commercial targets with airlines. For corporate travel, involvement in the refund process is also vitally important as part of the reporting agents perform on their clients' behalf, including tracking travel expenditure for budget forecasts and approvals, and accounting and record-keeping. There is no reason to depart from the standard refund processing system in relation to refunds issued in ombuds scheme matters.

Significantly, if the existing system is not used, where an agent is the merchant of record they could be exposed to travellers 'double dipping' on refunds using a charge back on the agent. If the refund is conducted outside of the usual systems they may lose the charge back and be out of pocket due to no fault of their own.

To ensure prompt receipt of refunds in ombuds scheme matters, there should be a timeframe placed on airlines to initiate a refund, and also a timeframe placed on agents within which to process the refund and provide it to their client **once they have received the funds and requisite information from the airline to ensure the correct payment can be reconciled with the client.**

The timeframe placed on airlines to initiate a refund must be the same regardless of whether the ticket was purchased through an agent or directly with an airline. The ombuds scheme must not be designed so as to inadvertently incentivise airlines to discourage people from not booking direct with an airline. Issues came to light during the COVID pandemic where airlines discriminated against agents by deactivating the refund function in the booking system and publicly in media and parliamentary inquires stated the reason for delay was the consumer choice of using an agent to book their flights. This resulted in bookings made directly with airlines being prioritised, therefore impacting customer service and ultimately customer choice as to how to book and manage their travel.

Once an agent has received the refund from the airline, the timeframe to process the refund depends on a number of factors including where the receipt of funds falls within the within the Billing and Settlement Plan (BSP) cycle. As such, any timeframe placed on agents who issue refunds required in ombuds scheme matters must commence **after receipt of the funds from the airline**, and allow for reconciliation and confirmation of funds, as well as other complexities such as where a consolidator is used or where the air is transacted through an agent but ticketed via a wholesaler or tour operator.

It is **vitally important that agents are not responsible to provide consumer refunds where they are not yet in possession of those funds from the airline.** Travel agents are not in a position to float the funds that they are not in possession of. This is particularly the case given that 92% of ATIA members

are small businesses. Where there is such a power imbalance this creates a potential for airlines to engage in unethical business behaviour, such as using financial delay tactics to penalise small businesses, that is often difficult to prove.

The policy outcome of protecting consumers can and should be achieved without requiring travel advisors to extend credit from their own pockets to pay airline refunds and/or compensation. To highlight the potential magnitude of this, last year, travel agents sold over 23 million air tickets worth almost \$18.5 billion in Australia. For 2024 so far, travel agents have almost 18 million tickets worth over \$14 billion.

Travel agents do not receive payment to issue refunds or to make changes to bookings due to issues caused by airlines, meaning time spend by staff reorganising trips, including issuing refunds and rebooking flights and other services results in lost opportunities and revenue. Some agents also use consolidators, which issue airline tickets on behalf of travel businesses who may not have their own ticketing facility in-house. Where these are used, agents are also charged a fee when a refund is issued. Where the refund is a result of actions by the airline, this cost should be borne by the airline rather than the agent, as the cost of the refund should not be borne by the entity that did not cause the reason for the refund. This helps prevent the possibility of an unintended consequence of the scheme being to encourage potential unethical behaviour by airlines.

In addition, if the refund is required as a result of actions by the airline, the airline should not be permitted to clawback any commission paid to the agent for work performed. This is the case in Canada, where it is recognised that agents have performed work on behalf of airlines and should not be penalised where a flight is cancelled and refund required at no fault of the agent. One recent example is where an airline opted to change its flight from Canberra to Bali to instead fly from Sydney to Bali, and not offer a refund without a cancellation fee imposed – this is at no fault of the agent.

### Example of payment and refund process when air services purchased through agent

Below is a summary of a standard refund process through the BSP system. The overwhelming majority of transactions are through the BSP. However, note the process can differ depending on factors such as the form of payment (credit card, and where agent holds a corporate account for a client, etc), whether a consolidator is used, and business structure.

- When the consumer pays for the booking with the travel agent, **all funds are automatically direct debited on average from the of agents' account within 7 days to the airline** through their mandated process of remittance to the International Air Transport Association (IATA), which holds funds on behalf of its airline members. **The funds are not held by the travel agents.** Funds and are never held by the agent any longer than 14 days.
- This is facilitated through the Billing and Settlement Plan (BSP), which is the central point through which data and funds flow between travel agents and airlines. Agents make one single payment to the BSP (remittance), covering sales on all BSP Airlines. The BSP makes one consolidated payment to each airline, covering sales made by all agents in the country/region. The BSP remittance and settlement cycle is 14 days, consisting of a 7-day selling period and a 7-day settlement period.
- When a booking is cancelled, **the airline, not the agent, determines whether the consumer is entitled to a refund** depending on the terms and conditions of purchase.
- Where a consumer is eligible for a refund in accordance with the airline's terms and conditions, an agent will submit a refund request on behalf of their client through the system. In certain matters, an airline will provide a waiver code to waive consumer fees associated with the refund.
- The airline will then issue a refund through the BSP. The length of time the airline takes to refund the funds differs depending on the airline, and whether it is automatic or needs to be manually processed (for example, in complicated matters such as where the ticket is partly used).

- The funds are received by the agent in accordance with the BSP cycle. For example, for a BSP cycle that runs every Monday, if an airline puts a refund through on Tuesday, the agent will not receive the funds until the following Monday.
- Once the funds have been received by the agent through the BSP, the agent can then supply the refund to their client.
- The time it takes to process a refund by the agent can vary depending on a range of factors including volume of refunds that have come through, and business structure.
  - In one business' example, the money on the BSP billing file needs to be reconciled by the central ticketing area, then transferred to the retail store and then actioned instore further.
  - In another example, once the BSP report comes through on the Monday, a process commences whereby the customer accounting team identifies which bookings the refunds apply to, and all funds are then cleared / refunded.

### Recommendation 5:

Where a matter relates to air services that have been purchased through a travel agent or other third party, the process for administering a remedy should differ depending on the remedy required.

If compensation is required in relation to an ombuds scheme matter, this should be paid directly between the airline (or airport) and the consumer.

If the remedy involves issuing a refund, this be processed through the well-established current system, with appropriate timeframes on airlines to ensure prompt initiation of refunds for all parties regardless of how the consumer has booked their travel.

Appropriate timeframes should also be placed on agents once funds have been received from airlines. It is vitally important that agents are not responsible to provide consumer refunds where they are not yet in possession of those funds from the airline.

Where a refund is required as a result of actions by an airline, the airline should not be permitted to clawback any commission paid to the agent for work performed.

## Summary – key features

In summary, key features of the ombuds scheme in matters relating to air services that have been purchased through a travel agent or other third party should be as follows:

- Agents should be notified when a complaint is lodged in relation to air services that have been purchased through them.
- While the ombuds scheme should not cover travel agencies, they should be notified of complaints involving air services purchased through them, and be permitted to opt in to be present as part of the complaint resolution process where they have been involved in the purchase of air services.
- Regardless of whether the agent opts in to be directly involved in the complaint resolution process, the agent should be notified out of the outcome of the matter by the ombuds person, in particular where action is required by the agent such as facilitating a refund.
- Where compensation is issued, this should be facilitated directly between the airline (or airport) and the consumer.
- If the remedy involves issuing a refund, this should be processed through the well-established current systems.
- In most cases, an airline should be required to initiate the refund in the system so as to remove the requirement for the travel agent to initiate the refund and obtain waiver codes, etc. Where an agent opts in to the refund process, an agent should be notified that a refund is required and provided with the relevant waiver code from the airline so they can initiate the refund.



- An appropriate timeframe should be placed on airlines within which they must process the refund, which should be the same regardless of how the consumer has booked their travel.
- An appropriate timeframe should be placed on agents **once funds have been received from airlines**. It is vitally important that agents are not responsible to provide consumer refunds where they are not yet in possession of those funds from the airline. This timeframe must allow for reconciliation and confirmation of funds, as well as other complexities such as where a consolidator is used or where the air is transacted through an agent but ticketed via a wholesaler or tour operator. ATIA would welcome the opportunity to discuss the process involved and appropriate timeframes in further detail.