

Director  
Consumer Policy Unit  
Market Conduct Division  
the Treasury  
Langton Crescent  
PARKES ACT 2600

21 November 2024

Via email: [consumerlaw@treasury.gov.au](mailto:consumerlaw@treasury.gov.au)

Dear Director

**RE: Consumer Guarantees and Supplier Indemnification Consultation**

The Australian Travel Industry Association (ATIA), the peak body for a broad array of Australian travel professionals, welcomes the opportunity to make a submission in relation to the Consumer Guarantees and Supplier Indemnification Consultation. ATIA's membership base includes the full spectrum of travel intermediary businesses across Australia including retail, corporate and online travel agents, tour operators, wholesalers and consolidators. ATIA also administers the Australian Travel Accreditation Scheme (ATAS). This is the largest and most representative accreditation scheme for travel businesses in Australia and includes a dispute resolution process for consumer matters. In our submission we have focused on Part 1: Prohibitions and penalties for failure to provide a consumer guarantee remedy.

This consultation seeks feedback on the design of proposed new civil prohibitions and penalties for traders who do not provide a consumer guarantees remedy when required under the Australian Consumer Law (ACL), which could be enforced by the ACL regulators. The basis for this proposal is stated to be to encourage improved consumer protections, and to address the core issues of a business refusing to comply with the consumer guarantees on a standalone basis, without having engaged in a separate ACL contravention.

In considering any reforms, it is important to take into account where industry codes are operating to fulfil the desired outcomes the proposed reforms seek to achieve. This is recognised by the NSW Small Business Commission in its October 2024 report *Rightsizing regulation*, where it recognised that it is "good practice to consider the viability of industry-led regulation as a response to an identified problem", and that "Industry-led approaches can also be more effective if they are well designed and are self-enforcing, accompanied by effective internal and external dispute resolution frameworks."

**Australian Travel Accreditation Scheme – Dispute resolution for consumers**

In relation to consumer protections and complaint resolution in relation to travel business, ATIA administers ATAS, which is the largest and most representative accreditation scheme for travel businesses, in Australia. It includes travel agents, tour operators, wholesalers and consolidators. This means for travel businesses, there is already a scheme in place that is designed to raise the standard of conduct of travel businesses and that includes a dispute resolution procedure that consumers can access free of charge. The scheme is recognised and promoted on a number of government and consumer affairs websites.

The scheme 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.

As is evident, there is already a comprehensive and effective consumer complaint resolution scheme covering travel agents, tour operators and other travel businesses. Any consideration of reform in relation to consumer guarantees remedies must appropriately account for scenarios where an industry code of conduct is in place which supports consumer outcomes. ATIA is supportive of measure to enhance use and further promote awareness of the industry scheme.

### **Fairness in infringement, penalty and public naming process**

Under the proposed reforms, regulators would be given the authority to issue an infringement notice for an alleged failure to provide a consumer guarantees remedy. It is notable that the alleged contravention does not need to be proven, and that an infringement notice may be issued based on where the regulator has “reasonable grounds to believe” a contravention has occurred. The consequences include penalties of around \$18,780 for corporations and \$187,800 for listed corporations. Details of infringement notices may also be made public on the ACCC website, despite infringement notices not being an admission of guilt or establishment of a proven contravention. These are significant consequences in circumstances where a contravention of the law has not been proven. It is vitally important that new processes are procedurally fair and avoid unintended and disproportionate consequences.

As recognised in the consultation paper, guidance issued by the Attorney-General’s Department indicates that infringement notices should be issued in relation to civil penalty provisions where “contraventions can be determined by automatic operation of the law or where an assessment of a contravention can easily be made based on straightforward factual questions.” In the travel industry, consumer disputes are often not straightforward. In some Tribunal matters, there can be a question of, for example, whether it is the agent or the airline who is responsible. In some instances where the response from the airline has been inadequate, agents have used their own funds to resolve a dispute despite the agent not being at fault. The risk of an incorrect infringement notice being issued may lead to the burden of a remedy being inappropriately provided by another business, which is not the intention of the proposed changes. On this basis, ATIA submits these types of disputes do not meet the criteria in the Attorney-General’s guidance as appropriate matters for infringement notices to be issued where no contravention has been proven.

In addition, we note concerns have been raised by stakeholders in previous consultations about the potential lack of expert knowledge for a regulator to form an appropriate view on suspected contraventions in order to issue an infringement notice, and submit this remains a relevant consideration. Consumer matter resolved under ACAC are determined by a panel of experts with technical knowledge and experience in the travel sector.

Thank you for considering the views of the travel industry. If you would like to discuss in further detail please contact ATIA’s Director of Public Policy and Advocacy, Ingrid Fraser at [ingrid.fraser@atia.travel](mailto:ingrid.fraser@atia.travel).

Yours faithfully

**Ingrid Fraser**  
**Director of Public Policy and Advocacy**