



## AFTA Submission to Independent Review 2022 Review: ATAS Charter, Code of Conduct & ACAC TOR

---

May 2022

## Table of Contents

---

SUMMARY OF RECOMMENDATIONS.....	3
BACKGROUND.....	4
Growing ATAS success .....	4
Impact of COVID-19 Pandemic .....	5
Part 1 – The ATAS Charter.....	6
RECOMMENDATION 1 – Change of Name.....	6
RECOMMENDATION 2 – Introduce an ATAS Governing Committee .....	7
RECOMMENDATION 3 – Improvements to Financial Reporting.....	8
RECOMMENDATION 4 – Introduce new ATAS Accreditation tiers .....	9
Part 2 – The ATAS Code of Conduct.....	11
RECOMMENDATION 5 – Strengthen Terms and Conditions requirements.....	11
Part 3 – The ACAC Terms of Reference.....	13
RECOMMENDATION 6 – Changes to Terms of Reference .....	13

## SUMMARY OF RECOMMENDATIONS

### RECOMMENDATION 1

Change the name of 'AFTA Travel Accreditation Scheme' to 'Australian Travel Accreditation Scheme'.

### RECOMMENDATION 2

That a Governing Committee be introduced for ATAS comprising of representational members and other representational bodies.

### RECOMMENDATION 3

Introduce improvements to the Financial reporting of Participants:

- i. Mandatory Client Accounts
- ii. Financial Statements to be prepared by an Accountant, and submitted signed by a Director to AFTA.

### RECOMMENDATION 4

Introduce additional categories for ATAS:

- I. ATAS – Business PLUS+
- II. ATAS – Professional (mobile consultants and employees)
- III. ATAS Green

### RECOMMENDATION 5

The ATAS Code of Conduct cl 4.1 'Terms and conditions' remove cl 4.1(a) and cl 4.2 and add the following to cl 4.1(b):

- a. A Mandatory Schedule of Fees must be included in Terms and Conditions;
- b. Acknowledgement from a consumer must be received of the Agent T&C's; and
- c. Introduction of a Statement on all Itinerary and Quotes that highlights to a consumer the application of Terms and Conditions of both the Agent and each Travel Provider.

### RECOMMENDATION 6

The Terms of Reference be amended to

- a. Revise the role of the ACAC to better reflect their role as an Appeal body;
- b. Increase flexibility of operations with no minimum number of meetings and ability to meet virtually.

## BACKGROUND

This submission is for consideration of the AFTA Board and the Independent Reviewer of the 2022 ATAS Charter Review.

Administered by AFTA, the AFTA Travel Accreditation Scheme (ATAS) was introduced in 2014 as a voluntary industry accreditation scheme to self-regulate those entities that were previously regulated by the State and Territory and Governments. The ATAS Charter is the governance document for ATAS and below is a summary of it and the attachments.

### ATAS Charter

- The ATAS Charter is one governance document with includes the 3 below attachmens.
- Lists Eligibility Criteria to become an ATAS Participant

### ATAS Code of Conduct

- Attachment A
- Details obligations to consumers (consumer facing)
- Details 3 stage ATAS Complaint Management Process

### Solvency Definitions

- Attachment D
- Lists Financial Ratios used in financial assessments as required by the ATAS Charter.

### ACAC Terms of Reference

- Attachment F
- Governance document for how the ATAS Complaint Appeal Committee operates

### Growing ATAS success

In the time since its inception, ATAS was on a successful trajectory in regard to both its Charter and Code activity. In 2018 and 2019, a number of ATAS entities had their accreditation cancelled for failing to meet the Eligibility Criteria of the Charter. While some of these entities have continued to trade, many of those that were cancelled due to failing the financial assessment, subsequently entered administration. An example of this was Tempo Holidays, who later collapsed as part of the Cox and Kings collapse, the second largest travel company globally. ATAS was the only accreditation scheme globally that had made the decision to cancel the relevant local business and this was done as it failed to demonstrate it met the Solvency Definitions defined in the ATAS Charter.

With regards to the Code of Conduct, in 2019 over \$157,000 was returned to consumers via the Complaint Management process and the ATAS Compliance Manager conducted 164 investigations, mutually resolving 99 of those. The ATAS Complaint Appeal Committee (ACAC) received only 5 Appeals in 2019 from the decision of the ATAS Compliance Manager, dismissing 3 and issuing 1 improvement notice and one rectification order. AFTA continued to focus on key areas raised via the complaint management with training and guidance for members, for example in the area of advertising.

## Impact of COVID-19 Pandemic

The unprecedented events of the pandemic placed enormous pressure on AFTA's administration of ATAS, and the industry. ATAS participants faced similar pressures to those businesses in the retail and discretionary spending segments of the economy. While some businesses were able to sell products online those in the retail service sector operated at revenue declines of more than 90%. Without government support such as JobKeeper and the Consumer Travel Support Program, many more travel businesses would have closed.

Australia's travel industry remains significantly impacted by government policies responding to the threat of COVID-19. Major parts of the Australian economy have adapted to 'COVID normal' and entered its recovery phase thanks to the lifting of state/territory government mandated lockdowns. The travel industry remains in a stage of significantly impaired recovery due to on-going uncertainty surrounding international border restrictions and the lack of inbound travel and workforce challenges.

Since the emergency of COVID-19, AFTA estimates a third of the travel sector, approximately 15,000 jobs, have been lost. All travel business are now facing the same economy-wide labour shortages resulting from isolation requirements.

As our members faced the most perilously financial and emotionally difficult time of their businesses history, AFTA also supported travel businesses by not charging Membership or ATAS fees for 2020-2021. Membership fees are the main income source for AFTA, and like all other businesses in the sector, AFTA had to make significant sacrifices in its operations including staff stand downs. This was also at the same time as when the services of AFTA to members and the greater sector were at their greatest demand. AFTA during this critical stage did focus on the critical task of advocating for federal and state funding for the industry to ensure the industries survival.

AFTA acknowledge that this impacted the operation of ATAS in particularly, the ATAS Code of Conduct and the operation of the ATAS Complaint Management process. As documented widely there was a large increase in complaints from consumers during the pandemic, with many consumers unable to contact suppliers and unsure of their rights. Unable to manage such volume via the 3-stage complaint process, AFTA focused on systemic issues, creating content to educate consumers and liaising with members and industry stakeholders.

Learnings from the pandemic have been taken into consideration in many of AFTA's recommendations, including financial reporting, Terms and Conditions and new tiers of ATAS.

## Part 1 – The ATAS Charter

### RECOMMENDATION 1 – Change of Name

ATAS stands for AFTA Travel Accreditation Scheme. AFTA is the administrator of ATAS and manages the application and renewal process and the ongoing monitoring and compliance of Participants of the Scheme.

Whilst AFTA is the administrator, having AFTA in the title is unnecessary and does not demonstrate or explain the scheme effectively especially given the scheme represents all travel intermediaries not only agents.

It is AFTA's recommendation that 'AFTA' be removed from the acronym and replaced with 'Australian'. That is the 'Australian Travel Accreditation Scheme' (ATAS).

This not only simplifies the explanation and meaning to consumers, but it has the added benefit that the acronym remains unchanged and therefore no requirements to change the ATAS branding would be required.

#### **RECOMMENDATION 1**

**Change 'AFTA Travel Accreditation Scheme' to  
'Australian Travel Accreditation Scheme'**

## RECOMMENDATION 2 – Introduce an ATAS Governing Committee

As per cl 1.2 of the ATAS Charter, ATAS is overseen by a governance team incorporating:

- (a) The AFTA Chief Executive (AFTA CEO or CEO), who has overall responsibility for ATAS' operation and ensuring that ATAS is aligned with the AFTA Board's strategic direction. The CEO is responsible for advising the AFTA Board on ATAS and both monitoring and reviewing the scheme's operation.
- (b) The ATAS Compliance Manager (Compliance Manager), who is responsible for assessing applications for ATAS participation by first-time and renewing participants, monitoring participants' compliance with the Charter and Code and reporting to the AFTA CEO or the ACAC accordingly, undertaking investigations into alleged breaches of the Charter and the Code and assisting participants, consumers and the ACAC in resolving customer complaints and other compliance matters. The Compliance Manager is responsible for the day-to-day management of ATAS and overseeing the ATAS Charter and Code including setting ATAS policies and procedures.
- (c) The ATAS Complaint Appeal Committee (ACAC), is an independent review body specifically established under ATAS to review and determine consumer complaints which have been referred to it by a consumer or the ATAS Compliance Manager, relating to an allegation of non-compliance with the ATAS Code.
- (d) The AFTA Board is responsible for formally approving the ATAS Charter and Code, commissioning relevant reviews, ensuring ATAS's effective operation more generally (such as setting fees), and taking into consideration any recommendation or report from the AFTA Chief Executive, the ATAS Compliance Manager or the ACAC.

Whilst the structure has worked effectively, AFTA recommends that for ongoing monitoring, development and improvement of ATAS, the governance team would benefit from introducing a Governing Committee for ATAS.

It is proposed that the ATAS Governing Committee would comprise of representatives that reflect the different types of ATAS travel intermediaries / participants. ATAS is comprised of 'Travel Intermediaries' which is defined as travel agents, travel management companies, aggregators, distributors, online travel agents, inbound tour operators, wholesalers and consolidators. The ATAS Governing Committee should be represented by an appropriate mix of travel intermediary members.

In addition to this, the Governing Committee should include representatives from consumer bodies or any other body to be determined and approved by the AFTA Board.

### RECOMMENDATION 2

**That a Governing Committee be introduced for ATAS comprising of representational members and other representational bodies.**

## RECOMMENDATION 3 – Improvements to Financial Reporting

The Eligibility Criteria for ATAS Accreditation is detailed at cl 2.5 of the ATAS Charter.

Currently, cl 2.5(p) Criteria 9 (start-up businesses only) contains the requirement for:

“Copy of your most recent bank account statements (including the set-up of a client account)”.

An anomaly has been identified that results in new applicants requiring to establish a client accounts, but no requirement to maintain one. Whilst many businesses do have a client account, or even a trust account, AFTA recommend that a mandatory requirement be made that all businesses (except for those that are publicly listed on the ASX) must have at a minimum a client account and that this can be identified in the Financial Statements.

### ***A Note on Trust Accounts***

Whilst there has been media reports calling for mandatory trust accounts, AFTA does not recommend making trust accounts mandatory. This is because the majority of customer funds are not retained for a very long period of time and there is no additional benefit to consumers, whilst creating red tape for businesses. A mandatory client account is sufficient to ensure that Participants separate consumer funds from operational/business accounts.

### ***Financial Statements***

The Charter currently states that “latest financial statements” must be submitted to AFTA. It is recommended that this be more specific and list the actual requirements, that is, that Financial Statements including a Profit and Loss Statement and a Balance Sheet be submitted. Additionally, it is recommended that these be prepared by an Accountant and submitted signed to AFTA.

## RECOMMENDATION 3

### Introduce improvements to the Financial reporting of Participants:

- iii. **Mandatory Client Accounts**
- iv. **Financial Statements to be prepared by an Accountant, and submitted signed by a Director to AFTA.**



## RECOMMENDATION 4 – Introduce new ATAS Accreditation tiers

The travel landscape continues to evolve as our leisure and corporate customers seek new information on travel impacts and experiences. To remain relevant and to ensure that ATAS accreditation is fit-for-purpose, AFTA is recommending the introduction of differentiation tiers that operate above the minimum standards of ATAS as detailed in the ATAS Charter. The aim of this is to recognise those travel intermediaries that encourage industry employee training, enhanced consumer protection, environment and social sustainability programs.

Please note, the below names and programs are indicative only and will require further consultation, setting of criteria and approval of the AFTA Board. Further consultation will be necessary in the development and implementation of the tiers.

### I. **ATAS Business PLUS+**

The PLUS+ would represent and be marketed as, an additional level of consumer protection of funds. This would apply to any business that has taken appropriate insurances such as SAFI (Supplier Airline Failure Insurance) and TAIFI (Travel Agency and Intermediary Failure Insurance) or any other product approved by the AFTA Board (or ATAS Governance Committee).

### II. **ATAS Professional**

ATAS Professional is proposed for individual employees or mobile/home travel consultants/brokers operating under a brand. For example, MTA, Travel Managers etc

The main growth area reported to AFTA is home based and mobile consultants, many operating under the brand of a current ATAS Accreditation. ATAS currently has no mechanism to vet or accredit such individuals who are essentially “piggy-backing” off the parent business and using ATAS branding and logo.

Currently AFTA has an antiquated scheme called AFTA Travel Professional Program (ATPP) which has only a small number of remaining participants. AFTA has been in ongoing discussions with many industry participants about how this program can regain its relevance and prestige.

The criteria for the Professional program would be required to be set and approved by the AFTA Board (or ATAS Governance Committee) if introduced. This would form a new section in the ATAS Charter that lists the Eligibility Criteria for ATAS professional and the ongoing CPD and renewal requirements.

### III. **ATAS Green**

As individuals and businesses seek ways to reduce their impacts of domestic and international travel, ATAS should seek to support and identify travel intermediaries that deliver on these principles.

Many consumers and employees (current and potential) are seeking business that operate through a triple bottom line framework offers opportunities for optimization, innovation, and improvement across industries and sectors. AFTA’s model would seek to embrace the principles of people, planet, and prosperity will ultimately to a sustainable Australian travel sector.

The AFTA Board will review existing, programs and seek to align and adapt internationally recognised frameworks. It is anticipated this work will occur over the next 12 months.

#### **RECOMMENDATION 4**

##### **Introduce additional tiers for ATAS:**

- I. ATAS – Business PLUS+**
- II. ATAS – Professional**
- III. ATAS - Green**

## Part 2 – The ATAS Code of Conduct

### RECOMMENDATION 5 – Strengthen Terms and Conditions requirements

The pandemic has highlighted the importance of Terms and Conditions (T&C's) and more importantly, the need for consumers to understand the application of both Agent T&C's and Travel Provider T&C's. Much of the consumer confusion that occurred during the pandemic, was a lack of understanding by consumers of the legal relationships that are created when booking via a travel intermediary.

It is recommended that the ATAS Code of Conduct be strengthened in this area with a number of requirements in relation to Terms and Conditions.

Currently, the ATAS Code of Conduct has the following requirements in relation to Terms and Conditions:

#### 4.1 Terms and Conditions

- (a) On request we will provide to you, or any person, as soon as practicable:
  - i) our standard terms and conditions; and
  - ii) where available, full details of any standard fees and charges that we may apply.
- (b) Our terms and conditions will:
  - i) Be distinguishable from marketing or promotional material;
  - ii) Be in English and any other language we consider to be appropriate to our customer base;
  - iii) Be consistent with this Code;
  - iv) Be provided at the time of, or before you enter into a sale with us;
  - v) Advise you of our obligations to protect the confidentiality of your information; and
  - vi) Provide you with information about our complaints handling policy and other dispute resolution procedures available under ATAS.

#### 4.2 Changes to terms and conditions

- (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;
- (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.
- (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.

In relation to cl 4.2 above, the terms and conditions that the customer agrees to forms part of the contract and can not be changed without the consent of the consumer. This term is generally stipulated in the T&C's itself and Clause 4.2 is unnecessary and misleading to a consumer and as such should be removed.

## Recommendations

The following additions are proposed:

**a. Mandatory Schedule of Fees**

All Participants will be required to include a Schedule of Fees in their Terms and Conditions. This will stipulate the fees that may apply under different circumstances, which will assist in avoiding some of the issues that were experienced during the pandemic. The Schedule of Fees will detail the fees agents charge for their different services. This addition will create clarity for consumers and an understanding when entering into the contract that such fees will apply under different circumstances.

**b. Acknowledgement by the consumer of the Agent T&C's**

As new precedents are being set through the Australian Consumer Law, many travel intermediaries have adjusted from payment as acceptance of T&C's to active acceptance. The Code does enforce the requirement for T&C's to be provided to a consumer at or before the time of sale, which is currently in the Code (refer above cl 4.1(b)(iv)). We are recommending the additional step of acceptance by the consumer.

This addition, takes this one step further to bring to a consumers mind the importance of the T&C's by ensuring that each customer confirms in writing that they have agreed to the T&C's. This occurs already online with a Box that is ticked, however ATAS Participants should collect such confirmation and retain it on file to ensure a consumer has turned their mind to the T&C's that they are agreeing to.

**c. Statement on all Itinerary and Quotes referring to the application of Terms and Conditions**

To further assist consumers in understanding the legal relationship that is entered into when booking with an ATAS Participant, it is recommended that all Quotes/Itineraries of ATAS Participants introduce a statement in relation to the application of the Participants T&C's and the Travel Providers T&C's.

For example:

"This quote/itinerary and booking is subject to the Terms and Conditions of '*Agent name*' and the Terms and Conditions of each Travel Provider. This includes any 3<sup>rd</sup> party providers such as wholesalers and consolidators."

All changes should have a future implementation date being at the time of the ATAS Participants 2023 membership renewal.

### RECOMMENDATION 5

The ATAS Code of Conduct cl 4.1 'Terms and conditions' remove cl 4.1(a) and cl 4.2 and add the following to cl 4.1(b):

- d. A Mandatory Schedule of Fees must be included in Terms and Conditions;
- e. Acknowledgement from a consumer must be received of the Agent T&C's; and
- f. Introduction of a Statement on all Itinerary and Quotes that highlights to a consumer the application of Terms and Conditions of both the Agent and each Travel Provider.

## Part 3 – The ACAC Terms of Reference

### RECOMMENDATION 6 – Changes to Terms of Reference

The following recommendations allow for a more efficient operation of the ATAS Complaint Appeal Committee (ACAC).

Attachment F the ACAC Terms of Reference establishes the authority, disciplinary processes and responsibilities the ACAC has in performing its functions effectively, efficiently and independently in accordance with the ATAS Charter.

Clause 2.4 details the role of the ACAC, which includes:

- a) Take all reasonable steps to ensure the resolution of consumer complaints referred to it under the ATAS Charter and Code. This includes but is not limited to:
  - i. Investigating, making determinations and giving directions;
  - ii. Reviewing all documentation available on each complaint;
  - iii. Determining what, if any, additional material/evidence (including verbal or written statements from affected parties or witnesses) may be required; and
- b) Review complaints referred to it by the ATAS Compliance Manager and provide recommendations or suggestions to support the scheme in accordance with these Terms of Reference.

The role of the ACAC is to review a complaint that has been appealed by a consumer, following a decision at Stage 2 by the ATAS Compliance Manager. The ACAC role is to review that decision and the complaint and determine whether the decision was appropriate or an alternate decision is required. The role is not “to ensure the resolution of consumer complaints referred to it” and it is recommended to remove this to better reflect their role in assessing the appeal and complaint – rather than ensuring it is resolved. The ACAC is an appeal body.

#### RECOMMENDATION 6

##### The Terms of Reference be amended to

- c. **Revise the role of the ACAC to better reflect their role as an Appeal body;**
- d. **Increase flexibility of operations with no minimum number of meetings and ability to meet virtually.**