

JUNE 2022

AFTA TRAVEL ACCREDITATION SCHEME

Review report 2022

WRITTEN BY

Graham McDonald

TABLE OF CONTENTS

About the Review	1
Summary of Recommendations - ATAS Charter	2
Summary of Recommendations - ATAS Terms of Reference	3
Summary of Recommendations - ATAS Code of Conduct	4
Introduction	5
Terms of reference for the review	6
Background - ATAS Charter and Code	7
Submissions	9
Context: the COVID-19 Pandemic	10
ATAS Membership and the Governance of the ATAS Scheme	12
ATAS Complaint Appeal Committee (ACAC)	18
Financial Reporting	25
ATAS Participation (membership) - Specialised tiers	27
Terms and Conditions: Clause 4 of the Code	29

SUMMARY OF RECOMMENDATIONS

ATAS CHARTER

1. It is recommended that Clause 2(c) of ATAS Charter be amended to provide that upon joining ATAS a non-AFTA participant accepts that, in the event of any conflict between the operation of the non-AFTA membership terms and conditions and the ATAS Code terms and conditions, the ATAS Code provisions are to prevail.

2. It is recommended that the reference to 'AFTA' in the acronym of ATAS (AFTA Travel Accreditation Scheme) should be substituted with 'Australian' so that ATAS is to be known as the 'Australian Travel Accreditation Scheme'.

3. It is recommended that AFTA 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. An advisory committee constituted along the lines of the proposed ATAS Board should 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.

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. This role should be performed by the Independent Chair of the ACAC, as a stand-alone function.

5. It is recommended that greater resources be allocated to the promotion of ATAS to the public.

SUMMARY OF RECOMMENDATIONS

ACAC TERMS OF REFERENCE

6. It is recommended that Clause 5 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'.

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

SUMMARY OF RECOMMENDATIONS

ATAS CODE OF CONDUCT

8. It is recommended that AFTA, ATAS and ACAC assess the Benchmark principle 4 for Accountability and implement enhanced public reporting according to the Treasury guideline.

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.

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.

11. 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 be demonstrated in the annual financial statements, which are lodged annually.

12. It is recommended that all ATAS Participants have their Financial Statements, including a Profit and Loss statement and balance sheet, be prepared by an accountant.

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)

(b) Repeal Clause 4.2

(c) Replace the repealed clauses with a mandatory requirement that the terms and conditions and the fees and a schedule of fees to be charged must be provided to the consumer before any contract or agreement to purchase any travel related service is concluded.

(d) It is further recommended that the consumer acknowledge receipt of this information in 13(c) above and a record of this retained.

(e) It is recommended that clause 4.1(b) be reconstituted as clause 4(1) with the requirement to “provide you of 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”.

INTRODUCTION

ATAS is the accreditation scheme operated under the auspices of the Australian Federation of Travel Agents Ltd (AFTA). AFTA is a not-for-profit company which represents the interests of Australian based travel agents. ATAS (AFTA Travel Accreditation Scheme) is an industry self-regulatory accreditation scheme introduced in 2014 following the repeal the Co-operative Scheme for the Uniform Regulation of Travel Agents.

ATAS is governed by a Charter (the Charter) and a Code of Conduct (the Code). Participants of ATAS agree to be bound by the Charter, which among other things establishes the membership criteria, and abide by the standards of service set in the Code.

The objectives of ATAS in the Charter are described to -

- Establish a nationally recognised accreditation scheme which sets minimum standards of service which consumers can expect from those members (participants) who subscribe to the scheme
- Ensure those standards are met and maintained
- Inform consumers of the benefit of using an ATAS Accredited travel agent
- Provide and independent consumer dispute resolution facility
- To build the professionalism of the travel agent industry into the future



It is highly desirable that, in a nationally operating deregulated industry, there be a nationally uniform operating accreditation scheme. In addition to affirming a high degree of self-confidence for the industry such a scheme has many advantages including:

- Giving assurance to consumers that readily identifiable minimum standards of operation can be expected throughout the industry,
- Demonstrating to the public and regulators that consumer complaints, which ATAS is unable to resolve by negotiation, are addressed in an independently
- Operating forum where the disclosed minimum Code standards will be enforced, and,
- Providing end suppliers (Travel Providers) with confidence that the industry will abide by minimum standards in the promotion and sale of their products to consumers.

TERMS OF REFERENCE FOR THE REVIEW

The Charter mandates that a review of the scheme be undertaken every 3 years¹. This is the third review. The terms of reference for the review are determined by the AFTA board and are:

- The ATAS Eligibility Criteria – Are the criteria sufficient to ensure the objectives of ATAS are achieved? Should changes be made to the criteria? If so what changes are recommended?
- The ATAS Charter – Does the ATAS Charter set out the objectives, rules and participation arrangements appropriately? Should consideration be given to amending the Charter? If so, what amendments are recommended?
- Code of Conduct – Does the ATAS Code of Conduct set out appropriately the standards of good practice that participants must follow in their day-to-day practices?
- Should consideration be given to amending the Code? If so, what amendments are recommended?
- The ACAC² – The effectiveness of the ACAC in:
 - (a) the resolution of Complaints referred to it; and
 - (b) structured to be able to operate efficiently and effectively.
- Should consideration be made to amending the ACAC’s Terms of Reference or role within ATAS? If so what is recommended?

¹ Charter clause 3.3. The scheduled 2021 review was delayed to 2022 year owing to constraints arising from the COVID-19 pandemic.

² The ATAS Complaint Appeal Committee



BACKGROUND: THE CHARTER AND THE CODE OF CONDUCT

The Charter, the terms of which are determined by the AFTA board, establishes the ATAS accreditation scheme and constitutes the governance terms pursuant to which ATAS operates.

The Charter incorporates the following expressed as attachments:

- the Code detailing the minimum standards participants undertake to provide to consumers,
- the list of the solvency requirements pursuant to which participants are to operate, and,
- the terms of reference governing the operation of the ATAS appeals committee (the ACAC).

Participation in the ATAS accreditation scheme by travel agents³ is voluntary. AFTA estimates that approximately 70% of Australian travel agents are participants.

ATAS accredited participants are entitled to use the trade mark approved branding "ATAS -travel accredited" which is designed to inform consumers of the level of quality and professionalism that they can expect in service delivery.

³ 'Travel agent' refers to all travel intermediaries. Clause 2.5 (a) of the Charter defines "travel intermediary" to include "a travel agent, travel management company, aggregator, distributor, online travel agent, inbound travel operator, wholesaler and a consolidator and their employees". The definition is replicated in clause 6 of the Code.

BACKGROUND: THE CHARTER AND THE CODE OF CONDUCT

The Charter provides that the ATAS Compliance Manager is to monitor compliance with the suspected breaches of the Charter or Code. The Code provides that the Compliance Manager is to investigate complaints lodged by consumers and resolve them by negotiation. If that does not result in a resolution the consumer has a right of appeal to an independent complaints appeal panel (the ACAC) the decision of which is binding on the Travel Agent but which does not inhibit the consumer from further pursuing any available legal remedies⁴.

As stated, the aim of the Code is to set the minimum standards of behaviour and service delivery expected of participating members, including relevantly for this review, which are to-

- disclose of all relevant (travel) information in a plain and easy-to-understand form,
- ensure that (travel) products and services are fit for any disclosed purpose, act with due care and skill,
- act fairly and in a reasonable and ethical manner, and,
- comply with Australian Consumer Law⁵

⁴Most usually to the relevant State Consumer Affairs departments or the (Federal) Australian Competition and Consumer Council but it remains open for court proceedings to be taken where costs may become an issue for the unsuccessful party.

⁵Code clause 3.2(a)(xi)

THE SUBMISSIONS

For this review submissions were sought⁸ from interested parties. The following submissions were received:

- (a) Mr David Walker Chairman and Executive Director of ITC Pacific Pty Ltd,
- (b) The Australian Lawyers Alliance,
- (c) AFTA,
- (d) Choice,
- (e) CATO (Council of Australian Tour Operators)

The Hon. Andrea Michaels the South Australian Minister for Business and Consumer Affairs submitted that the agency responsible for fair trading matters in South Australia supported improvements in the resolution of disputes between travel agents and consumers and enhanced consumer confidence when dealing with travel agents and operators in light of the impacts of COVID-19.

The Hon. S Uiibo the Attorney General and Minister for Justice in the Northern Territory, in the course of a letter declining to make a submission, commented that the most complaints received by the Territory Fair Trading office related to non-accredited Travel Agents.

The submissions have been posted on the AFTA website where they can be read. While the reviewer has read and considered all of the submissions the report is limited to those issues which are considered to be most crucially relevant to considering the effectiveness and operation of the ATAS scheme and to consideration of the specific questions posed in the terms of reference.

⁸ By public advertisement and direct approach.



CONTEXT: THE COVID-19 PANDEMIC

As is acknowledged in a number of the submissions⁹ it is relevant to record, in the period since last review held in 2019, that both travel agents and consumers who utilise their services have experienced substantial disruption caused by the COVID-19 pandemic. In particular, various health related travel restrictions imposed by Australian (and international) governments have been problematic. The problems, which overwhelmingly relate to how cancellation of bookings should be handled, have been described in a report jointly published by the ACCC and the ACL regulators¹⁰. The problems described are, to a large extent, also reflected in the internationally operating tourist industry as reported in the United Nations sanctioned World Tourism Organisation entitled "The International Code for the protection of Tourists"¹¹.

In many respects both of the above reports identify issues which existed prior to the onset of the pandemic but which the pandemic has served to bring into sharper focus. Both reports highlight difficulties and financial hardships often experienced by consumers in obtaining refunds or credits arising from cancellations. At the same time travel agents have faced difficulties in negotiating and managing with Travel Providers cancellation claims while trying to remain financially solvent. While not exclusively so securing refunds was particularly an issue with overseas Travel Providers. Maintaining solvency was accentuated during periods when there was an absence of, or a great reduction in, ongoing and/or new incoming business. While reducing, ongoing

⁹ Submissions from AFTA (p 5), Choice (p 4). The Lawyers Alliance submission referred only to problems faced by consumers (p 5), Choice (p 5)

¹⁰ ACCC and ACL regulators best practice guidance for the Travel Industry for COVID-19 related travel cAdopted by the UN General Assembly in

¹¹ December 2021 and not yet endorsed by the Australian Government.ancellations (July 2020)



CONTEXT: THE COVID-19 PANDEMIC

COVID-19 travel related visa and other Government imposed requirements continue to present difficulties for consumers and the industry.

The 2021 Annual report records that AFTA negotiated Federal Government funding of \$258m for member support - not any of which was directed to support AFTA or ATAS operations. To assist in the maintenance of solvency of participants AFTA membership fees, which are the sole source of funding the work of ATAS, were suspended in both 2020 and 2021. During this period ATAS was placed on a monitor and support footing and utilised accrued reserved savings to cover operating costs. Among other things ATAS dealing with consumer complaints was suspended. Complaints were referred to the ACCC or State consumer affairs offices for resolution. The operation of the ACAC was suspended from 28 March 2020 and remains suspended until the outcome of the AFTA board consideration of this report. The terms of appointment of the ACAC panel members, apart from that of the Chair, have expired by effluxion of time.

While it is unfortunate, it is accepted by the reviewer that the ability of ATAS to provide consumer complaint resolution support during the 2020, 2021 and into the 2022 years has been adversely impacted by the financial constraints resulting from COVID-19. The lack of resources to meet consumer demand at a time of high consumer concerns has exposed an underlying weakness in a scheme designed to achieve, and which is promoted as offering, national minimum standard consumer coverage.



ATAS MEMBERSHIP AND THE GOVERNANCE OF THE ATAS SCHEME

While it is compulsory for AFTA members to join ATAS Clause 2(c) of the Charter provides that travel agent non-members may also join provided that they also belong to an “...industry body, association or other relevant travel industry association”. While currently there are no non AFTA participant members of ATAS for the sake of clarity it is recommended that clause 2(c) of the Charter be amended to provide that upon joining ATAS a non AFTA participant accepts that, in the event of any conflict between the operation of the non AFTA membership terms and conditions and the Code terms and conditions, the Code provisions are to prevail.

Clause 1.1 of the Charter states that the establishment of “a nationally recognised accreditation scheme ” is an objective of ATAS. To that end it is recommended that the AFTA proposal to replace the reference to the ‘AFTA’ acronym in the ATAS title and substitute “Australian” so that ATAS is to be known as the “Australian Travel Accreditation Scheme” should be adopted. Such a change, as well as being more meaningful to consumers who may not be familiar with the AFTA acronym, better reflects the aim of moving to achieve national coverage of ATAS. It may also encourage a number of agents who are not members of AFTA to become ATAS participants.

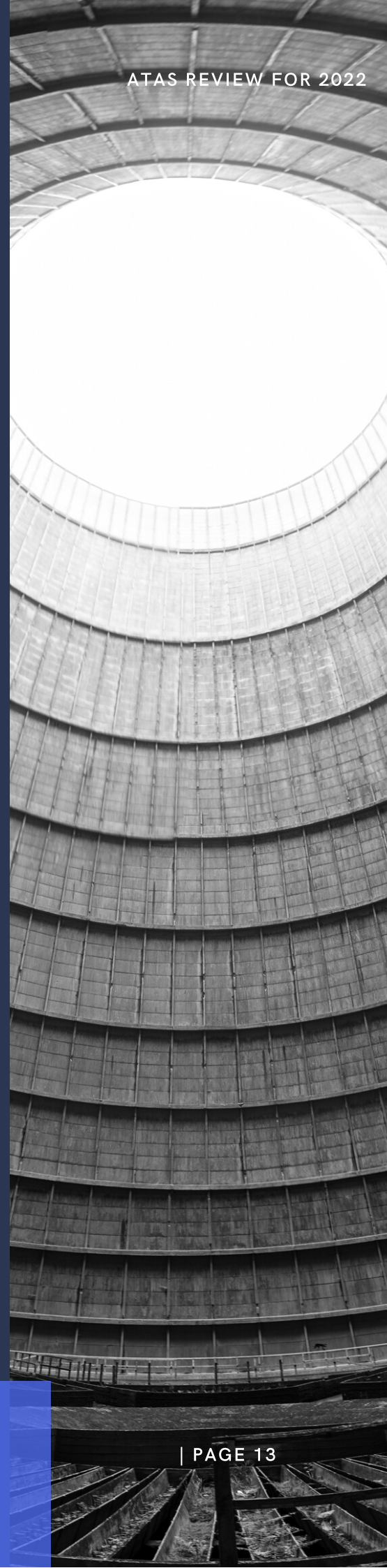
ATAS MEMBERSHIP AND THE GOVERNANCE OF THE ATAS SCHEME

Clause 1.2 of the Charter provides ATAS is to be overseen by a governance team consisting of the:

- AFTA CEO,
- ATAS Compliance Manager who is responsible for the day-to-day management of ATAS,
- ATAS Complaint Appeals Committee (ACAC) which is described as “..an independent review body to review and determine consumer complaints which have been referred to it by a consumer or the ATAS Compliance Manager” and¹² which assert non-compliance with the ATAS Code

The current structure effectively results in ATAS being managed by AFTA. While AFTA submitted that that structure has been effective in managing ATAS, it acknowledged that some change was desirable. It submitted that an ATAS governing committee be appointed comprised of members that are more reflective of the different industry sectors to serve terms on a rolling proportional basis as well as the appointment of consumer representatives. The submission proposed that the governing committee would provide “on-going monitoring, development and improvement of ATAS.” It is not stated that the governance committee would be granted determinative powers to fulfill the proposed mission. It seems likely that the proposed role of the governing committee is to be recommendatory and that AFTA would retain to right to make final decisions about ATAS operations. As such it is a mis-designation to describe the role as having a ‘governing’ function.

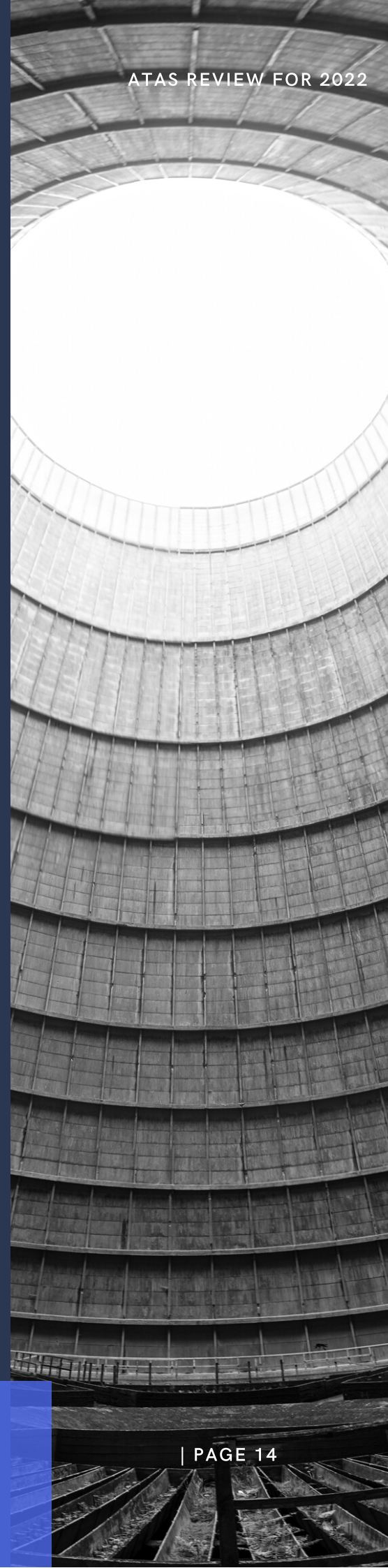
¹²The Terms of Reference for the ACAC are contained in Attachment F to the Charter



ATAS MEMBERSHIP AND THE GOVERNANCE OF THE ATAS SCHEME

Mr Walker submitted that a greater degree of industry sector representation in respect of the administration of ATAS would be desirable. While CATO acknowledged the desirability of having an industry wide accreditation scheme it submitted that the control exercised by AFTA in the operation of ATAS is unduly confined to the retail sector of the industry and other components including CATO (which represents tour operators and travel wholesalers) lacked influence. The Choice submission expressed concern as to the lack of independence of ATAS from AFTA.

The AFTA submission on the structure of ATAS arises for consideration under Clause 4.2 of the Review's Terms of Reference as to whether the Charter sets out the appropriate "objectives, rules and participation arrangements". The introduction of a more representative governance committee for ATAS which has no authority other than to offer advice to the AFTA board is not supported. On the other hand, an entirely stand-alone structure would present an obvious relationship difficulty for AFTA which is the sole source of funding for ATAS. A possible solution which is recommended is for AFTA to consider constituting a wholly owned subsidiary company, with a separate board constituted as the consensus of submissions submit, with a broader range of industry and consumer representation, and pass control of the operation of ATAS to that company.

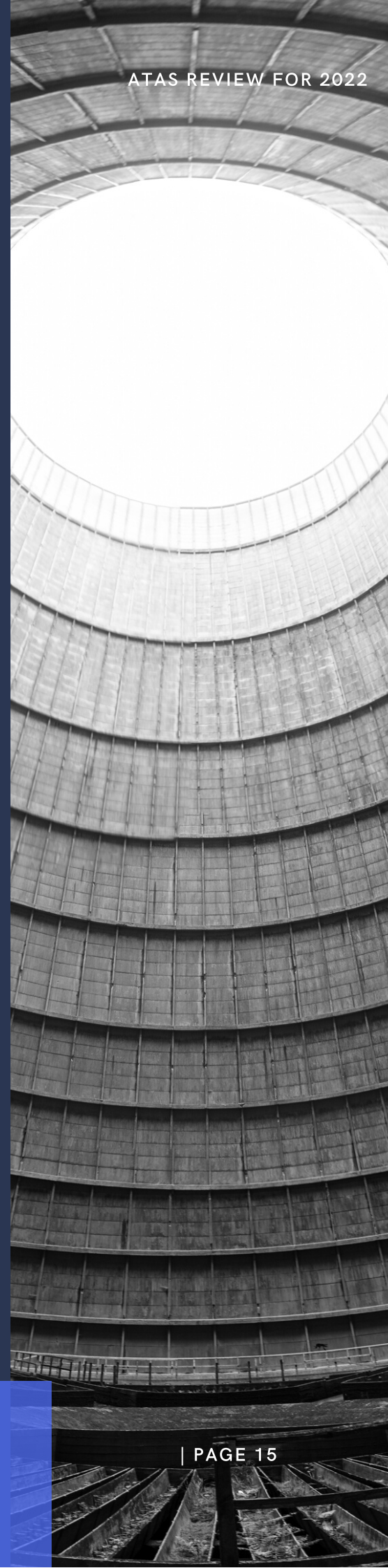


ATAS MEMBERSHIP AND THE GOVERNANCE OF THE ATAS SCHEME

It would be a matter for the proposed ATAS board to negotiate funding with AFTA on an annual basis. The proposed structure would provide ATAS with operational independence from AFTA with AFTA still retaining representation on, but not control of, the ATAS board. The proposed subsidiary would carry out the ATAS functions which are currently undertaken by the AFTA board. Such a structure would encourage better industry ownership, add value, encourage greater industry participation, create a more balance approach and ensure a contribution from consumers in ATAS governance.

This recommendation, if adopted, would be a major step forward in achieving the Charter objectives of having a nationally recognised accreditation scheme as it would encompass broader industry and consumer participation which would operate under rules set by the governing body rather than by the industry representative body. If accepted this 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 that committee report to AFTA Board which would make the final decision.

If adopted such the proposed new structure would more definitively demonstrate to consumers the professional standing of the travel industry - that being one of the main stated objectives of ATAS.



ATAS MEMBERSHIP AND THE GOVERNANCE OF THE ATAS SCHEME

AFTA would retain a continuing important industry role in its stated remit of undertaking –

- the effective representation in industry and government affairs;
- facilitating changes to education and training curriculum,
- providing business support through professional advice and services, and,
- responsibility for its membership cohort

Membership is a matter of importance for ATAS. Clause 2.4 of the Charter envisages the refusal of accreditation for an applicant who is unable to satisfy the eligibility criteria. The Compliance Manager may also cancel or suspend a participant’s membership if there has been a failure to adhere to the criteria. The provision permits an appeal to the AFTA CEO whose decision is final. Refusal of an applicant to participate and/or cancellation or suspension of the right to participate are fundamental issues of importance with respect to access.

It is important that procedural fairness forms part of the decision-making process and that it is seen to be part of that process. This should be expressly recognised in the appeal process. Accordingly, it is recommended that a further right to appeal from the CEO’s decision be introduced but solely limited to determining that natural justice has been extended to an applicant or participant. An appeal should only be able to be considered if independent legal advice that a breach of natural justice has been obtained.

ATAS MEMBERSHIP AND THE GOVERNANCE OF THE ATAS SCHEME

The legal advice should be made by the independent Chair of the ACAC given as a stand-alone separate function from the Chairing the ACAC consumer appeal function. Later in the review it is recommended that the Chair of the ACAC be restricted to a lawyer having no less than 5 years' experience. In the event of a finding that natural justice has not been accorded then the matter should be returned to the Compliance Manager for a decision on the merits which is to be made ensuring that the natural justice issues identified in the appeal process are addressed.

Promotion of ATAS is an integral function of ATAS. Clause 1.1(c) of the Charter recognises the need for consumers to be informed about "...the benefits of using an ATAS accredited travel agent when booking travel". While there has been some promotion of the ATAS's role greater efforts should be made to increase awareness in the broader community. It is recommended that greater resources be allocated to the promotion of ATAS to the public. While it is appreciated this has financial implications it is, however, not only essential for the consuming public to be aware of the benefits of utilising ATAS accredited agents but also of fundamental importance to participants to be assured that a greater recognition of the brand will provide a marketing advantage. The review is unable to recommend an increase of any specific amount to be allocated but consideration of this aspect is something which should remain to the forefront of mind in the AFTA budget considerations for ATAS.

THE ATAS COMPLAINT APPEAL COMMITTEE (ACAC)

Whatever governance structure is in place it is imperative that the ACAC operate, and be seen to operate, independently not only from AFTA but also from the other activities of ATAS. The involvement of the ATAS CEO, who is an AFTA employee, as a member or potential member, of the ACAC panel which decides consumer appeals from decisions reached by the Compliance Manager places him/her in a conflicted situation as he/she is also the supervisor of the Compliance Manager. This breaches the terms of the Treasury published "Benchmark for Industry-based Customer Dispute Resolution" (the Benchmark)¹³. Accordingly, it is recommended that Clause 5 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.

The Benchmark also recommends that the administration of industry-based consumer appeals bodies be operated independently of the participating organisation and states as an underlying principle :

- " The office publicly accounts for its operations by publishing its final determinations and information about complaints and reporting any systemic problems to its participating organisations, policy agencies and regulators."

¹³The Terms of Reference for the ACAC are contained in Attachment F to the Charter

THE ATAS COMPLAINT APPEAL COMMITTEE (ACAC)

If the adoption of the earlier recommended structural change to the governance of ATAS is accepted then that would, to a limited but important extent, serve to enhance a greater degree of independence and effectiveness in the operation of the ACAC. Prior to the onset of the COVID-19 pandemic there were not sufficient appeal numbers to warrant the establishment of a separate administrative function for the ACAC¹⁴. This however is something which depending if increased appeal numbers eventuate should be left open to be subsequently reviewed. [1] In 2018 there were 10 appeals and in 2019 5 appeals. The vast number of appeals lodged (669 in 2018 and 656 in 2019) were successfully handled by the Compliance Manager with oversight from the ACAC (or its predecessor body).

There is merit in the ACAC chair being a senior lawyer who can ensure proper legal process is followed in reaching appeal determinations including natural justice forming part of the process. Accordingly, it is recommended that the terms of reference for the ACAC be amended to provide that appointment to the chair be a lawyer of at least 5 years' experience.

¹⁴In 2018 there were 10 appeals and in 2019 5 appeals. The vast number of appeals lodged (669 in 2018 and 656 in 2019) were successfully handled by the Compliance Manager with oversight from the ACAC (or its predecessor body).

THE ATAS COMPLAINT APPEAL COMMITTEE (ACAC)

If the adoption of the earlier recommended structural change to the governance of ATAS is accepted then that would, to a limited but important extent, serve to enhance a greater degree of independence and effectiveness in the operation of the ACAC. Prior to the onset of the COVID-19 pandemic there were not sufficient appeal numbers to warrant the establishment of a separate administrative function for the ACAC¹⁴. This however is something which depending if increased appeal numbers eventuate should be left open to be subsequently reviewed. [1] In 2018 there were 10 appeals and in 2019 5 appeals. The vast number of appeals lodged (669 in 2018 and 656 in 2019) were successfully handled by the Compliance Manager with oversight from the ACAC (or its predecessor body).

There is merit in the ACAC chair being a senior lawyer who can ensure proper legal process is followed in reaching appeal determinations including natural justice forming part of the process. Accordingly, it is recommended that the terms of reference for the ACAC be amended to provide that appointment to the chair be a lawyer of at least 5 years' experience.

¹⁴In 2018 there were 10 appeals and in 2019 5 appeals. The vast number of appeals lodged (669 in 2018 and 656 in 2019) were successfully handled by the Compliance Manager with oversight from the ACAC (or its predecessor body).

THE ATAS COMPLAINT APPEAL COMMITTEE (ACAC)

Currently the ATAS Complaints Manager provides a report to the ACAC of the cases which have been dealt with and their outcomes, and answers any queries which the panel may have about the process or outcomes. Details arising from this process are not made publicly available-although the AFTA annual report sets out the statistical outcomes. The Choice submission recommends that AFTA comply with the Benchmark principles for Accountability. Choice provide a suggested list of consumer related outcome information concerned with complaints that should be publicly released:

Total number of complaints
<ul style="list-style-type: none"> • Number of complaints by business and brand • Rates of resolution and appeal • Patterns in determinations, including types of resolution determined
<ul style="list-style-type: none"> • The average time taken to finalise complaints; • The number of Code breaches identified and reason for them
<ul style="list-style-type: none"> • Case studies of any major or high events that occurred in the year • Any potential systemic issues identified from complaints

Information of this type is of importance, not only for public accountability purposes, but also to the industry as it identifies where systemic industry wide problems may exist. Such information also encourages an industry to adopt an acceptable consistent methodology for dispute resolution rather than individual ATAS participants each having to deal repeatedly with the same problems which can result in inconsistent outcomes.



THE ATAS COMPLAINT APPEAL COMMITTEE (ACAC)

As the Choice submission notes it also provides a level of public accountability which would enhance the independence of the operations of ATAS and the ACAC.

Given the structural and financial constraints surrounding the near future of ATAS it is unlikely that enhanced industry wide reporting measures would be able to be introduced immediately. However, it is recommended that AFTA, ATAS and ACAC assess and implement enhanced reporting that meets the principles of accountability as detailed in the Treasury's Benchmark.

Choice submitted that while the Charter and Code provide a complaint resolution scheme there was no requirement contained in either which mandates an ATAS participant to advise a consumer of the existence of the appeal right to the ACAC at the time a complaint is made. Charter clause 2.5(k) mandates both that participants have efficient internal dispute resolution processes and where the client remains dissatisfied with the outcome an 'available external process' for resolution is available. It is however unclear from the wording as to what is meant by 'available' processes. This appears to be a reference to the fact that a consumer dissatisfied with a decision of a travel agent may issue court proceedings or apply to government-based consumer affairs departments or the ACCC rather than access the ACAC.



THE ATAS COMPLAINT APPEAL COMMITTEE (ACAC)

A more direct reference to the existence of the ACAC would serve to ensure that the consumer is made aware that AFTA members have the professional confidence to make an independent dispute resolution scheme available. Additionally, such a reference would serve to inform ATAS of any training issues which may improve the 'efficient and effective' aspect of a participant's internal resolution processes in the event that a breach of the Code is established.

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.

AFTA submits that the requirement¹⁵ that ACAC meetings are to be held quarterly should be repealed. While it is not expressly stated in the clause that the meetings are to be held in person that has overwhelmingly been the practice to date. The expense of bringing members together in person for every meeting is not warranted and it is, in any event, unnecessary for the meetings to be held quarterly. It is recommended that this requirement be removed. Meetings should be held as often as the Chair directs after consultation with the Compliance Manager.

¹⁵Clause 8.1 of the ACAC Terms of Reference

THE ATAS COMPLAINT APPEAL COMMITTEE (ACAC)

The wide spread acceptance for holding meetings virtually is accepted and there is no reason why that course cannot be adopted. These are practical common-sense issues and it is not necessary to make any formal recommendations beyond that stated. Arrangements for ad hoc in person meetings as thought desirable can be made after consultation between the ACAC Chair and the ATAS Compliance Manager.



FINANCIAL REPORTING

There is obvious advantage to the users of the services of travel agents in ATAS participants being mandated to ensure security of client deposits. The requirement that annual independently audited financial reports be filed was abandoned when the Government repealed the Co-operative Scheme in 2014. The reintroduction of such a measure, which considerably increases cost, is unlikely to be welcomed or accepted by the industry which, at the time, advocated for the repeal of a mandated audit requirement. While there is a strong element of trust involved in the handling of client deposit funds it is not recommended that they be designated in specifically regulated trust accounts requiring independent auditing. A recent ATAS survey of participants returned a divided industry opinion as to whether audited trust accounts should be required.

However, the review accepts the AFTA submission that the current requirement that the "latest financial statements" relating to clients' accounts be filed only upon the request of the ATAS Compliance Manager is inadequate. Nor is there any definition as to what is to be covered by "latest financial statements". The reviewer accepts the AFTA submission and recommends the introduction of a requirement that the keeping of separate client accounts showing deposits and disbursements be mandated. As a corollary to the above recommendation is also accepted and recommended that participants should be obligated to file client related annual financial statements and those statements should be defined to include all client deposits and disbursements.



FINANCIAL REPORTING

The review also recommends adoption of the AFTA submission that participant financial statements covering profit and loss and balance sheets be prepared by an accountant and submitted to AFTA annually. This is a necessary measure to ensure that as far as possible that solvency is maintained and any temptation to intermingle client funds with the operating funds of a participant are avoided. The accountant may, but not necessarily, be an employee of the travel agency business.

ATAS REVIEW FOR 2022



ATAS PARTICIPATION (MEMBERSHIP) - SPECIALISED TIERS

The AFTA submission tentatively proposes the introduction of a tiered participant membership structure aimed at better reflecting changes impacting the travel intermediary industry. The diverse nature of the manner in which the industry operates can be unclear and confusing to consumers. Importantly, particularly in the context of the confusion and disruption evident following the onset of the COVID-19 pandemic, any change which results in the promotion of a better understanding for consumers of what additional enhanced benefits may be offered beyond the minimum currently advocated in the Code is to be welcomed.

The following indicative three-tiered structure is proposed in the AFTA submission for further industry consultation over the next year for the development of suitable criteria:

- ATAS Business PLUS+ which would provide an additional level of protection of consumer funding with coverage from insurance and/or other measures approved by the AFTA board,
- ATAS Professional-offering coverage for individual employees or mobile /home travel consultants/brokers operating under a brand,
- ATAS Green for agents which adopt principles which embrace "...the principles of people, planet and prosperity " in the Australian travel sector.



ATAS PARTICIPATION (MEMBERSHIP) - SPECIALISED TIERS

It is submitted that the changes will better accord recognition to the different segments of the travel intermediary industry-something also adverted to in the submission from Mr Walker. AFTA maintains that the proposed changes are aimed at and encouraging "industry employee training, enhanced consumer protection, environmental and social sustainability programs" - which are all desirable aims.

Ultimately the proposal is one for the industry to consider and is not appropriately a matter which the review can, or should, make a recommendation.

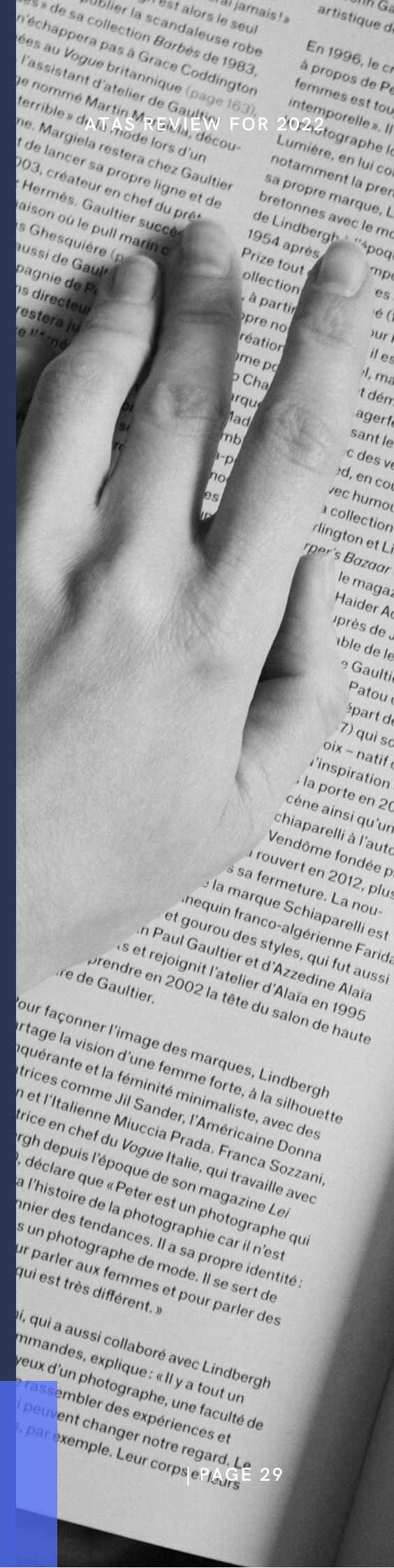


TERMS AND CONDITIONS: CLAUSE 4 OF THE CODE

The AFTA submission draws attention to the desirability of amending clause 4 of the Code which currently provides that on the request of the consumer the travel agent is required to provide a copy of the agent's standard terms and conditions and 'when available' full details of any standard fees and Charges' that may be applied. As is apparent there is no mandated requirement that, absent a request being made, that this information is to be provided before any contract for the provision of services is concluded. The Alliance of Lawyers submitted that participants should be required to "...provide copies of all relevant terms and conditions prior to of the contract for every booking rather than on request" and "all fees and charges that apply to the booking at¹⁶ the point of sale".

The reviewer concurs that the current requirements on these issues are unsatisfactory. Additionally, there is, for instance, no requirement to provide any special or exceptional terms and conditions which the agent may impose.

¹⁶Submission ps 9 and 11. The Alliance advocated that the terms and conditions of 'relevant suppliers' (Travel providers) should be included. This latter aspect is addressed later in the review report.



TERMS AND CONDITIONS: CLAUSE 4 OF THE CODE

To address these concerns the review accepts the AFTA submission and recommends that clause 4.1 (a) of the Code be repealed. The provision should operate without exception and consequently it is also recommended that Clause 4(2), dealing with notification of subsequent changes to already issued terms and conditions, be repealed. It is recommended that the repealed provisions be replaced by a mandatory requirement that a schedule of all agent's terms and conditions and the fees to be charged should be provided to the consumer before any contract or agreement to purchase any travel related service is concluded. It is also accepted and recommended that consumer acknowledgement of receipt of this information must be recorded at the time of receipt.

The Alliance of Lawyers also submitted that the Terms and Condition should be provided to consumers using "clear and comprehensible language". There is no recommendation made in respect of this as clause 3.2(a) (iii) of the Code already mandates all information provided is be in a "plain and easy to understand form". This is a matter for the ATAS Compliance Manager and the ACAC to monitor.

A more complex aspect of the AFTA submission, and an issue that is also raised in the Alliance of Lawyer's submission, relates to the need for travel agents to provide consumers with either a summary (AFTA) or all of (the Alliance) the terms and conditions to be applied by Travel Providers.

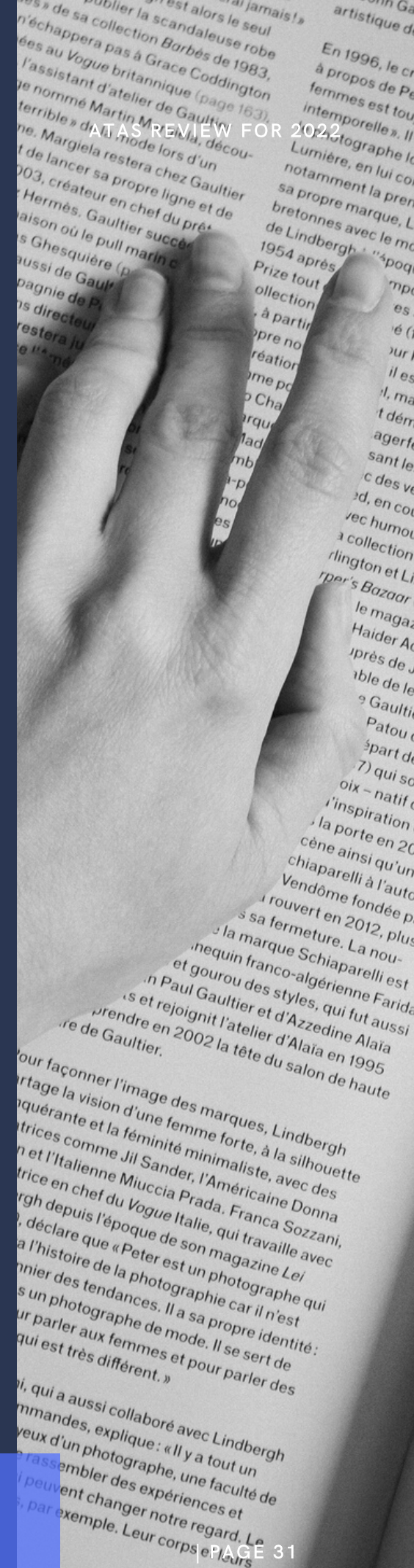


TERMS AND CONDITIONS: CLAUSE 4 OF THE CODE

The provision of all such conditions can cover several hundred pages e.g. in the case of airline bookings. It is likely that consumers would find it too onerous and therefore are unlikely, or indeed want or have the time, to read them. One of the reasons in seeking assistance from a travel agent is to overcome the onerous task of addressing this type of detail.

However, there is need, highlighted by what has already been mentioned earlier in this report concerning the difficulties experienced by consumers in particular in obtaining return of fees deposited with Travel Providers when cancellation of the end service arises. There are several aspects identified as being of concern.

The first is when cancellation occurs because of government decisions restricting travel. Some consumers are reported as cancelling their travel arrangements after such restrictions were imposed but before the issue of fee return had been considered by the Travel Provider. Many of these consumers subsequently found, because they initiated the cancellation, the terms and conditions precluded their right to secure a deposit return. On the other hand where the Travel Supplier cancelled the arrangement the deposit was refunded or a credit offered. In such circumstances it would obviously have assisted consumers if travel agents had provided them with a summary of this fundamentally relevant information.



TERMS AND CONDITIONS: CLAUSE 4 OF THE CODE

While the COVID-19 pandemic has highlighted the desirability for consumers to be made aware of cancellation terms and conditions this is but one aspect and different circumstances will give rise to the need for travel agents to additionally highlight other specific conditions which may impact on consumers' travel arrangements. For instance, another aspect connected to cancellation, as pointed out in the Alliance of Lawyers submission, relates to whether on cancellation a refund or credit note may be offered. It submitted that the choice of which to accept should be with the consumer. While, from the consumer point of view the right to choose may be highly desirable, the review is of the opinion that at a minimum the consumer should be informed of the options which are available and whether the decision rests with the consumer of the Travel supplier. This exemplifies the type of information which an agent should make clear to a consumer prior to concluding any contract.

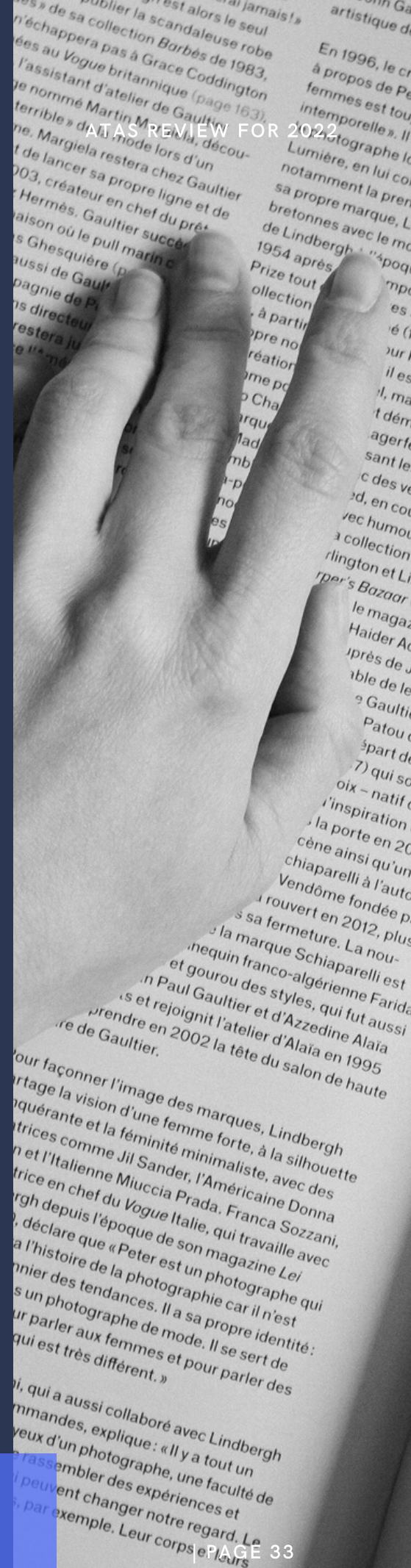
To address this problem AFTA submitted that travel agents should include a "...statement on all itinerary and quotes that highlights ...the application of terms and conditions of both the agent and the Travel Provider". While the condition is necessarily generic in form, it acknowledges the responsibility travel agents have to inform their clients of particular aspects which may adversely impact them. There is no knowing what other pandemic or other circumstances may arise which will give rise to adverse consequences on premade travel arrangements, so it is accepted that a generic statement of broad application is probably the best that can be suggested.



TERMS AND CONDITIONS: CLAUSE 4 OF THE CODE

Never-the-less the reviewer considers it worthwhile to recommend inclusion of a reference to refunds as a given particular in the terms and conditions information which are required to be provided. Consequently, it is recommended that the clause proposed by AFTA to be included in clause 4.1 (b) be reconstituted as clause 4 (1) and the following be added to the undertakings given::

- "provide you of 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 applicable refund arrangements".



ATAS REVIEW FOR 2022

ABOUT THE REVIEWER

Graham McDonald has a distinguished career in the legal profession. As a practitioner of the High Court of Australia he was worked as both a solicitor and barrister. Graham has held numerous roles on various Tribunals and Committees including:

- 1987-88 Commissioner for Corporate Affairs (WA)
- 1988-2010-Presidential member of the Federal Administrative Appeals Tribunal
- 1990-4 inaugural Australian Banking Ombudsman
- 2000-2007-Chair Superannuation Complaints Tribunal
- 2009-2016-Independent board member of auDA ltd
- 2012-member three person international expert panel on alternative dispute resolution for Internet Corporation for Assigned Names and Numbers.
- 2011-13 Member Refugee Appeals Panel
- 2013-4 Ministerial appointee to the Anti Dumping and Countervailing Measures review panel
- 2016 – present - Chair/ Deputy Chair Financial Planners conduct Review Commission
- 2017 – 2019 ATAS Complaint Appeal Committee Chair