

## **ACCC FAQ's - ACL issues in relation to the Coronavirus (COVID 19) - Consumer rights and business obligations**

### **Consumer rights**

**If a business has cancelled a flight, cruise or tour service due to travel bans, is the consumer entitled to a refund?**

- Where the cancellation is because of a Government travel ban, the customer is unlikely to be entitled to a refund under the Australian Consumer Law.
- Where a flight, cruise or tour service has been cancelled because of travel bans, a consumer should check the terms and conditions of their contract with the service supplier. These remedies may include a full or partial refund, credit note or voucher.
- If a business' cancellation policy does not address cancellations for circumstances beyond its control, the consumer may be able to negotiate an alternative remedy with the business.

**If a business has cancelled a flight or cruise due to travel bans, are they required to provide compensation for associated losses (e.g. accommodation costs)?**

- A consumer is unlikely to be able to obtain compensation for associated losses such as accommodation costs under the ACL from the business which cancelled the flight, tour or cruise due to travel bans.
- A consumer's ability to obtain compensation for will depend on the terms and conditions of their contract with the travel supplier or rights at common law.

**If a person wants to cancel a travel service due to health / safety concerns in the absence of a travel ban, what are their rights?**

- If there are legitimate concerns about the risk of infection, then the consumer guarantees might apply. For example:
  - a person wanting to cancel a cruise that is still operating, but has passengers with current coronavirus infections;
- If their concerns are unfounded or unreasonable, they may not be entitled to a remedy under the consumer guarantees. For example:
  - a person wanting to cancel a flight from Sydney to the Gold Coast.
- Where passenger health / safety concerns are unfounded or unreasonable, the consumer needs to check the terms of their contract with the travel service provider regarding their cancellation rights.

**If a person wants to cancel a service that has been changed by a business (i.e. cruise/tour companies amending its itinerary to avoid ports/areas subject to travel bans), what are their rights?**

- Whether a consumer can cancel a cruise or tour which has been changed by the travel supplier will depend upon all the facts, including the extent to which those changes have affected the original itinerary.

- Where it's the case that the changes to the itinerary are so significant that the cruise or tour is no longer fit for the purpose for which the consumer acquired it, then the consumer will be entitled to a refund under the ACL.

## **Business obligations**

### **If a business has cancelled a flight, cruise or tour service due to travel bans, what are its obligations to consumers?**

- Businesses are contractually bound to honour the terms and conditions of their cancellation and change policies with consumers, by providing the full or partial remedies provided for in those policies.
- When considering the remedies to provide to consumers in these circumstances, businesses also need to ensure that they comply with their other obligations under the ACL. For example, businesses are prohibited from:
  - misleading or deceiving consumers about their rights or entitlement to remedies under their contract,
  - engaging in conduct that is, in all the circumstances, unconscionable.
- Businesses cannot seek to rely on unfair terms in standard form consumer contracts, including the contracts that consumers may have with flight, cruise or tour providers. Under the ACL, these unfair terms will be void.

### **Businesses that continue to provide services where there are consumer concerns about safety must still comply with the ACL.**

- Under the consumer guarantee provisions in the ACL, businesses guarantee that the services they supply to consumers are supplied with due care and skill and that the services are fit for the purpose for which they were acquired.
- Regardless of any government travel bans, if a travel provider does not provide its service with due care or if the service is not fit for the purpose for which the consumer acquired it, then the consumer may be entitled to a remedy under the ACL.
- A tour or cruise operator may not be supplying a tour or cruise with due care and skill and/or that the cruise or tour is not fit for purpose if:
  - That cruise or tour will be visiting areas that are subject to a travel ban or includes passengers who are suffering or at high risk of suffering a coronavirus infection.
  - That cruise or tour is aware that a passenger is currently suffering a coronavirus infection and it does not have adequate quarantine procedures.

### **If a person cancels a service that has been changed by the business (i.e. cruise/tour companies amending its itinerary to avoid ports/areas subject to travel bans), what are the business' obligations to consumers?**

- Where businesses are unable to offer services in substantially the same form as they had promised they should inform consumers.
- Where it's the case that the changes to the itinerary are so significant that the cruise or tour is no longer fit for the purpose for which the consumer acquired it, the business has an obligation to provide the consumer with a refund under the ACL.
- Given the safety issues involved, cruise and tour operators will also need to consider their broader legal obligations to passengers.

**Can businesses increase prices for certain products that are in heightened demand due to the coronavirus (for example, face masks)?**

- The ACCC cannot prevent or take action to stop opportunistic excessive pricing, as it has no role in setting prices and increasing prices is not in of itself conduct that breaches the competition and consumer laws.
- However, a business may be breaching the Australian Consumer Law if they make misleading claims about the reason for price increases.
- In some limited circumstances excessive pricing may be unconscionable where the product is necessary to help save or protect consumers.
- The Department of Health can answer questions about the supply of face masks in Australia.

**Private sellers/auctions**

- A business may be breaching the Australian Consumer Law if they make misleading claims about the reason for price increases. This applies to businesses who are selling their products through auction sites and online marketplaces.
- Where a person conducts a one-off sale, or infrequent sales, on an auction site or online marketplace, they may not be considered to be acting in trade or commerce, and the Australian Consumer Law would not apply.