

COVID-19 and holiday booking cancellations

As health and movement restrictions increase in response to the COVID-19 pandemic, including the closure of borders and grounding of domestic and international flight services, increasing numbers of people are being forced to cancel their holidays. This factsheet addresses some common questions about holiday booking cancellations in light of COVID-19 and the Australian Consumer Law (schedule 2 of the *Competition and Consumer Act 2010* [Cth]).

The coronavirus situation in Australia is constantly evolving. Health warnings, movement restrictions and business closures vary state by state, and are changing daily. Reliable and updated health information, including on state-based travel and movement restrictions, across Australia is available from:

- Australian Government Department of Health [Coronavirus \(COVID-19\) health alert](#)
- state and territory health departments ([Queensland link](#)).

CONSUMER RIGHTS GENERALLY

The Australian Consumer Law (Consumer Law) applies to most holiday booking purchases within Australia, including flights, accommodation, cruises or tours made through Australian tour companies, travel agents and other holiday booking businesses (business).

Consumer Law guarantees apply to the following types of holiday booking purchases:

- anything that costs \$40 000 or less (e.g. accommodation or airfares)
- anything purchased for your personal use regardless of how much it cost (e.g. a cruise or services of a tour company or travel agent).

The Consumer Law says that services provided to you must be provided with ‘... due care and skill ...’, so that they are ‘... fit for any specified purpose ...’ and ‘... within a reasonable period of time’ (when no time is set).

You can read more about Consumer Law guarantees for services in the:

- Australian Consumer Law [Travel and Accommodation](#) industry guide
- Queensland Government [Consumer Guarantees Your Services Must Meet](#) webpage.

Ordinarily, a person who is provided with a service that fails to meet the Consumer Law guarantees would have a right to remedies under the Consumer Law.

For example, if you booked an interstate flight and your travel was cancelled because the plane was overbooked, you may be entitled to remedies under the Consumer Law such as a full or partial refund, credit note or voucher.

However, if you made a holiday booking before government restrictions related to coronavirus were in place, and the booking is then cancelled because of the restrictions, the Consumer Law is unlikely to offer you protection.

That is because, broadly speaking, the Consumer Law is designed to protect you from failures that are within the control of the business.

You will also have limited recourse under the Consumer Law if you decide to cancel your holiday booking because you are worried about your health, safety and other matters related to the travel due to coronavirus.

Instead, you will need to work out what cancellation and refund rights you have under the contract with the business, and whether you can make an insurance claim.

Your situation may be different if you booked directly with an overseas company, as it is unlikely that they will be covered by the Consumer Law. There may be different laws in the country that they operate, which may affect your rights to seek a refund. It can also be very difficult to pursue an overseas company if they owe you money.

CONTRACT RIGHTS GENERALLY

Where the Consumer Law does not apply to the cancellation, your first step should be to check the contract with the business.

A contract is an agreement between you and the business, where you have agreed to pay a fee in return for the holiday booking service.

Your contract might be a written document you signed, an agreement you made over the phone or information on a web page where you clicked 'I agree'. If you do not have the written contract, ask the business for a copy of it.

Check the contract to see if you can work out how it can be cancelled, whether there is a cancellation fee and if the contract says what happens when the booking is cancelled due to extraordinary events such as pandemics, natural disasters or unanticipated government controls.

You should also check to see if the business has any relevant policies that might apply. Start by checking the website of any individual businesses. For example, if you booked a flight through a travel agent, check the website of both the airline and the travel agency. Search these websites for any policies that explain what happens when you cancel a contract due to an emergency, natural disaster or similar. If you cannot find any policies, contact the business and ask if they have a policy that applies.

Generally speaking, the terms of the contract and any policies that apply will determine what happens if the contract is cancelled, including whether you are entitled to a refund and must pay a cancellation fee.

Where a holiday booking needs to be cancelled due to circumstances outside the control of you and the business, the contract may have been 'frustrated'. Where your contract has been frustrated, you may be able to cancel the contract and ask for your purchase price to be refunded. However, any reasonable cancellation fees will still apply.

Many travel companies are offering, for example, credit vouchers at this time.

INSURANCE

Your travel insurance may cover you for the cost of any cancellation fee or non-refundable holiday booking charges.

You should check your insurance contract and policies to see if you can work out whether your insurance covers the booking cancellation.

You can still try to make a claim against your insurance even if your insurer has made a statement indicating that they will not pay for COVID-19-related cancellations. You should make sure that any insurance claim is submitted within the timeframe specified in your policy (typically travel insurance claims must be submitted within a certain period after your trip ends, e.g. within 30 days).

If your insurer refuses your claim, you should check to see if you can ask for the insurer to review their decision (known as internal review), and if you are still not satisfied with the outcome, consider making a complaint to the Australian Financial Complaints Authority (AFCA). You can contact AFCA's Significant Event Hotline on 1800 337 444 and visit their [COVID-19 webpage](#).

Generally speaking, you must make a complaint to AFCA within six years of when you became aware of a loss you want to complain about, or within two years of complaining to the insurer's internal dispute resolution process.

FREQUENTLY ASKED QUESTIONS

The following illustrative examples might help you to understand what protections might apply to your holiday booking cancellation.

I made a holiday booking, and the booking has now been cancelled due to travel restrictions related to COVID-19

If your holiday booking was cancelled due to travel restrictions imposed by the government in relation to COVID-19, and which are outside the control of the business, you are unlikely to have a remedy under the Consumer Law.

For example, if your international cruise has been cancelled due to restrictions both domestically and internationally on the ship coming into port, it would be difficult to argue that this has been due to a failure by the cruise company to provide services that complied with the Consumer Law.

However, you may be able to argue that your contract with the business has been frustrated.

To do this, you should take the following steps:

1. Check the contract and any policies to work out what happens if the contract gets cancelled. Contact the business to confirm you have understood the contract and any policies correctly.
2. Contact the airline via their complaints process. If your contract says that you must pay a cancellation fee or forfeit some or all of the purchase price, contact the business and ask them if they will consider offering you a full refund. Explain your personal circumstances, and how the loss of the purchase price will affect you. Make a note of the call and ask for a reference number.
3. Negotiate with the business. It may be advisable to accept a partial refund instead of a credit note or voucher from the business. Some businesses may not survive the current financial downturn. If you are owed money in the form of a credit note or voucher, it may be difficult for you to recover this if the business goes into liquidation.
4. If you have been charged a cancellation fee, or the purchase price is not refundable, and you are unable to reach an agreement with the business, check your insurance contract and policies. Make a claim.

5. If your insurer refuses your claim, check to see if they have an internal review process for you to ask for the decision to be reviewed.
6. If your insurer is still refusing your claim, make a complaint to AFCA.

I do not think my holiday booking should have been accepted, because government restrictions relevant to COVID-19 which prohibited the travel were already in place

If the government restrictions were already in place and the holiday booking was still accepted by the business, you may have a claim under the Consumer Law.

You might also be able to argue that the contract has been frustrated due to circumstances outside your and the business's control.

For example, if the airline was aware that all flights into a state or territory had been restricted, and still accepted your payment for travel, you could argue that the services were not provided with due care and skill or within a reasonable period of time.

You should take the following steps:

1. Collate your contract and any policies relevant to your holiday booking.
2. Contact the business via their complaints process and inform them that you believe your rights under the Consumer Law have been contravened, and tell them the outcome you want (e.g. a full or partial refund, credit note or voucher).
3. Negotiate with the business keeping in mind that it may be safer to get a refund (even a partial refund) than accept a credit note or voucher.
4. If you are unable to negotiate an outcome, consider a complaint against the airline under the Consumer Law. The [Queensland Law Handbook Consumers and Contracts chapter](#) covers common scenarios, and how to take legal action where there has been a breach of your Consumer Law rights. You will generally have six years from when you say the Consumer Law was breached to bring legal action.
5. You could also consider lodging a complaint to the Office of Fair Trading (see [this webpage for further information](#)).

I want to cancel the holiday booking because I am worried about coronavirus. Can I get a refund?

If you decide to cancel your holiday booking because you are worried about travelling during the pandemic, but your booking has not yet been cancelled and there are no government restrictions that impact on your booking, your right to cancel will be subject to the contract you entered into with the business.

You are unlikely to have any protection under the Consumer Law, or to be able to argue that the contract has been frustrated where the business is still able to provide the service.

You will need to check the terms and conditions of your contract and the policies of the business to see whether you need to pay a cancellation fee or forfeit the purchase price.

As set out above, you should check the contract and any policies, contact the company via their complaints process, negotiate with the business, check your insurance coverage, make a claim if applicable and, if your insurance claim is refused, make a complaint to AFCA.

This [Choice article](#) covers several other similar accommodation trouble-shooting scenarios that might be relevant to a decision to cancel your holiday booking.

FURTHER INFORMATION ABOUT HOLIDAY BOOKING CANCELLATIONS

More information relevant to consumer protection across Australia is available from:

- the Australian Competition and Consumer Commission's [COVID-19 \(coronavirus\) Information for Consumers](#)
- other state and territory consumer protection agencies that are listed in the Contacts section.

For legal matters, the [National Association of Community Legal Centres](#) can help you find a community legal centre across Australia, and Legal Aid services and private lawyers are good sources of legal information and advice. For financial problems, the [National Debt Helpline](#) is a free, reliable, community-based source of information.

CONTACTS

AUSTRALIAN FINANCIAL COMPLAINTS AUTHORITY

GPO Box 3
Melbourne Vic 3001
T: 1800 931 678
F: (03) 9613 6399
Email: info@afca.org.au

The Australian Financial Complaints Authority has a [Coronavirus \(COVID-19\) – financial difficulty webpage](#).

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Email: Brisbane.OFT@justice.qld.gov.au

The OFT has created a [webpage for consumers and businesses affected by COVID-19](#).

State and territory consumer protection agencies

Australian Capital Territory:
[Office of Regulatory Services](#)

New South Wales:
[Fair Trading](#)

Northern Territory:
[Consumer Affairs](#)

South Australia:
[Consumer and Business Services](#)

Tasmania:
[Consumer Affairs and Fair Trading](#)

Victoria:
[Consumer Affairs Victoria](#)

Western Australia:
[Department of Mines, Industry Regulation and Safety](#)

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