

# choice

## FARE PLAY? TERMS AND CONDITIONS IN AUSTRALIA'S AIRLINE INDUSTRY



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[WWW.CHOICE.COM.AU](http://WWW.CHOICE.COM.AU) E [CAMPAIGNS@CHOICE.COM.AU](mailto:CAMPAIGNS@CHOICE.COM.AU)

57 CARRINGTON ROAD MARRICKVILLE NSW 2204 P 02 9577 3333 F 02 9577 3377

# ABOUT US

Set up by consumers for consumers, CHOICE is the consumer advocate that provides Australians with information and advice, free from commercial bias. By mobilising Australia's largest and loudest consumer movement, CHOICE fights to hold industry and government accountable and achieve real change on the issues that matter most.

To find out more about CHOICE's campaign work visit [www.choice.com.au/campaigns](http://www.choice.com.au/campaigns) and to support our campaigns, sign up at [www.choice.com.au/campaignsupporter](http://www.choice.com.au/campaignsupporter)

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## INTRODUCTION

When a service can't be delivered with reasonable care, skill or in a reasonable time, consumers have rights to redress. But how do these rights play out when consumers fly with Australian airlines?

Excessive fees, unfair terms and poor complaints handling are parts of an entrenched culture in the airline industry. While the increase in competition in the industry has improved choice and lowered prices for consumers, remedies for consumers in the event of problems within an airline's control – including delayed or cancelled flights – have not improved.

CHOICE has found that airlines push the boundaries with, and appear to breach, the consumer law with no regard and little consequence. For example, while businesses across the country are clearly banned from making blanket 'no refund' claims, consumers are told that flights are not refundable when booking with three out of Australia's four major airlines.

“... I am a Frequent Flyer and a shareholder. I think they abuse their control of the market. They are like a brick wall in this matter.”

Complane user, October 2016<sup>1</sup>

Many Australian consumers experience poor airline complaints handling, complex booking policies and exorbitant fees for flight changes or cancellations. Thirty-one per cent of travellers had a problem with flights in the last twelve months, with 73 per cent of problems related to delays and cancellations.<sup>2</sup> Other major problems cited were difficulties making changes to bookings, cancellation or change fees and difficulties claiming a refund.

“There wasn't any compensation, only an apology. Anybody can apologise.”

Complane user, October 2016

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<sup>1</sup> Complane is a tool developed by CHOICE to assist consumers in contacting their airline directly to complain about a flight delay or cancellation. More information can be found at [www.complane.com.au](http://www.complane.com.au). CHOICE also surveys users on their experience resolving complaints with airlines.

<sup>2</sup> CHOICE conducted a nationally representative survey of Australian travellers. Research conducted by Pure Profile with a nationally representative sample of 2500 Australians, aged 18-85 years. Research was conducted between 20 June to 8 July, 2016. Participants had taken a domestic flight in the previous 12 months and an international flight in the past two years.

Consumers are frustrated and left out of pocket when their airline refuses to take financial responsibility for incomplete or unsatisfactory service. This is exacerbated for domestic travel, where many consumers do not have travel insurance. Beyond the direct economic consequences of airlines' failures, consumers have reported missing weddings, medical appointments and business meetings, as well as losing valuable time with families and friends when an airline fails to get a passenger to their destination within a reasonable time.

“Compensation doesn't make up for losing a day in Honolulu.”

Complane user, October 2016

Consumers often have little or no recourse when something goes wrong, with the Airline Customer Advocate having no enforcement powers – it is not a true external dispute resolution scheme. Disturbingly, over 39% of consumers making a travel related complaint found it too much of a hassle and 11% didn't even know how to make a complaint.<sup>3</sup>

CHOICE is calling for urgent enforcement action to ensure that the airline industry is compliant with the Australian Consumer Law (ACL). This complaint identifies the most problematic terms in the Conditions of Carriage and Fare Rules of the airlines as well as problematic application of airlines' policies and remedies. The report also calls for guidance and a thorough review of the terms and conditions of the Australian airline industry. This will ensure that consumers are treated fairly, consumer guarantees are applied and that complaints handling in the industry moves towards best practice.

Many of the issues consumers face in Australia's airline industry exist within a 'black box' of little transparency. From outside the industry, it is impossible to measure the degree to which airlines' change and cancellation fees are excessive, beyond the clear observation that a ticket cancelled weeks in advance of a flight is very likely to be re-sold. We can observe that airlines can repeatedly reject customer complaints, and reject subsequent referrals from the Airline Customer Advocate, without consumers having any further access to external dispute resolution. But we have no sense of whether these complaints are legitimate. We can also observe that Australian airlines offer inconsistent and highly discretionary responses to consumers impacted by delays and cancellations without any sense of whether these remedies meet the requirements of the Australian Consumer Law.

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<sup>3</sup> Ibid.

In order to lift the lid on this ‘black box’, CHOICE believes the ACCC should consider conducting a market study to explore systemic consumer protection issues within Australia’s airline industry. Through a market study, the ACCC could use its information gathering powers to provide critical insights on:

- The true costs of, and reasons for, delays and cancellations;
- The effectiveness of airline internal complaints handling processes; and
- The appropriateness of remedies provided to consumers due to airline failures.

## Recommendations

### Recommended actions for the airline industry:

- At minimum, airlines should remove prominent, blanket ‘no refund’ claims from their online booking processes and include clear information about consumer rights under the Australian Consumer Law (ACL).
- Airlines should make their terms and conditions clearer and simpler to read for consumers and ensure these can be easily understood in the time given for making an online booking.
- Airlines should clearly communicate cancellation fees to be incurred at any point where a cancellation will be initiated, such as an email asking about varying flight times or cancelling a ticket.
- Cancellation fees should be cost reflective, taking into account the lead time and likelihood of reselling the ticket. Alternately airlines should allow consumers to resell non-refundable tickets themselves, thereby also allowing changes in personal details.
- Airlines should offer financial compensation for consumers when flights are delayed or cancelled for reasons within the airline’s control. Compensation should be consistent and easy for consumers to arrange.
- Airlines should remove no-show clauses from their contracts.

### Recommended actions for the ACCC:

- The ACCC should consider whether a market study into the airline industry is warranted to investigate and assess systematic consumer protection issues. This should include investigating the true cost of cancellations, reasons for delays and cancellations, internal complaints handling processes and remedies available to consumers.
- The ACCC should take action against airlines that refuse to remove prominent, blanket “no refund” claims in the booking process, Fare Rules and the Conditions of Carriage.

- The ACCC should provide guidance to industry on appropriate simplified versions of the Conditions of Carriage that can be easily understood by consumers and can be read during the booking time frame.
- The ACCC should provide clearer guidance to the industry about acceptable fee levels. This should include guidance on when it is *not* acceptable for industry to charge a cancellation fee, such as cancellations made well before the agreed delivery of the service (where the airline's chance of rebooking is high). Based on this guidance, the ACCC should take action against unfair cancellation fees.
- The ACCC should conduct an investigation into redress options available to consumers, and the practical application of the consumer guarantees, in the event of an airline's major or minor failure to deliver a service.
- The ACCC should define what constitutes a major and minor failure in the airline industry, including identifying where an airline has failed to deliver a service within a reasonable time, when a service is unfit for the purpose it was purchased for, or where a service was provided with an unacceptable level of care and skill.
- The ACCC should make clear that no-show clauses are unfair contract terms and take action against airlines that continue to use them.



## 1. Fare rules? Understanding airline terms and conditions

Consumers face systematic breaches of their statutory rights under the ACL with all of the major domestic Australian airlines. For example, it is in direct breach of the law that a business would advertise or inform a consumer that some fares are subject to a ‘no refund’ policy, regardless of the circumstances surrounding the refund.

Consumers are faced with two sources of terms and conditions when they book a flight: Fare Rules and Conditions of Carriage. Consumers are presented with long, standard form contracts with competing information on ACL rights, rights to refund, or booking alterations. Consumers are also shown blanket “no refund” statements throughout the booking processes of three of Australia’s four major domestic airlines.<sup>4</sup>

CHOICE has compared the fare types and their claims about ticket refunds, and each airline’s Conditions of Carriage, across Australia’s four major airlines: Jetstar, QANTAS, Tiger, and Virgin.

At minimum, airlines should remove blanket “no refund” claims from the booking process and Fare Rules sections of their websites as this is inconsistent with consumers’ rights under the consumer guarantee provisions of the ACL. Terms and Conditions, also known as “Conditions of Carriage,” should be readily made available to the consumer, not only when the booking is nearly complete. Simplified versions of these documents should be provided to consumers.

### No refund claims

#### Are businesses able to make “no refund” claims?

Business should not mislead a consumer about their statutory rights, including their right to a replacement, refund or repair. ACCC general guidance clearly warns against misleading “no refund” claims:

*“For example, signs that state ‘no refunds’ or ‘no refund on sale items’, could lead consumers to believe they have no right to a refund under any circumstances,*

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<sup>4</sup> QANTAS, Virgin and Jetstar all clearly make no-refund claims during their booking process.



*which is untrue because if a statutory condition has been breached, the consumer may be entitled to a refund.”<sup>5</sup>*

Just as a shop is unable to display a “no refund” sign and later claim that a consumer would be able to view their full refunds policy in an obscure location on their website, airlines should not be able to claim “no refunds” at the point of booking, even if they provide further detail in their Conditions of Carriage.

CHOICE is concerned that consumers are led to believe they are not entitled to a refund under any circumstance as their fare is prominently labelled “non-refundable” at the time of purchase.

Fare Rules govern the conditions under which a fare is sold and are displayed at the time of booking and on the airline’s website. They are typically complex and dependant on variables such as the country of purchase, flight type (international, domestic, trans-Tasman etc.), point of purchase (online, over the phone or via an agent) and class of travel.

In this complaint, we have focused on fare rules for the most popular fares that consumers would purchase in Australia for international and domestic travel - online fares for consumers booking on the four major carriers’ websites.

**Prominent “no refund” claims made by most domestic airlines**

Three of the four large domestic Australian airlines make blanket “no refund” claims during their pre-purchase booking processes. All airlines make claims that sale fares, low cost fares and non-flexi fares are strictly ‘non-refundable’ in their Fare Rules.

**Table: “No refund” claims on popular fare types with the major Australian airlines**

Airline	Fare type	Refund/no refund claim made
Qantas	Red e-deal	No (indicated by X)
Qantas	Super Saver	No (indicated by X)
Qantas	Flexi Saver	No (indicated by X)
Qantas	Fully Flexible	Yes

<sup>5</sup> <https://www.accc.gov.au/system/files/Warranties%20and%20refunds%20-%20a%20guide%20for%20consumers%20and%20business.pdf>, p. 14

Qantas	Business Class	Yes
Virgin	Getaway	Not permitted
Virgin	Elevate	Permitted until midnight prior to scheduled departure + \$50AUD fee
Virgin	Freedom	Permitted
Virgin	Go and Go Plus	Permitted until midnight prior to scheduled departure + \$100AUD fee
Virgin	Premium Saver	Permitted until 24 hours prior + \$550AUD fee
Virgin	Premium	Permitted until 24 hours prior
Virgin	Business Saver	Permitted until midnight prior to scheduled departure + \$50AUD fee
Virgin	Business	Permitted
Jetstar	Starter	Non-refundable
Jetstar	Starter fare with Plus bundle	Non-refundable
Jetstar	Starter fare with Max bundle	Refundable for a fee
Jetstar	Starter fare with FlexiBiz bundle	Jetstar voucher, other refunds not available
Jetstar	Business Class	Non-refundable
Jetstar	Business Class with Max bundle	Refundable for a fee
Tigerair	All fare types	Tigerair operates a no refund policy and as such it is unable to refund any tickets (fares and charges) where the passenger decides they no longer have a requirement to fly or is unable to travel.

Each airline clearly tells the consumer that they are, in many circumstances, not entitled to a refund, despite a consumer’s right to refund under the consumer guarantees and the airlines’ acknowledgement of this in their Conditions of Carriage.

## Conditions of Carriage

While each airline does disclose terms and conditions, booking time limits make it difficult for the consumer to digest them before accepting and paying for a flight.

When a consumer purchases a flight they enter into a standard form contract with the airline. This contract is referred to by airlines as the Conditions of Carriage. This contract outlines how a passenger can obtain a refund and the airline’s obligations under the ACL. The Conditions of Carriage are available on each airline’s website, at the checkout in the online booking process and via a link in the passenger’s e-ticket upon purchase. References to the ACL are made in the Conditions of Carriage, and these excerpts can be seen in appendix 1.

A link to the Conditions of Carriage is made available to the consumer during the booking process. Passengers also must agree to the Conditions of Carriage at the point of sale by checking a small box before payment. Consumers can read the Conditions of Carriage by clicking the hyperlink to the full document. The link to this document is also often bundled with links to other relevant sections of the airlines’ websites, such information for passengers with disability or other special needs.

Consumers need to complete their booking within the website’s booking time limit. It would be impossible to read the Conditions of Carriage in full and purchase their ticket within the time allotted. For example, QANTAS’ booking page times-out after 10 minutes of inactivity. The length of standard form contracts range from more than 6,000 to 13,000 words would be unreadable in the short booking timeframe.

**Table: Conditions of Carriage length of contract in words**

Airline	Conditions of Carriage by no. of words	Average reading time needed <sup>6</sup>
Qantas	13,025	52 minutes

<sup>6</sup> Based on an average reading time of 250 words per minute; academic research suggests this as an assumed reading time: <http://lorrie.cranor.org/pubs/readingPolicyCost-authorDraft.pdf> CHOICE considers this to be a generous estimate of reading time needed given the complex, legal language used in Conditions of Carriage.

Virgin	10,861	43 minutes
Jetstar	9602	38 minutes
Tigerair	6682	27 minutes

It is unreasonable to expect a consumer to understand that any problematic terms, like “no refund” claims, made clear during the booking process would be overridden by a sub-section of the Conditions of Carriage that details the consumer’s statutory rights under the ACL.

As the ACCC’s travel & accommodation industry guide states:

*“For online bookings, you should make terms and conditions easily available and identifiable on your website to avoid possible disputes. Failure to disclose these conditions could be considered unfair, due to a lack of transparency.”<sup>7</sup>*

Current “no refund” claims cause two kinds of consumer detriment: Risk averse consumers may purchase flexible fares (at a higher value) believing that they will not be entitled to a refund under any circumstances, even if those circumstances include major or minor failures caused by the airline. Similarly, consumers purchasing sale or low-cost fares may not be claiming for refunds for major or minor failures (for example, after a flight is cancelled and the booking not fulfilled) as they did not read beyond the very prominent “no refund” claim made in the fare rules at the time of booking.

## A closer look: Australia’s domestic airlines

The following sections outline some of the specific problematic policies and claims of the four major Australian airlines.

### Qantas

QANTAS only references the ACL in its Conditions of Carriage at section 2.4, “Overriding Law” (see appendix 1A). QANTAS states that its Conditions of Carriage “do not apply to the extent that they are inconsistent with laws that apply to your carriage, including consumers’ rights under the ACL.”<sup>8</sup>

<sup>7</sup> <https://www.accc.gov.au/publications/travel-accommodation-an-industry-guide-to-the-australian-consumer-law>

<sup>8</sup> Qantas Conditions of Carriage, accessed 23/08/2016 at <http://www.qantas.com/travel/airlines/conditions-carriage/global/en>

In contrast, fare rules are clearly stated through the booking process. A consumer sees the fare rules in the first booking stage, when selecting their fare. They are then prompted to check a box stating:

“I have read and accept the Fare Conditions above, the Conditions of Carriage [hyperlink] and I understand that if I require specific assistance [hyperlink], I will need to contact Qantas as soon as possible to discuss my requirements.”

However, specific fare rules (including the ‘Red e-deal’ outlined below) indicate to a consumer that no refund would be available, despite a consumer clearly having rights under the ACL.<sup>9</sup>

### Online ‘Red e-deal’ Fare

The QANTAS Red e-deal Fare makes specific “non-refundable” claims without reference to consumer guarantees. Consumers would see this fare rule when progressing through the booking screen, or when searching for the fare rules of the ‘Red e-deal’.

The Fare Rules state that “the original ticket value is non-refundable and remains non-refundable **at all times**”.<sup>10</sup>

Red e-Deal	
Travel Class	Economy
Booking Changes	<p>Changes can be made online at <a href="http://qantas.com/yourbooking">qantas.com/yourbooking</a>, otherwise call 13 13 13.</p> <p>Exception: For changes to combined Qantas and Jetstar multi-city bookings call 13 13 13.</p> <p><b>Changes before the day of scheduled departure:</b> Your original fare may be used as credit towards a new fare of equal or higher value, provided the new fare conditions are met.</p> <p>For changes made over the phone, you must pay the <a href="#">service fee</a> applicable as at the date of change.</p> <p>At the time of making the change you must pay: the <a href="#">change fee</a> applicable any fare difference between the fare for your new booking and the original fare.</p> <p>Once your booking is made the current change fee and service fee can be viewed anytime at <a href="http://qantas.com/your booking">qantas.com/your booking</a>.</p> <p>Your new booking must be for travel anywhere on the Qantas network within 12 months of the date that the original ticket was issued. However, you cannot re-book and travel on the same day.</p> <p><b>The original ticket value is non-refundable and remains non-refundable at all times.</b></p> <p><b>Changes on the day of scheduled departure:</b> Not permitted. Loss of fare.</p>

<sup>9</sup> Qantas Fare Rules, accessed 10/08/16 at <http://www.qantas.com.au/infodetail/bookings/flights/fareType.html>

<sup>10</sup> Qantas Fare Rules, accessed 23/08/16 at <http://www.qantas.com.au/regions/amadeus/minirules/AUAURED1JQ/>

QANTAS only notes that consumers can alter the flights with the payment of a service fee of \$27.50 prior to the day of departure. A consumer would reasonably assume from the QANTAS booking process that no refund was available to them under any circumstances, contrary to their rights under the ACL.

## Virgin

Specific references to the Australian Competition and Consumer Law are made in the airline's Conditions of Carriage at section 2.4<sup>11</sup> (see appendix 1B) and then, at section 3.5, Virgin states that refunds are subject "to the extent permitted by law".

Section 6.2 (d) of the Conditions of Carriage clearly indicates to consumers that there are some circumstances in which they would not provide a refund:

"The Fare Rules will state how restrictive your Fare is, whether or not the Fare can be changed and whether or not the Fare is refundable."<sup>12</sup>

Again, Virgin does not reference the consumer's right to a refund under the ACL at this point.

### *Getaway Fare*

Virgin's Getaway fare says that refunds are "not permitted" (also in appendix 2C).<sup>13</sup>

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<sup>11</sup> Virgin Conditions of Carriage, accessed 12/08/2016 at <http://www.virginaustralia.com/au/en/about-us/legal-policies/conditions-of-carriage/>

<sup>12</sup> Ibid.

<sup>13</sup> Accessed 18/10/2016 at <https://www.virginaustralia.com/au/en/plan/fare-types/Domestic/>

Fare Rules	
Changes	<p><b>Name Changes</b></p> <p>Not permitted.</p>
	<p><b>Flight Time and Date Changes</b></p> <p>Permitted until midnight prior to scheduled departure.</p> <p>\$A80 fee + fare difference.</p> <p><a href="#">More information on fees and charges for changes</a></p>
Cancellations and No-Shows	<p><b>Cancellations</b></p> <p>No refund or credit</p> <p><b>No Show</b></p> <p>Loss of fare</p>
Credits and Refunds	Not permitted
Payment	Instant payment required

Consumers are given the option to view the fare rules throughout the booking process by clicking the ‘View fare rules’ button below the ticket cost (see appendix 2C). However, the Conditions of Carriage are not available to the consumer until the final stage of the booking process – not at the time a consumer is choosing the level of fare that meets their needs.

The consumer must validate that they have accepted a range of Virgin Australia policies by checking a box, including:

- Terms and Conditions of Carriage
- Fare Rules
- Privacy Policy
- Privacy Statement
- Restrictions on dangerous goods and batteries
- Travel insurance (if purchased with the flight)



A consumer must check the box within the booking time limit to purchase the flight. There would not be sufficient time for the consumer to read all the above documents before the booking screen times out. A consumer would not be able to confidently assess whether the terms and conditions they were agreeing to met their needs or whether any terms and conditions breach the law.

### **Jetstar Airways**

Jetstar's Conditions of Carriage acknowledge the application of other laws that may apply "for the benefit of consumers" and references the ACL (see appendix 1C).<sup>14</sup>

A consumer would need to specifically look up the Conditions of Carriage online before purchase to be aware of their consumer rights against the "non-refundable" claims made in the Fare Rules. The consumer is only asked to check a box stating they understand the Conditions of Carriage on the final booking page after the consumer has progressed through the entire booking process. This is also after the consumer has been clearly displayed the fare rules, including "no refund" claims.

*Starter, starter with plus bundle and Business class base fare*

Jetstar's Conditions of Carriage specifically indicate some fare types are "non-refundable":

#### **"5.4 Non-refundable fares**

Some fare types are non-refundable. Please refer to the applicable fare rules for more information."<sup>15</sup>

Jetstar's 'Starter', 'Starter fare with Plus bundle' and 'Business Class' Fare Rules all make blanket "non-refundable" claims in their online Fare Rules pages (see appendix 2D).<sup>16</sup>

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<sup>14</sup> Accessed 10/08/09 at <http://www.jetstar.com/au/en/conditions-of-carriage-jq>

<sup>15</sup> Jetstar Conditions of Carriage

<sup>16</sup> Starter accessed 10/08/16 at <http://www.jetstar.com/au/en/help/articles/starter-fare-rules>; Starter fare with Plus bundle accessed 10/08/16 at Accessed 10/08/16 at <http://www.jetstar.com/au/en/help/articles/starter-fare-rules>; Business Class accessed 10/08/16 at <http://www.jetstar.com/au/en/help/articles/business-class-fare-rules>

## Tigerair

Tigerair references rights consumers have under the ACL in its Conditions of Carriage. They also acknowledge this in article 11: refunds: “except where provided in these Terms and Conditions, your fare is not refundable under any circumstances” (see appendix 1D).

Tigerair’s Fare Rules state that Tigerair “operates a no refund policy” (see appendix 2E):

“refunds and cancellations  
tiger operates a no refund policy and as such it is unable to refund any tickets (fares and charges) where the passengers decides they no longer have a requirement to fly or is unable to travel, as a result of any change in personal circumstances, including but not limited to medical grounds. Individual or Personal Travel Insurance is recommended for all passengers to cover such cancellations.”<sup>17</sup>

Of the four airline policies, Tigerair has the least complex policy, with only two fare types, ‘Light’ and ‘Express’. The airline provides a clear description of what each fare offers, presented to the consumer during the booking process. “No refund” claims are not made during the booking process. Clarification on the Fare Rules is only provided (by hyperlink) when the passenger progresses through to the final, payment stage of booking.

CHOICE considers this the least confusing model currently in the Australian domestic market, where the consumer is not potentially misled into purchasing more expensive fares as a result of “no-refund” claims made during the booking process.

## Recommendations

### Recommended actions for the Australian airline industry:

- At minimum, airlines should remove prominent, blanket ‘no refund’ claims from their online booking processes and include clear information about consumer rights under the Australian Consumer Law (ACL).
- Airlines should make their terms and conditions clearer and simpler to read for consumers and ensure these can be easily understood in the time given for making an online booking.

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<sup>17</sup> Tigerair Conditions of Carriage, accessed 19/10/2016 at <https://tigerair.com.au/tigerair-info/conditions-of-carriage>

**Recommended actions for the ACCC:**

- The ACCC should take action against airlines that refuse to remove prominent, blanket “no refund” claims in the booking process, Fare Rules and the Conditions of Carriage.
- The ACCC should provide guidance to industry on appropriate simplified versions of the Conditions of Carriage that can be easily understood by consumers and can be read during the booking time frame.

## 2. Many options, little choice: unfair contract terms across the airline industry

A significant power imbalance exists between Australian consumers and airlines. Consumers are at the whim of airlines' schedule changes, excessive fees and strict terms and conditions. However, when an airline fails to provide the service as promised the consumer has no clear redress options.

CHOICE has received numerous complaints from consumers who have found it difficult to obtain a refund when flights have been cancelled, delayed or a service that was promised was not delivered. National surveys and qualitative research show that these issues are widespread and airlines' approaches are inconsistent and confusing.

Thirty-one percent of travellers experienced a problem with flights in the last year. A large majority of those who experienced problems cited delays and cancellations as their biggest problem with airlines (73%).<sup>18</sup> However, a significant number of travellers also had problems with booking changes/cancellations, hidden fees and refunds.

Of Australian travellers who experienced a problem with their flights in the last 12 months:

- 18% reported hidden fees or charges
- 11% said they had difficulty making changes to booking/cancelling
- 10% reported a problem with charges associated with cancellations/changes
- 4% reported a problem claiming a refund<sup>19</sup>

Airlines exert disproportionate power over their customers, cancelling and rescheduling flights, enforcing no-show clauses and charging excessive fees. Consumers often have no effective recourse, with a last resort being the Airline Customer Advocate. The Airline Customer Advocate has no ability to enforce findings, unlike external dispute resolution schemes in the finance, energy and telecommunications sectors. This leaves consumers with no free, non-legal option for external dispute resolution.

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<sup>18</sup> CHOICE conducted a nationally representative survey of Australian travellers. Research conducted by Pure Profile with a nationally representative sample of 2500 Australians, aged 18-85 years. Research was conducted between 20 June to 8 July, 2016. Participants had taken a domestic flight in the previous 12 months and an international flight in the past two years.

<sup>19</sup> Ibid.

It is clear that many consumers report experiences of detriment in their dealings with airlines. In this section, we take a closer look at airlines' terms and conditions to better understand the nature and severity of the impacts on consumers, specifically:

- Excessive cancellation and change fees;
- Scheduling, rescheduling and flight times;
- Store credit and access to contract: Virgin's Travel Bank; and
- No-show clauses

## Costly cancellations: fees for cancellation or changes

When an airline has significantly changed the time or date of a trip, should a consumer be penalised if they cancel or vary the service? And, when a consumer decides to cancel or change their flight well before the date of flight purchased, should they be liable beyond genuine cost recovery?

The Fare Rules and Conditions of Carriage dictate the kind of refund, compensation or changes allowed to a ticket once purchased. Consumers wishing to change or cancel bookings are often charged high fees to change their flight, name or any other details on their booking or are provided no refund at all – even when the change is because of a major or minor failure of the airline.

This is highlighted in the case study of a QANTAS customer below (See *Case study: Mr Kruk and QANTAS* below) which was brought to CHOICE's attention as a part of our 'Complane' campaign for fairer treatment of consumers during flight delays and cancellations.<sup>20</sup>

All four major airlines charge some type of fee for a full cancellation of a booking. Most charge these fees for any cancellation prior to 24 hours before a flight is scheduled to depart regardless of how far in advance the cancellation occurs (even when the airline has sufficient time to resell the seat, potentially at a higher price).

The most expensive cancellation fees were QANTAS' \$400 international sale fare and Virgin's \$550 saver fare to Europe via the Middle East. Virgin customers receive the remainder of the

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<sup>20</sup> Complane is an online tool developed by CHOICE that consumers can use to make a complaint about a flight delay or cancellation directly with Australia's major domestic airlines. Consumers ask for compensation for a delay or cancellation that is the fault of the airline. More information about Complane can be found at [www.complane.com.au](http://www.complane.com.au).

ticket value in their 'Travel Bank', instead of in the form of original payment. A full table of cancellation fees across the four major domestic carriers is detailed in appendix 5. Flight change fees are detailed in appendix 4.

### Case study: Mr Kruk and QANTAS, flight changes and cancellation fees

Mr Kruk purchased tickets to travel to New York for his honeymoon with his fiancée. The total cost for two return tickets to New York was \$2139.58, originally scheduled to leave on January 15, 2016.

Mr Kruk received an email (see appendix 3A) from QANTAS on Wednesday 15 July, 2015 advising that his flight details had been changed. At this stage he is advised to accept the new flight arrangements or change or cancel the new flight.

A second email was received on Thursday 16 July (see appendix 3B) advising of new travel details for travel starting on January 15, 2016. Again, Mr Kruk was advised that he could accept, change or cancel his booking.

A third email was received on Wednesday 7 October (see appendix 3C) which stated that their flights on March 17, 2016 had been changed to January 15, 2016.

After three flight changes, Mr Kruk did not trust the airline to deliver the service:

*“After the 3rd flight change, I chose to decline the flight alterations and request a refund. It became too difficult to manage Qantas' continued flight changes. It became evident that Qantas was an unreliable airline. My partner and I were trying to plan our 8 week honeymoon. We had many plans underway, including hotel, car hire, and connecting flights to Europe. Each time Qantas changed their flight dates/times, we had to significantly alter our plans. I could no longer rely on Qantas, that is why I chose to cancel.”<sup>21</sup>*

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<sup>21</sup> Personal communication, see appendix 3H

Significant changes to the flight's schedule made the flights unfit for Mr Kruk's purpose – booking flights that would reasonably leave on the day originally scheduled, allowing him to make travel, accommodation and other plans. Changing flight dates and times did not allow Mr Kruk to feel confident that the service would be provided within a reasonable time or with reasonable care and skill.

### Unfair cancellation fees

At no time during this process was it made clear to Mr Kruk that the cancellation would result in an \$861.72 total charge (cancellation fee including extra charge for refunding to a credit card).

Mr Kruk rejected this third booking (as the option was given to the consumer in the booking portal) and was expecting a refund for the value of the flights. He was not told that he would receive anything other than a full refund in his communications with Qantas. It was reasonable for Mr Kruk to expect to receive a full refund without an explicit warning of the cancellation fee.

Mr Kruk then received a partial refund. The cancellation fee amounted to just over 40% of the original cost of the ticket. The airline's \$430.86 cancellation fee for each ticket was deducted from the total cost of the flight upon refund. This fee was approximately \$400 per ticket plus a \$30 fee for refunding to Mr Kruk's credit card.

*"I received a partial refund from Qantas, I incurred a cancellation fee of \$861.72 AUD (\$430.86 AUD each ticket). I was dismayed at why Qantas would charge me a cancellation fee, when the basis of my cancellation was because Qantas had altered my flight dates and times 3 times, and they offered me the option to accept or decline."<sup>22</sup>*

Mr Kruk had no real or reasonable choice of remedy. He could continue to hold his booking for a service he felt would not be delivered in a reasonable time, with due care and skill (this understanding based on the multiple and erratic changes to his flight), or he could incur a seemingly disproportionate

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<sup>22</sup> Personal communication, see appendix 3H



penalty (\$430 per flight) for choosing to cancel his flight and rebook with a more reliable carrier.

## Defining reasonable cancellation fees

The ACCC has provided guidance to accommodation and tourism providers on appropriate cancellation fees. The ACCC advises that cancellation fees “should not be excessive”<sup>23</sup> and that excessive cancellation or administrative fees may be regarded as unfair contract terms.

The industry guide advises that not more than 10% is an appropriate deposit fee, unless the potential loss or inconvenience justifies a higher amount. Mr Kruk’s cancellation fee was much higher, at 40% of the ticket cost. Given that he cancelled months in advance, it is highly likely that QANTAS could have resold the tickets for the same price or higher.

Another consumer complained to CHOICE about excessively high change fees with Jetstar. A simple mistake made months before the date of service (which the consumer took every step to rectify as quickly as possible) attracted an unreasonably high penalty.

### Case study: unreasonable fees, Jetstar

*I recently booked combined Qantas/Jetstar flights and so was moved around websites from Qantas to Jetstar to complete the booking. I did not notice that with the change the webpage date defaulted to the current date. I know it was my error but immediately on printing the booking confirmation I saw the error and attempted to find a way to make the correction on the Jetstar help chat line...*

*I booked flights for June 2016 in March. The total fares (2 people) came to \$404 i.e. \$202 each and the fee for the date change, which I made within half an hour to an hour after confirming the booking was \$196.00 i.e. about 48% of the original total fare...CHOICE Community member, October, 2016*

There are moves to cap excessive cancellation fees in the United States through the introduction of the Forbid Airlines from Imposing Ridiculous (FAIR) Fees act in the United

<sup>23</sup> ACCC, Travel & accommodation – an industry guide to the Australian Consumer Law, p. 15. Available at: <https://www.accc.gov.au/publications/travel-accommodation-an-industry-guide-to-the-australian-consumer-law>

States Federal Senate. The FAIR Fees Act seeks to “protect consumers by limiting fees for checked bags, ticket changes and cancellations”<sup>24</sup> by limiting cancellation fees to the cost of processing a new ticket and/or any potential revenue loss while acknowledging revenue loss may be minimal or “even zero because the airline can resell the seat for a potentially higher fare.”<sup>25</sup>

Australian consumers need action to stop excessive flight cancellation fees. The ACCC should consider whether fees of up to 40% or more are allowable under the ACL.

### **Reasonable efforts to re-book**

Previously, the ACCC has advised the tourism industry that businesses should make reasonable efforts to re-book the service or accommodation for the same price before applying a cancellation fee.<sup>26</sup>

Airlines continually advertise and sell tickets for flights online. Popular routes are often full (including major domestic and international routes) and flights can also be over-booked, with more tickets sold than those available on the plane.

Australian seat utilisation continues to grow. In 2015, 80.3% of seats were utilised on international flights<sup>27</sup> and 77.4% domestically<sup>28</sup>. This is up from 77.4% and 76.4% respectively. In 2015, in the United States, 83% of seats on aeroplanes were filled.<sup>29</sup> It is likely that airlines are re-booking cancellations that have occurred months (or even weeks) before flights and are not refunding cancellation fees charged to consumers despite having sold the seat on to another passenger.

Flight prices also generally increase as the date of the flight gets closer. Research shows that the “general trend of price quotes is upward starting from about two to three weeks before the flight departure date.”<sup>30</sup> If a consumer cancels a flight a few months prior to travel, it is likely that the airline will be able to resell the ticket at a higher cost than it was originally sold for as well as collecting the cancellation fee from the previous ticket holder who is left out of pocket.

<sup>24</sup> Markey, *Blumenthal Introduce Legislation to Ground Rising Airline Fees*, Wednesday 9 March, 2016. Accessed at: <http://www.markey.senate.gov/news/press-releases/markey-blumenthal-introduce-legislation-to-ground-rising-airline-fees>

<sup>25</sup> Ibid.

<sup>26</sup> ACCC, *Travel & accommodation – an industry guide to the Australian Consumer Law*.

<sup>27</sup> BITRE *International Airline Activity 2015*, [http://bitre.gov.au/publications/ongoing/files/International\\_airline\\_activity\\_CY2015.pdf](http://bitre.gov.au/publications/ongoing/files/International_airline_activity_CY2015.pdf)

<sup>28</sup> BITRE *Domestic Airline Activity 2015*, [https://bitre.gov.au/publications/ongoing/files/domestic\\_airline\\_activity\\_2015\\_2016.pdf](https://bitre.gov.au/publications/ongoing/files/domestic_airline_activity_2015_2016.pdf)

<sup>29</sup> Consumer Reports, *Secrets to Stress Free Flying*, October 2016

<sup>30</sup> See <https://theconversation.com/so-when-should-you-book-that-flight-the-truth-on-airline-prices-34033>

The restrictive nature of airline tickets compounds this detriment; not only are certain types of fares entirely non-refundable, but consumers are not in a position to re-sell fares themselves, even when there is a long lead time and high likelihood of resale. While CHOICE accepts that there is some cost to airlines of re-selling tickets, there appears no relationship between these costs and extraordinarily high cancellation fees. For this reason, there is a strong case for reducing cancellation fees to a cost-reflective level. Consideration could also be given to allowing consumers to re-sell non-refundable tickets themselves. It is difficult to see how this would result in any additional costs to airlines beyond the administrative process of changing passenger details on the booking.

## Scheduling, rescheduling and flight times

CHOICE acknowledges the complexity of scheduling in the airline industry, however, airlines have significant power to vary schedules or cancel flights as per their terms and conditions.

Delays and cancellations come at a cost to consumers. A 2013 MIT study estimated the economic impact of flight delays on consumers in the United States was \$15.3 billion.<sup>31</sup> This included the cost of consumers taking risk-averse action such as travelling early to their destination. Another study found that delays in the US in 2007 cost passengers an aggregate delay of 28,500 years.<sup>32</sup> Such calculations do not factor the detriment from tangible, human loss such as missing a wedding, family holiday or job interview.

Airlines' Conditions of Carriage generally contain a clause that places no legal obligation for the airline to carry a consumer to their destination on time:

*"We will use our reasonable endeavours to operate in accordance with our published schedules. However, we do not guarantee the flight times and they do not form part of your contract of carriage with us."<sup>33</sup>*

While the airline can change, reschedule or cancel a consumer's flight at any time, the consumer is unable to change or cancel their flight (or is sometimes able to do these things with a large fee attached). These terms allow each airline to cancel or vary the terms of the contract without allowing the consumer to do the same.

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<sup>31</sup> Wittman, MD & Swelbar, WS. *Trends and Market Forces Shaping Small Community Air Service in the United States*. Report No. ICAT-2013-02 accessed online at <http://dspace.mit.edu/bitstream/handle/1721.1/78844/Trends%20and%20Market%20Forces%20Small%20Community.pdf>

<sup>32</sup> Ball, M et al. *Total Delay Impact Study: a comprehensive assessment of the costs and impacts of flight delay in the United States*.

<sup>33</sup> This excerpt is from 9.1 (a) of the QANTAS Conditions of Carriage.

## Flight schedules and varied pricing

How can a business charge a premium for a service scheduled at a peak time when this is explicitly excluded in the contract with the consumer? Should a term that states the service will not be delivered in a specific time frame be considered unfair? Given consumers' willingness to pay a price premium to travel at certain 'peak' times, should airlines be required to provide some kind of guarantee on time of delivery?

Other industries that charge a premium for products delivered in peak times only charge these costs when a service or product is actually delivered. When a customer pays 'surge' pricing with ride-sharing platform Uber, they only pay the additional amount after receiving the service. Electricity customers only pay peak time pricing for the exact amount of electricity used during this time. No such guarantee exists in the airline market, and consumers often pay a premium without any such guarantee that the service will be delivered in the peak time as promised.

Airline flight pricing structures clearly show that airlines place monetary value on the scheduling of particular flights on particular routes. For example, prices for QANTAS flights from Sydney to Melbourne<sup>34</sup> vary significantly: flights arriving into Melbourne before 9am cost significantly more than flights that arrive into Melbourne after 9am (see appendix 6A).<sup>35</sup> A search on QANTAS' website found flight prices ranged from \$350 (arrival before 9am) to \$206 (arrival after 9am), a 70% increase in price. A similar search on Tigerair's website showed the 7am flight as the most expensive, at \$199, with the cheapest flight priced at \$125 leaving at 1:15pm, a 60% increase in price (see appendix 6B).

It is clear from this pricing structure that the Australian domestic airlines know the value of the different scheduled flights and routes, and charge a higher rate to exploit this. However, flight time is explicitly excluded in the consumer's contract with the airline:

*"We will use our reasonable endeavours to operate in accordance with our published schedules. However, we do not guarantee the flight times and they do not form part of your contract of carriage with us."*<sup>36</sup> Qantas, Conditions of Carriage

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<sup>34</sup> Flights viewed on Tuesday 4<sup>th</sup> of October

<sup>35</sup> Flights searched on QANTAS website on 29/09/2016.

<sup>36</sup> QANTAS Conditions of Carriage, 9.1. Accessed: <http://www.qantas.com/travel/airlines/conditions-carriage/global/en>

*“At any time after a Booking has been made, we may change our schedule, cancel, terminate, divert, postpone, reschedule or delay any flight.”<sup>37</sup> Tigerair, Conditions of Carriage*

This pricing structure is problematic as this contract term creates a significant imbalance between the consumer and business. While a consumer can purchase a flight that leaves at a particular time for a price premium, the airline can alter this time for any reason without providing financial or other compensation to the consumer for the change, without reasonable notice to the consumer.

With 22.6% of passengers experiencing a flight delay or cancellation in the past twelve months<sup>38</sup>, a large number of consumers are experiencing detriment as a result of delays and cancellations. Airlines should provide guarantees to consumers that flights will leave within a reasonable time frame of their scheduled departure, except for reasons outside of the airlines’ control (such as weather problems or acts of terrorism).<sup>39</sup> Consumers should have access to a clear choice of adequate remedies under the consumer guarantees when the airline fails to deliver the service for reasons within an airline’s control in a reasonable time frame. The ACCC should define what a ‘reasonable time’ is in relation to delayed, cancelled and rescheduled flights.

### **Determining appropriate remedies**

It is unclear when a major scheduling change or cancellation of a flight constitutes a major failure. Each airline offers remedies to the consumer in event of a cancellation or flight reschedule. However, in practice, these remedies may be only partially offered or the consumer may not have a choice of which remedy they receive.

The following table outlines the remedies offered by each airline in case of cancellation or delay at the fault of the airline. Often, monetary compensation or alternate remedies are not specified, leaving interpretation and value of the remedy offered at the discretion of the airline or customer service agents on the desk on the day of the delay, cancellation or schedule change.

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<sup>37</sup> Tigerair Conditions of Carriage, Section 11.2 accessed: <https://tigerair.com.au/tigerair-info/conditions-of-carriage>

<sup>38</sup> Ibid 1

<sup>39</sup> CHOICE acknowledges that forces outside an airline’s control, such as weather or civil unrest, may affect flight times. CHOICE does not expect airlines to be responsible for guaranteeing a service when events are outside of their control. CHOICE considers problems such as mechanical, crewing or staffing problems and passenger unrest to be within the control of the airline.

**Table: Airline remedies in event of booking change, cancellation or delay at fault of the airline**

Airline	Statement	Remedy offered
<b>Tigerair</b>	At any time after a Booking has been made, we may change our schedule, cancel, terminate, divert, postpone, reschedule or delay any flight. Subject to the consumer guarantees referred to in Article 3.4, the options outlined here are the sole and exclusive remedies available to you and we shall have no further liability in this respect.	<p>Be carried at earliest opportunity without additional charge</p> <p>Retain the value of fare in a credit account</p> <p>Receive a refund</p>
<b>QANTAS</b>	If, due to circumstances within our control, after you buy your Ticket we make a significant change to the scheduled departure time of your flight or the flight is cancelled, we will:	<p>Rebook on the next available flight</p> <p>Meal, refreshment vouchers and/or accommodation</p> <p>Refund the original fare (consumer can select this option instead of rebooking)</p>
<b>Virgin</b>	We may need to cancel or delay and reschedule flights or services due to industrial action, landing restrictions, airport loading restrictions, unsuitable weather conditions, technical problems, operational reasons, or any event beyond our reasonable control, and scheduled flight times or destinations are not guaranteed. Subject to the consumer guarantees referred to in paragraph 2.4 and to the extent permitted by any applicable Laws, we are not liable for any Loss which you may incur as a result of any such delayed or rescheduled flight or service.	<p>May offer compensation according to compensation and assistance policy</p> <p>Rebook on next available flight</p> <p>Meal, refreshment vouchers and/or accommodation</p> <p>If choosing not to travel, credit in the Virgin Travel Bank</p>
<b>Jetstar</b>	If, after you pay for your Booking, we make a significant change to the	Fare refund

	<p>scheduled departure time of your flight or the flight is cancelled (except where this is due to circumstances beyond our control):</p> <p>this change means you are unable to use your Booking for its intended purpose, and we or our Authorised Agents cannot book you on another flight which you are prepared to accept</p>	
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Only one airline, Virgin Australia, fails to offer consumers a refund option. They instead offer credit for future flights in their Travel Bank system.

A small sample of feedback from CHOICE’s Complane tool highlights the lack of remedies offered to consumers when an airline reschedules or cancels a flight<sup>40</sup>:

*“Jetstar would not respond to this specific part [request for compensation] of my complaint. They have also refused to refund the Airbus travel expenses which they said they would do on the day the flight was cancelled. So I have incurred extra travel costs to get to the accommodation they provided.”* Jetstar international flight, CHOICE Complane user, August 2016

*“My Sydney-Hobart flight which was rebooked for the following day was also cancelled. I am still waiting to find out if my accommodation costs in Hobart will be refunded - currently \$400 out of pocket.”* Jetstar domestic flight, CHOICE Complane user, August 2016

*“They did not offer anything, no reimbursement of hotel, transport to and from the airport, meals etc., very disappointing.”* Virgin Australia international flight, CHOICE Complane user, August 2016

How the airlines define a “major” change in their schedule is inconsistent. In Mr Kruk’s case study (above), erratically changing schedules was a major concern for the consumer, however he was not offered a full refund when he chose the ‘decline’ option in the flight change

<sup>40</sup> All feedback from CHOICE’s Complane website is for flights that were delayed or cancelled within the control of the airline e.g. mechanical failure, crew problems. Quotations were obtained in a follow-up survey to Complane users after lodgement of their complaint and surveyed consumers’ experiences obtaining compensation from their airline.



process. Instead, he was refunded the amount less a \$400 cancellation fee per person, which was not clearly articulated during this process.

The kind of remedy offered when a service fails to be delivered (and how that remedy is delivered) is at the complete discretion of the airline. Sometimes consumers are offered vouchers for food or hotel accommodation, but many times they are offered no compensation for a delay, schedule change or cancelled flight.

There is a strong case for greater guidance for industry and consumers on what constitutes a major and minor failure and how (and what) remedies can be clearly and transparently offered to consumers during a failure.

## Virgin Travel Bank: No refunds, no contract?

Sometimes consumers only have the option to receive a refund in a store credit style arrangement – most notably Virgin’s ‘Travel Bank’<sup>41</sup> - rather than in the original form of payment. CHOICE has concerns that consumers do not clearly understand or have access to the Travel Bank terms and conditions as highlighted by a CHOICE Help<sup>42</sup> case study, below.

In addition to this, it is unclear why a consumer cannot receive a refund by the method of their choosing. The ACCC should investigate whether airlines are misrepresenting customers’ rights under the consumer guarantees by providing refunds only through travel credit.

Virgin’s Guest Compensation Program indicates the Travel Bank credit is the only financial remedy offered to consumers when they cancel a flight. Virgin’s Guest Compensation Program does not offer the option of a refund, only the option of store credit if the flight change does not suit the consumer.

Virgin seems to be routinely providing travellers with credit without the option of refund by cash. There also appears to be a lack of clarity about the value of this credit or how it can be accessed.

### Access to contract

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<sup>41</sup> Virgin’s Travel Bank stores customer credit for flight bookings: <https://www.virginaustralia.com/au/en/help/how-to-guides/travel-bank/>

<sup>42</sup> CHOICE Help is a service CHOICE provides advice on consumer rights and advice to its members. More information is available at: <https://www.choice.com.au/shopping/consumer-rights-and-advice/choice-help>

Contracts may not always be easily accessible to the consumer. This can cause consumers to experience financial loss, especially when cases involve expensive international travel.

A consumer approached CHOICE Help, CHOICE's consumer advice service, when they experienced a problem retrieving funds from a Virgin Travel Bank account. The consumer had not been given online access to this account and therefore did not have adequate access to the terms and conditions.

### Case study: Virgin Travel Bank

CHOICE received a complaint from a CHOICE member regarding the terms and conditions of Virgin's Travel Bank. The member had booked and rebooked flights through the Travel Bank, valued at over \$2500. All transactions occurred over the phone and the only representation of the contract's terms and conditions was made over the phone by a customer service representative. The customer subsequently found that the funds stored in the travel bank expired 12 months from the date of the original booking cancellation, not from the date of subsequent bookings as she was advised over the phone, and was unable to restore the funds.

The customer had no access to the contract at any time during their contact with Virgin and when the customer contacted CHOICE Help, CHOICE was unable to locate a copy of the terms and conditions online without having access to a Travel Bank account. A customer not using the online function of the Travel Bank would have limited – or no – means to access their contract with Virgin Travel Bank.

Subsequently, through further contact with Virgin, the CHOICE member has had their funds reinstated and has been given specific details regarding how and when to spend these funds.

### Case study: Virgin Travel Bank and a cancelled flight

*"A few years ago my wife and I flew with Virgin from Rockhampton, Qld to Hobart, Tas. for holidays. While there the Rockhampton Airport went under water in floods, I rang Virgin to check this and was told airport was closed, next day we turned up at Hobart Airport to be told all of our connecting flights home had been cancelled by the call centre the previous day, I said we still need to get home, the Hobart Virgin staff was very good and rebooked us as*

*far as Brisbane where we then flew Qantas to Gladstone and went by boat home to Yeppoon. Virgin didn't fly to Gladstone then. **Anyway the flight we lost from Brisbane to Rockhampton wasn't refunded but put as credit to my name, next time we flew to Hobart, I could not find any record or way of claiming this credit so ended up losing that money. I still don't know how I was supposed to use that credit***"<sup>43</sup> CHOICE Community member, October 7, 2016

Contracts should always be available in prominent, easily accessible locations and customers should be proactively offered the option of receiving them in writing when purchasing products or services over the phone. This is even more important when the product or service purchased is relatively expensive, like many airline tickets.

## No-show clauses

No-show clauses are contract terms that allow the airline to void sectors of a passenger's ticket when they do not show up for a sector of a booked journey. They are enacted when:

- A passenger misses the first or subsequent leg of a multi-leg itinerary; or
- A passenger misses the outbound flight of a return journey

The airline cancels subsequent trips and does not refund the passenger for sectors after the missed sector. Each Australian domestic airline has this clause. For example, Virgin describes this no-show clause as "tickets used in coupon sequence":

**"Tickets used in coupon sequence.** You must use the Flight Coupons or Electronic Coupons in your Ticket in the sequence they appear on your Ticket, and you must commence your journey with the first coupon. If you do not, your Ticket may be invalid, and we reserve the right to refuse to carry you, and to cancel the Ticket."<sup>44</sup>

While the passenger is unable to travel for some, or all, of their journey the airline still retains revenue for all flights sold. This is without delivering the service on some (or all) sectors of travel. Airlines may also earn additional revenue if the seats are resold, without providing any refund to the original passenger. Statistics on the growth seat of utilisation are highlighted

<sup>43</sup> CHOICE Community post: <https://choice.community/t/ever-had-problems-with-cancelled-or-rescheduled-flights-we-would-like-to-hear-your-stories/11871/4>

<sup>44</sup> Virgin Con<https://www.virginaustralia.com/eu/en/about-us/legal-policies/conditions-of-carriage/>

above (“reasonable efforts to rebook”). Tickets with flights spaced well apart,- for example, on a ‘round the world’ ticket<sup>45</sup> - could result in several months between the ‘no-show’ segment and the consumer attempting to check-in to the next flight – ample time for the airline to enact the clause and then resell the seat.

The European Commission introduced a proposal to partially ban no-show clauses, which was supported by the European Parliament. EU interest in airline no-show clauses is reinforced by states within its jurisdiction that have banned no-show clauses: Germany and Spain.<sup>46</sup> BEUC, the European Consumer Organisation, has argued that there is a significant imbalance to the detriment of the consumer, and that the airline should be obligated to deliver the service the consumer has paid for:

*“A simple contractual analysis would suggest that the consumer’s obligation is to pay the price of the air ticket which the airline is obliged to provide the air transport. However, the airline (through the no-show clause) reserves a right to breach the contract (by refusing boarding to no-show passengers on their return leg)... The airlines would of course argue that the consumer’s obligation is not merely to pay the price, but also to use the tickets fully and sequentially. This however seems contrived, as the airline incurs no extra cost when the passenger fails to use one leg of a round-trip flight for example. The flight has already been paid for in full.”<sup>47</sup>*

No-show clauses are not widely understood among consumers and when enacted can cause significant financial detriment. A case study reported to CHOICE highlights the significant financial loss caused by no-show clauses and the lack of consumer awareness.

### Case study: London to Rome no-show

*“My son and his friend booked return tickets with a major airline to London from Sydney plus return tickets from London to Rome. They then took a bus from London to Rome so didn't use the first section of their return ticket London-Rome. When they turned up at Rome airport to fly back to London and connect with their flight home to Sydney they were told that the tickets had been cancelled as they hadn't used the London-Rome portion. It cost them \$3000 each to get flights home plus a night in Rome and they were a*

<sup>45</sup> Round the world tickets consist of up to 15 flight segments across a minimum of four continents. They are usually used by travellers on extended trips, such as gap year students or backpackers.

<sup>46</sup> A [Spanish language] decision on no-show clauses is available at <http://notin.es/wp-content/uploads/2012/10/Sent-Juzg-Mercantil-12-Madrid-11-sept-2012-NULA-CLAUSULA-NO-SHOW.pdf>

<sup>47</sup> Boulet et al, ‘Eliminating airline “no-show clauses” in the EU’, 2015

*day late for work. They were grudgingly told that they should have read the small print in the ticket. It seems outrageous that the airline can charge people for a seat on a flight and then cancel their subsequent flights due to a no show. My guess is that the airline subsequently rebooked those seats so made two lots of fares from the one seat. Unbelievable!!” CHOICE supporter, 2013*

As this example demonstrates, both travellers suffered financial losses (total \$3000) for missing a leg of a flight, instead choosing to travel by bus (rather than using a flight segment in their ticket). Their return ticket was completely void, despite having paid for the ticket in full. The no-show clause meant that they lost the entire value of the Rome-Sydney segment of their flight, despite intending to fly this segment, and having paid for the booking.

The ticket holders were not aware of this obscure clause and only became aware that their ticket was no longer valid when they arrived at the airport, by which point they had to accept the penalty of purchasing a new ticket.

CHOICE maintains that no-show clauses are unfair contract terms and should be eliminated from airline contracts.

## Recommendations

### Recommended actions for the airline industry:

- Airlines should clearly communicate cancellation fees to be incurred at any point where a cancellation will be initiated, such as an email asking about varying flight times or cancelling a ticket.
- Cancellation fees should be cost reflective, taking into account the lead time and likelihood of reselling the ticket. Alternately airlines should allow consumers to resell non-refundable tickets themselves, thereby also allowing changes in personal details.
- Airlines should offer financial compensation for consumers when flights are delayed or cancelled for reasons within the airline’s control. Compensation should be consistent and easy for consumers to arrange.
- Airlines should remove no-show clauses from their contracts.

### Recommended actions for the ACCC:

- The ACCC should provide clearer guidance to the industry about acceptable fee levels. This should include guidance on when it is *not* acceptable for industry to charge a cancellation fee, such as cancellations made well before the agreed delivery of the service (where the airline's chance of rebooking is high). Based on this guidance, the ACCC should take action against unfair cancellation fees.
- The ACCC should conduct an investigation into redress options available to consumers, and the practical application of the consumer guarantees, in the event of an airline's major or minor failure to deliver a service.
- The ACCC should define what constitutes a major and minor failure in the airline industry, including identifying where an airline has failed to deliver a service within a reasonable time, when a service is unfit for the purpose it was purchased for, or where a service was provided with an unacceptable level of care and skill.
- The ACCC should make clear that no-show clauses are unfair contract terms and take action against airlines that continue to use them.