

CONSUMER PROTECTION FOR AUSTRALIAN TRAVELLERS:

a plan for clarity, consistency and fairness

JULY 2021



CHOICE

ABOUT US

CHOICE is the leading consumer advocacy group in Australia. CHOICE is independent, not-for-profit and member-funded. Our mission is simple: we work for fair, just and safe markets that meet the needs of Australian consumers. We do that through our independent testing, advocacy and journalism.

To find out more about CHOICE's campaign work visit www.choice.com.au/campaigns

CONTENTS

- INTRODUCTION 4
- TERMINOLOGY 5
- RECOMMENDATIONS TO IMPROVE
CONSUMER CONFIDENCE 6
- KEY FINDINGS 8
- PROBLEM ONE: POOR INFORMATION
ABOUT CONSUMER RIGHTS 11
- PROBLEM TWO: POOR CUSTOMER SERVICE
AND COMPLAINTS PROCESSES 12
 - Limited means of communication and significant delay 13
 - Complex agency arrangements made refunds more difficult 16
- PROBLEM THREE: INCONSISTENT AND UNFAIR REMEDIES 21
 - Consumers out of pocket 21
 - Impractical or useless credits and vouchers 29
- PROBLEM FOUR: POOR PROTECTIONS
WHEN COMPANIES BECOME INSOLVENT 31
- LOOKING AHEAD: BUILDING BACK CONSUMER CONFIDENCE 33
- ABOUT CHOICE'S TRAVEL SURVEY 36



INTRODUCTION

Australians have long enjoyed travel. Whether domestic or international, travel has allowed us to visit family and friends, mark important life events and engage in business.

When the COVID-19 pandemic hit in early 2020, many thousands of Australians had money tied up in bookings with travel and tourism businesses located in Australia and overseas.

The announcement of the pandemic and associated public health measures meant that these plans fell into disarray. As consumers and businesses alike grappled with the implications of widespread and constantly changing travel restrictions, the dominant experience was one of confusion.

As consumers sought to change their plans or obtain refunds, many experienced stress and frustration. Consumer complaints to Australian Consumer Law (ACL) regulators, including the Australian Competition and Consumer Commission (ACCC), surged. The ACCC reported in November 2020 that travel problems topped the list of consumer reports it received in the first 10 months of 2020, totaling over 24,000.¹

As CHOICE has long assisted consumers in the travel market, we knew that consumers were often exposed to losing money when their plans were interrupted by external events. The COVID-19 pandemic however brought these problems into sharp focus due to the unprecedented numbers of people affected.

To understand how this played out, we invited people to tell us about their experiences of travel cancellations through an online survey from January to March 2021. The purpose of the survey was to gather qualitative information about consumer experiences of travel cancellations due to COVID-19 and associated restrictions. The experiences canvassed in this report are in relation to travel and tourism businesses located all around the world but many related to businesses operating in Australia.

This report provides a snapshot of the types of common issues raised by people in their responses. Importantly, this report also outlines policy recommendations aimed at getting Australians travelling again, with confidence that they have clear rights when something goes wrong.

We are conscious that the last fifteen months have been tough not just for people who lost money due to plans being cancelled but also for many people working in the travel and tourism industry. The best way to restore that industry to its place in the Australian economy is by restoring consumer trust and confidence.

TERMINOLOGY

The supply chain of the travel and tourism sector is complex. This is particularly so due to the cross-jurisdictional nature of international travel. Money can flow through numerous intermediaries between the consumer and the ultimate provider of a service, making the tracking and recovery of funds more complex. The role of these intermediaries is often unclear – for example, it is not clear whether travel agents act on behalf of the traveller or the businesses with whom they place bookings. New forms of intermediaries have emerged in recent years, many of which are based outside Australia.

This report uses the term ‘travel and tourism businesses’ broadly to include:

- Travel and tourism suppliers: airlines, accommodation providers, and cruise operators; and
- Travel agents and intermediaries: Traditional ‘bricks and mortar’ travel agents, tour operators and wholesalers, online companies selling package holidays and destination management companies.

Similarly, we use ‘travel and tourism sector’ to broadly mean all businesses and entities involved in the supply and sale of travel and tourism services. Where commenting on particular industries, like airlines or travel agents, the report refers to these industries specifically.



RECOMMENDATIONS TO IMPROVE CONSUMER CONFIDENCE

To restore consumer confidence in the travel and tourism sector, CHOICE is calling on Australian governments to implement the following recommendations. Some of these will require collaboration between federal, state and territory governments.

LAW REFORM



1. Make it easier to get a refund when a service isn't provided

Governments should improve consumer protections for people who book travel or tourism services that cannot be provided due to circumstances outside the control of the business and consumer.

In doing so, governments should initially focus on businesses that are clearly bound by Australian law, and should **implement reforms that make it easier for consumers to receive refunds** from service providers, and for travel agents to obtain refunds from service providers on behalf of their customers.

- a. For bookings where the ultimate service is to be provided by a business that operates in Australia, consumer protections should include:
 - ii. a requirement that consumers can choose to receive a refund or a credit/voucher;
 - iii. that any fees or charges deducted from a refund must be limited to the business's reasonable costs. The ACCC should produce specific regulatory guidance on what constitutes reasonable costs.
- b. For bookings involving funds remitted to travel or tourism businesses based entirely overseas that are not otherwise subject to the Australian Consumer Law, the Federal Government should work with industry groups, consumer organisations and foreign governments to establish mechanisms that enable Australian-

based consumers to obtain refunds. The Government should use trade agreements to provide greater certainty to Australian consumers about their refund rights when booking international travel.



2. Make travel credits and vouchers fairer

Governments should **mandate minimum requirements for travel vouchers/credits** provided by travel and tourism businesses in lieu of a service, similar to those that apply to gift cards. These should include:

- a. a minimum term of three years;
- b. the ability to transfer the credit or voucher to another person;
- c. the ability to split over multiple bookings;
- d. an obligation on travel and tourism businesses to convert credits or vouchers to a refund in certain circumstances including at the expiration of the term; and
- e. an obligation to treat bookings made with credits or vouchers in the same way as bookings paid for in cash.



3. Lift standards of customer service

The Federal Government should introduce a **mandatory industry code** applying to all airlines and large travel and tourism businesses taking money from Australian-based consumers. Small travel businesses should be given the option to sign on to the code. The code should include:

- minimum requirements for consumer protection, including additional refund protections for people experiencing financial hardship;
- minimum requirements for customer service including commitments to manage high-demand times using consumer friendly methods, like call back services;

- a maximum timeframe for businesses to provide refunds or other remedies; and
- a governance structure that includes a code compliance committee to identify and address systemic issues in the sector (similar to financial services codes).



4. Make it easier to get disputes heard and resolved

The Federal Government should establish a **new travel and tourism industry ombudsman**, similar to the Telecommunications Industry Ombudsman or the Australian Financial Complaints Authority. All airlines, along with large travel and tourism suppliers, large travel agents and large intermediary companies should be required to participate in the industry ombudsman scheme. Smaller travel and tourism businesses should be able to opt-in to the scheme. The ombudsman should:

- a. be initially established and funded by government with a plan for transition to an industry-funded model;
- b. be governed by a board that includes equal numbers of consumer and industry representatives and an independent chair;
- c. be responsible for investigating complaints against travel and tourism businesses;
- d. have the power to issue determinations and decisions which industry are obliged to act on; and
- e. be required to comply with the Benchmarks for Industry-based Customer Dispute Resolution Schemes.



5. Improve information provided at the time of booking

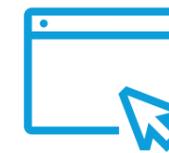
The Federal Government should introduce a **mandatory information standard** on the information that must be provided to consumers at the time they make a travel purchase. This should include what refund a consumer will receive if a business is unable to provide a service, information on how to lodge a complaint and, for travel agents and intermediaries, a breakdown of fees and commissions.

Other measures



6. An ACCC market study into the travel and tourism sector

The ACCC should conduct a market study into the travel and tourism sector, with a particular focus on travel agents and intermediaries. The market study should consider issues of competition, independence, contracting practices, pricing transparency and risk allocation through the supply chain.



7. Establish a website for information on restrictions

Australian governments should establish a website that publishes information on domestic COVID-19-related restrictions to provide travel and tourism businesses and members of the public with timely, accurate and consistent information, including information on past restrictions that may have affected bookings.

KEY FINDINGS

CHOICE received over 4,443 responses to the travel cancellations survey. Survey respondents talked about travel they had booked to be with children, parents and other loved-ones separated by distance; to get married, attend weddings and celebrate important life milestones like birthdays and wedding anniversaries. For many, travel was seen as a significant life milestone that they had worked long and hard to afford.

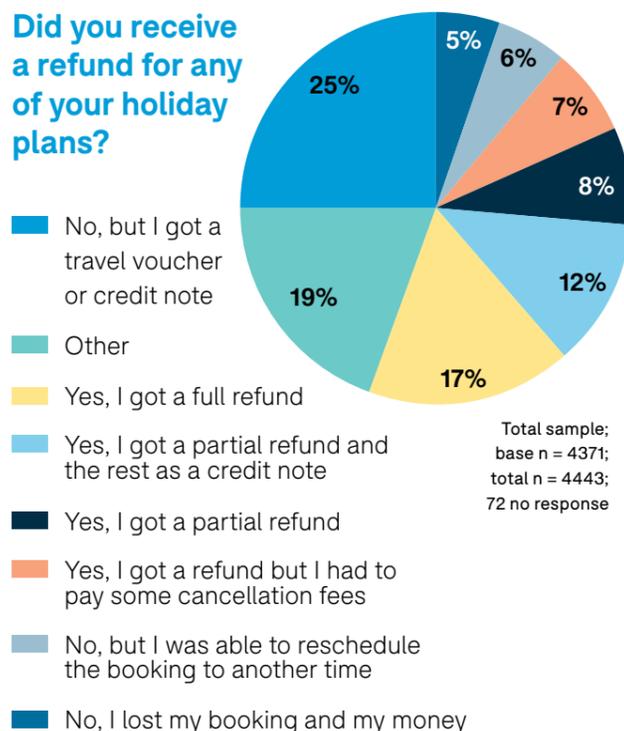
Saved up for years to get married in Bali and take my elderly father (87) overseas for the first time of his life.

I am originally from Zimbabwe and was taking my elderly father to a wedding and to see his brother for the last time.

Single father of two young teenage girls, saved up for three years to celebrate the eldest finishing Grade 12 in 2020 by taking us all to America for a month at the end of the year.

When plans could not proceed due to COVID-19 and associated restrictions, consumer experiences varied greatly.

Did you receive a refund for any of your holiday plans?



25% received a travel voucher or credit, 12% received a combination of partial refund and travel credits and a further 6% were given the ability to reschedule the booking to another time. **This means that for 43% of respondents, the ability to obtain value from the remedy they were offered is dependent on their ability to use vouchers or credits, or rebook to travel at a future time.**

Of the holiday plans that were cancelled, flights were most affected with 86% of respondents reporting cancelled flights.

Many experienced very poor levels of customer service, waiting unacceptably long periods to talk to a representative and have their questions answered.

How long did you have to wait to get a refund, voucher or resolution?



Total sample; base n = 2961; total n = 4443; 1482 no response

Not only could we not get married, not only did myself and my partner lose our jobs, but these companies were trying to steal our honeymoon money too! It took almost seven months to finally get all our money back, when we needed it most...It was horrible.

The result of such experiences is that consumer confidence has been shattered for many survey respondents.

The system has failed us.

I will never book through an agency again. Not that airlines are without fault, however, agents are incredibly dishonest and difficult to deal with and do not look after the interests of their customers.

I appreciate how difficult travel agents and other third party providers have struggled with COVID 19 however some honesty and transparency from the outset would have been most welcome and would have ensured continued support in the future. I will never use that travel agent or the third party booking agency again. I will book all future travel myself including accommodation and car rental.

Some people reported positive experiences, including:

- › travel agents who went above and beyond in their efforts to obtain refunds for their customers;
- › travel and tourism businesses that were proactive and regular in communicating with their customers; and
- › travel and tourism businesses that gave refunds even though the terms and conditions of the booking didn't technically require them to.

People who were lucky enough to have such positive experiences have vowed to continue to book with such businesses into the future.

...I usually book direct with airlines and accommodation. This time I used a travel service for the airline bookings. This made it so much easier for the cancellation and refunds as she did it all. I cancelled accommodation with no problems.

Travelrite International (Victoria) kept me informed with emails regarding the refund process and progress. They asked me for my preferred option: full refund; credit for future cruise or another holiday. I received a full refund of all my expenses...I was expecting to be charged an administration fee of \$100-\$200? but was very surprised to be charged nothing. Even my insurance premium was fully refunded.

Our travel agent was amazing as were Qantas, no issues at all.

In addition, many people expressed sympathy and concern for the owners and employees of travel and tourism businesses – especially small businesses – who they could see were grappling with very challenging and unprecedented circumstances.

Regardless of whether people's experiences were positive or negative, there was a strong degree of consensus around the need to fix the rights of consumers when something goes wrong – 90% of respondents support changes to the law to make it easier to access refunds.

Reform is needed to restore consumer confidence

The experiences reported by consumers make it clear that current consumer protections have let travellers down. We observed the following problems from survey responses:

1. Consumers are unaware of the options available to them, which led some to cancel arrangements in ways that then affected their ability to obtain a refund.
2. Consumers find it hard to obtain information on their rights and receive a remedy. This is because of difficulty contacting providers, delays and complex agency arrangements that make it difficult to understand whether refunds were progressing.
3. The rights and remedies available to consumers are variable and often unsatisfactory. These have been largely determined by the terms and conditions of each operator and/or travel agent, which are often difficult to understand. Outcomes have included:
 - a. Consumers being out of pocket, for example, due to inability to obtain any refund or excessive cancellation fees; and
 - b. Consumers receiving credits or vouchers that they are in reality unable to use.
4. Consumers lack protection when companies become insolvent.

Travel cancellations caused by COVID-19 and related public health restrictions exposed very significant flaws in the Australian Consumer Law, which fails to provide clear refund rights where a consumer has paid for a service that cannot be provided due to events outside the control of the consumer and business. The ACL has not protected consumers in these circumstances, nor has it provided clarity to travel and tourism businesses.

While recognising the complexities of industry arrangements and international supply chains, **the starting point should be to recognise that if an Australian consumer pays for a service that cannot be provided they should be entitled to receive a fair remedy, ideally a refund.** Minimum protections are also necessary to facilitate refunds when consumers themselves are facing financial hardship. While better information about terms and conditions of travel and tourism bookings is part of the solution, that alone will not ensure that consumers receive an appropriate remedy where a service cannot be provided.

Reform in these areas is important and urgent. The duration of the COVID-19 pandemic remains unclear and even as vaccines roll out, travel and tourism plans are likely to be affected by considerable uncertainty for some time yet. Restrictions on travel within Australia continue to change, and the 'Trans-Tasman Travel Bubble' remains subject to suspension in response to COVID-19 outbreaks. We may also face future pandemics that have similar impacts on travel markets.

Implementation of reforms will require a concerted approach by our federal, state and territory governments, in consultation with consumer and industry groups. This will require more detailed consideration of issues such as:

- the scope of some reforms, including how they apply to different types of businesses, taking account of their size and position in the supply chain;
- legal mechanisms through which law reform can be achieved, noting the different constitutional powers of the Commonwealth, states and territories; and
- the availability of insurance to both travellers and businesses in the travel and tourism industry.

It is also likely that consumer education, industry support and transitional measures will be necessary to support implementation of reforms.

An ACCC market study into the travel and tourism industry will be crucial to understanding market forces, the nature of the supply chain and the way in which consumers' money flows through the supply chain when bookings are made and cancelled.

If governments seize this opportunity to provide greater clarity to consumers and businesses, that will provide the foundation for the travel and tourism sector to win back people's trust, and their business.



PROBLEM ONE: POOR INFORMATION ABOUT CONSUMER RIGHTS

Seeing the pandemic worsen and in anticipation of their service not proceeding, some people proactively cancelled their bookings through electing to cancel or not pay amounts still owing. They did so in the belief this was the appropriate thing to do. It was only later that many realised doing so made them ineligible for a refund under the terms and conditions of their supplier or travel agent.

Was to go on an 18 day European tour/ cruise on March 2020. We cancelled 2 days before we were due to leave Australia, as the coronavirus pandemic had really taken hold of Italy and the cruise was cancelled...Travel company said were not eligible for a refund as we cancelled.

Because of the virus I waited and waited to see if the agency would contact us as I could not see cruises going ahead by April this year so I just cancelled it and then was told later even though the cruise line had cancelled that cruise that because I cancelled it there would be no refund just a credit note, which I think that sucks, as now my husband refuses to go on anymore cruises as he has emphysema so can't afford to catch anything, so we are out of pocket due to this.

Booked through Booking.com...Governments announced travel restrictions, I rang to cancel for reasons beyond my control and was told nothing could be done except through Booking.com. The only relevant option there was to cancel. Then I was told I had cancelled, it was my decision to do that and no refund would be given...

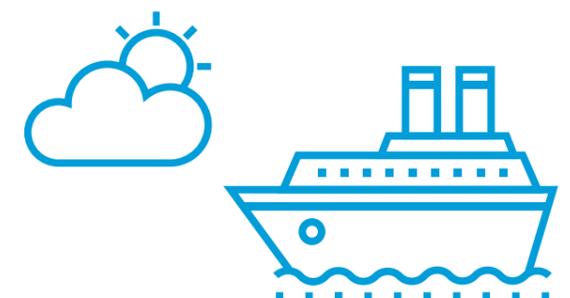
Others chose not to pay the balance of their booking as they envisaged that the service would have to be cancelled in any event.

Balance of Oceania cruise not paid in mid April 2020 for cruise in July 2020 as it was obvious the cruise was not going to happen. Oceania cancelled the cruise 3 weeks after balance was due but claim we didn't pay the balance therefore we have lost the deposit. Cruise credit offered but unlikely to be used. Will not deal directly with me, only through travel agent who is no longer in business. She has tried to help but it is not a priority. Amount in question is \$1000.00. Not likely to go on a \$12,000 cruise to use our \$1000.

Analysis

These stories indicate a lack of awareness and clarity among consumers about whether, and in what circumstances, they would be entitled to a refund. Problems were compounded by poor or no communication from travel and tourism businesses. For consumers to lose their deposit and booking, even in circumstances where the service did not proceed, is unjust.

There is a need for measures to help ensure that consumers and businesses alike are clear about their rights, responsibilities and remedies in the event that the contract for a service cannot be fulfilled due to a pandemic or similar event. This is necessary to avoid consumers proactively cancelling their bookings and subsequently losing funds in circumstances where they could otherwise be entitled to a refund, credit or voucher.



PROBLEM TWO: POOR CUSTOMER SERVICE AND POOR COMPLAINTS PROCESSES

Consumer experiences throughout 2020 make it clear that the travel and tourism sector, particularly large businesses, lacked the systems and capacity to communicate with consumers in a timely and transparent way.

This resulted in a very challenging and time-consuming process for most consumers. Many people reported experiences of stress and despair, particularly when large sums of money were involved, or where the consumer was experiencing financial hardship.

It was very, very difficult with many, many phone calls and emails. It was also very distressing and kept us awake at night.

It was stressful, limited communication, changing stories, conflicting advice. It became harder to contact people to follow up through long winded and confusing call centre prompts. I think I got my refund through sheer perseverance.

Extracting teeth has been less painful and drawn out.

For the last 12 months I have been trying to get my money back from TripADeal to no avail. The phone is unanswered I have been on hold for 3 hours. I have sent emails that get a generic repose and do not know what else to do. I have received very rude emails from them when they do reply...

This is the most difficult process I have ever been through...

Consumers reported having to spend considerable time to get any sort of resolution. While some survey respondents reported eventually receiving the refund they sought, they only attribute that outcome to their own persistence and follow up.

I had to research, investigate and challenge decisions, deductions etc. by providing supporting evidence. A very stressful journey. I cancelled in March 2020 and received a final refund for the flights in December/ November 2020. I used Flight Centre. The flight refund took over 22 weeks although Qantas indicated 12 weeks...Every step felt like a challenge.



Limited means of communication and significant delay

Many people spoke of frustration attempting to make contact with travel and tourism businesses. This was due to limited options for making contact and long response times, especially for phone calls. Several people reported that some avenues of communication ceased at different times. Many spoke of the frustrating experience of being unable to speak to a customer service representative to discuss their booking.

It was an absolute nightmare. Qantas seemed to go out of its way to make things difficult.

They deliberately limited the means by which customers could communicate with them. 'Chat' option was removed from their webpage, as was a general email address. Phone calls were impossible, as wait times were in excess of 2 hrs – after which we were cut off more than once. When we did get to speak to someone they simply read the 'script' advising that there would be lengthy delays in providing refunds...but the people we spoke to, often contradicted each other.

Phone lines just ring engaged 24/7 for the last 10 months, no response to emails.

My Travel agent never once initiated contact.

Horrible. No one answered the phone or responded to emails for months. The credit card company wouldn't allow the dispute and were rude. One airline said I'd get a refund but I'm waiting for more than 6 months with no further response. Another airline went bankrupt.

...I have emailed on different occasions and have yet to receive a response and definitely no refund or credit. Do not need a refund and a credit would be fine. Really the return airfare costs is all that we think appropriate. I wanted the contact in writing so there was a record rather than merely a phone call, however no written response anyway.

Went on for months using a contact us box on a website and then received an email that you could not respond to. Shows the limitations of cheap hotel booking website; no customer service when you need it.

It has been extremely difficult. eDreams, cancelled the email addresses, and didn't take the calls for a while. Later they re-established the phone calls however I had to wait on the call for hours to reach someone in both eDreams and Qantas call centers (to be specific 2 hours 20 mins at one of the times) and they all said they had nothing to do as the other party was to be blamed.

Consumers also reported various challenges around obtaining documentation from travel and tourism businesses. These issues included not receiving a copy of applicable terms and conditions and not receiving confirmation that a refund had been requested. This left people unclear of where they stood and uncertain about whether their refund was being processed.

Qantas have no online options to resolve booking issues, you have to wait 45 minutes or more to be connected to someone, and then wait over 3 months for the credit to be processed. There is no email communication to confirm a refund has been requested, so unless you record the date of your conversation it is difficult to follow up after the 6 week timeframe is up.

One respondent neatly articulated how difficult it was to simply lodge a formal complaint and to escalate issues further.

Jetstar – because I booked a holiday package, neither their holidays area or their flights area would take responsibility for refunding me. They sent me back and forward multiple times, and would not even let me make a formal complaint. Without the ability to make a formal complaint, I was not able to escalate the issue to the Ombudsman. In the end, I managed to get around the process and make a complaint to the Ombudsman who stepped in and directed Jetstar to allow me to make a complaint with them. Once that happened, a refund was processed but it still took weeks and weeks.

The time it took for customers to receive a refund or other remedy also varied significantly. Some businesses were exceptional in the circumstances and did not hesitate to provide refunds. With others, delays have meant that customers have been waiting unacceptably long periods, including 23% waiting over six months.

How long did you have to wait to get a refund, voucher or resolution?



Total sample; base n = 2961; total n = 4443; 1482 no response

I am a travel agent, and I'd like to see things change. We lost all of our income and the refund process took way too long. Applied in April, received in October. Applied in July, received in December. Both too long.

We appreciate that this was a time of turmoil and that businesses were trying to protect themselves. It should, however, not have taken 7 months to get a refund.

Keep saying refund coming. Nearly 12 months.

Thankfully we got a full refund but it took 9 months which was way too long.

It wasn't difficult in terms of the process. We had booked through Flight Centre so they handled the refund. The difficulty was that it took about 6 months to process the first cancellation. The second one was much shorter at about 10 weeks.

Analysis

Current complaints processes and escalation options for the travel industry are unsatisfactory. In part this is due to the lack of clarity provided by the Australian Consumer Law on consumer rights in these types of circumstances but it is also due to poor systems and capacity within providers to cope with periods of high demand. Travel and tourism businesses, especially major businesses, should have basic systems for responding to high demand, such as the ability to make contact via email or request a call back.

CHOICE also holds major concerns about the effectiveness of the Airline Customer Advocate (ACA) – the complaints escalation point for the domestic airline industry.² Unlike independent ombudsman schemes in the finance, telecommunications and energy industries, the ACA has no power to require that airlines comply with its decisions.

Analysis of the 4,443 survey responses identified five responses that mentioned the ACA, and four of these mistakenly referred to it as an ombudsman. The fact that very few people mentioned the ACA indicates that consumers are either unaware of it or do not see it as an effective vehicle through which to raise a complaint. Those who did mention the body had the mistaken belief that it had the powers of an independent ombudsman.

A recent notice on the ACA website confirms the significant limitations on its role:³



Special COVID 19 Notice

The majority of complaints currently being received here at ACA are ineligible for review pursuant to the ACA Charter. ACA cannot accept complaints of the following nature:

You have been offered a credit, and want a refund instead;

You are having difficulty communicating or getting a response from an airline

You feel there is a delay in the payment you are expecting for your refund.

In order for your ACA complaint to be accepted you must have done the following:

Contacted the airline via the designated complaints area and followed their complaints process in its entirety as per their Customer Charter- generally speaking, phone calls and chat discussions are not considered to be part of the airlines complaints process.

Allowed the airline appropriate time to respond to your matter including additional time if requested by the airline due to unprecedented levels of enquiry.

When you lodge your complaint with the ACA please ensure you have included the reference number of the complaint you have lodged with the airline as well as any membership numbers or booking numbers appropriate to your complaint.

The limitations on the role and powers of the Airline Customer Advocate mean that it is not able to genuinely help most people.

The onset of the pandemic undoubtedly created many challenges for travel and tourism businesses and while some were able to process refunds in a timely manner, too many did not. While it might be reasonable to expect some delay in such unprecedented circumstances, CHOICE believes it is unacceptable that some consumers have been waiting well beyond six months – even up to 12 months in some cases – to learn whether they will get back the money they have entrusted to travel and tourism businesses.

Contrast these delays with the consumer guarantees for physical goods – where a supplier must provide a consumer remedy (repair, refund or replacement) within a reasonable time.⁴

ACCC guidance also made clear that businesses should remit refunds within a reasonable time, stating in its guidance published in July 2020:⁵

Timing of refunds

Where a consumer is entitled to a refund, the refund must be paid within a reasonable time. The ACCC and ACL Regulators appreciate that, in the circumstances of the COVID-19 pandemic, it may take longer than usual for businesses to be able to process the volume of cancellations and refunds.

Where a business has received funds from a supplier or third party that are due to be returned to a consumer, the business must remit those funds to the customer as soon as possible in the circumstances.

Businesses should communicate regularly with consumers about the timing of any refunds.

Consumers should have access to timely and clear information from travel and tourism businesses and these businesses should be required to adhere to minimum customer service standards. Additionally, consumers should have access to effective and efficient processes to resolve their issues, and an ability to escalate issues to an independent body when unable to get a proper resolution from a supplier, travel agent or intermediary.

It is also clear that many consumers found it difficult to obtain information on the travel restrictions that affected their booking, especially when attempting to pursue a remedy after the fact. Australian governments need to provide timely and accurate official information to consumers and businesses alike about restrictions that cause major disruption to travel. This information needs to be available as a historic record, to make it easier for consumers and businesses to resolve disputes.



Complex agency arrangements making refunds more difficult

Consumers who had booked through a travel agent were very polarised when it came to their view on how their agent had handled their situation.

Some people reported very positive experiences with agents who they saw as working hard and effectively to seek refunds during very challenging times for their business.

Our very able travel agent did everything and kept us up to date frequently...

My travel agent was amazing and organised it all for us. A full refund on accommodation and flights.

My travel agent handled the whole process for me – applied for airline refund, tour refund and hotel refunds, so I found it very easy. The travel agent kept me informed at all times with processing updates. The agent charged me only \$200 for all her work – as compensation I gave her a \$100 gift voucher because she worked so hard. Without her I would not have got my money back so quickly.



My personal travel manager acted as my advocate throughout the entire process and continued to negotiate full refunds for us until she achieved the desired outcome. For me, I believe I am very lucky to have an amazing travel agent who knows me well after working together for many years, and who I know has my best interests at heart and I trust her. The process was easy as she did all the work and kept me informed throughout. A good travel agent is worth their weight in gold. I have friends who have been dealing with these online OTA's who might give a cheap price but zero service as the trade off. They are regretting that decision now to save a few bucks!

In contrast, many reported very poor experiences with their travel agent. People reported very poor customer service and a sense that they had been let down and charged for services they never benefited from.

Very difficult. Why is the agent not responsible under consumer law? They took my money, not the airline.

Lack of communication from travel agent due to their staff redundancies, no assistance from airline. Very poor experience.

Our agent wasn't proactive and asked us not to contact her. It was difficult to speak with our airline or cruise line due to booking through an agent.

We will never use a Travel Agent again! The whole experience has been a nightmare and left us both feeling very stressed and upset. Our trust and confidence shattered...

**CASE STUDY:
FLIGHT CENTRE**

Respondents were scathing of Flight Centre in particular.

It was HORRIBLE! Flight Centre were lovely when we paid \$20k upfront for our holiday, yet getting our money back took more than 6 months, multiple phone calls, emails, complaints. ...they would often blame the supplier for delays in refunds but I found they were holding onto funds. They were very hesitant in providing partial refunds. Qantas were the last to refund and did not communicate with us as the customer at all, they blamed Flight Centre and Flight Centre blamed Qantas. I'll book my holidays independently from now on.

Flight Centre made the entire process an exceedingly difficult & frustrating one. When they actually responded to calls/emails, Staff frequently gave inconsistent and/or incorrect information. They also used threatening, intimidating bullying tactics to try to force Customers to give up their fight (& I know many did).

It has been a nightmare. All our accommodation was booked directly and refunded almost immediately. Flight Center have been dishonest and unhelpful. They told us we would need to cancel, and offered a voucher, and did not explain that by accepting a voucher we were cancelling the flights and then would not be eligible for a refund. We have to travel by November this year or lose all our money which equates to about 7k between the group.

Several calls to Flight Centre. No follow up from them. No credits on flight accounts and no refunds. Unable to contact Air Asia.

The refund process is non-existent at Flight Centre.

My airline bookings were done online through The Flight Centre and they are a shocker. I have had so many emails from them with ever-changing restrictions and 'fines'...



Many survey respondents also reported being told inconsistent information by their agent on the one hand and their supplier (e.g. an airline) on the other. This left many feeling like travel and tourism businesses were passing the buck between each other with no one taking responsibility.

Told by Expedia that it was a Virgin issue, told by Virgin it was an Expedia issue...

As I booked the Virgin flight via a 3rd Party online agent (Flight Network), Virgin Airlines has refused to deal with me, even though they cancelled my flight due to border closures. I have spoken to a Supervisor at their call centre who repeated the standard line that I have to go through Flight Network despite my telling her FN sent an email saying to go through them. But Flight Network have been non-responsive, only sending me an email saying I had to deal directly with the airline...Virgin say they cannot take over the booking. It is like some absurd black hole going around and around.

A game of pass the buck.

Booked through Flight Centre. Qantas cancelled. Took more than 8 months for a refund. Flight Centre blamed Qantas, Qantas blamed Flight Centre. Pathetic!!!

Very difficult. The parties involved are just making us go back and forth between them. This has been happening for almost a year.

In addition, many people reported situations where the travel agent reported that the supplier had not provided a refund but the supplier said that a refund had been provided to the agent. This left many people feeling that the agent was holding onto their money wrongfully.

Booked accommodation through Webjet and they refunded 2 of our accommodations that were refundable but the other 2 were not refundable. They were absolutely horrible to deal with, lied to us and said the money for the non-refundable accommodation was being held by the hotels and there was nothing they could do. I ended up calling the US hotels (they were amazing and so helpful) told me they had not receive any funds from Webjet and said they were providing full refunds to customers due to being closed from COVID. I went back to Webjet told them that I knew it was them holding the money and threatened to contact Fair Trading if they did not provide a refund. After this they ended up giving a full refund. Very disappointed and will never ever use Webjet again...

...Flight Centre were a bit stroppy with me when I reported back to them that American Airlines had told me that a refund had been processed back to Flight Centre. I was told if a refund was possible I would have been the first to know. I sent on emails I had received from American to Flight Centre and they still tried to tell me that it was a credit I had been given, not cash. I was always polite and up beat with the TA and she was ok but obviously didn't like me questioning her on everything. She put in a request to their refund team and I was told the refund had been rejected. I persisted and eventually they admitted they had received back the cash...

Analysis

Travel agency arrangements add a level of complexity to bookings. Agents are intermediaries – a link in the supply chain between the consumer and the ultimate supplier of services. To further complicate matters, there are often a number of intermediaries between the consumer and ultimate supplier.

The way in which funds move through the supply chain is also complicated. The period of time for which an agent or intermediary holds funds before passing them onto a supplier varies and can be quite short. Depending on the way in which an intermediary has booked services, where funds are returned to an agent, they might not necessarily be earmarked as owing to a particular customer.

Agency arrangements also make it more difficult to establish a consumer’s rights, because a booking may be subject to the terms and conditions of the agent as well as those of the operator.

This situation is exacerbated by a lack of transparency

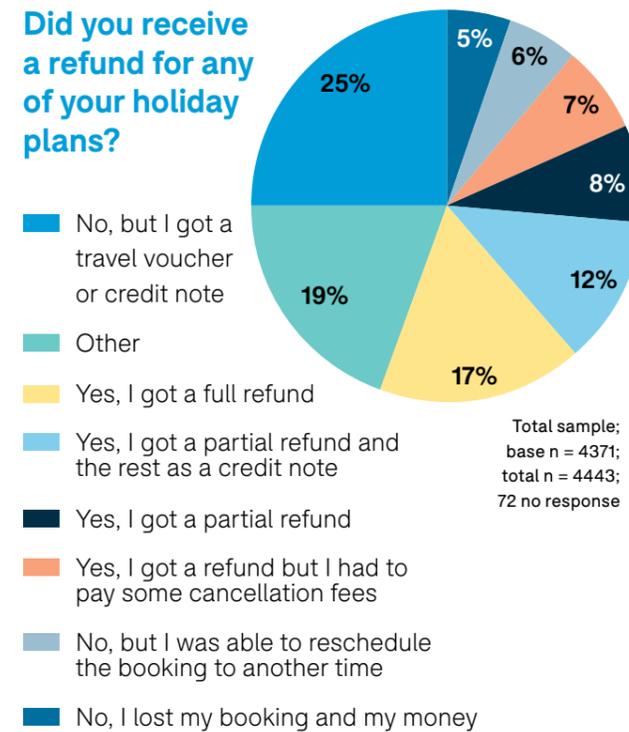
about travel agent commissions and charges. CHOICE is concerned that consumers are not adequately informed about how much an agent is paid or the travel agent’s costs. As a result, consumers are not clear about where their money is going (e.g. how much is going to the agent and how much to suppliers). This means that it can be hard for a consumer to understand at the point of booking or when seeking a refund how much the agent might seek to retain. It is also unclear in some cases who a travel agent is working on behalf of – the consumer or the suppliers of travel services.

To determine how the rights and interests of consumers can be improved, considering these complex operational and supply chain considerations, CHOICE recommends that the ACCC conduct a market study into the travel and tourism sector, with a particular focus on travel agents and intermediaries. The study should help determine whether additional measures beyond those recommended in this report are necessary to ensure effective competition and consumer protection.

PROBLEM THREE: INCONSISTENT AND UNFAIR REMEDIES

Survey respondents reported many and varied outcomes in relation to what remedies, if any, they received when their travel plans did not proceed.

Did you receive a refund for any of your holiday plans?



While some consumers were satisfied with the alternative they were provided, many were not. This was particularly the case for people who reported being unable to obtain a refund.

Consumers out of pocket

17% of survey respondents said they received a full refund. A further 20% said they received a partial refund (of which 8% reported receiving a partial refund and 12% reported receiving a partial refund and the rest as a credit). A further 7% reported receiving a refund but having to pay cancellation fees.

With many consumers having not received a full refund, many expressed dismay that they paid for a service that they have not received. They expressed frustration that thousands of dollars were often tied up with travel and tourism businesses for many months. This situation was particularly acute for people who were experiencing hardship due to job losses.

There were several reasons why consumers have been left out of pocket. These include:

1. travel and tourism businesses imposing cancellation fees and charges, or withholding part of funds;
2. travel and tourism businesses failing to honour a remedy as agreed or as outlined in terms and conditions, changing terms and conditions, and potentially misleading consumers about their rights and remedies; and
3. non-refundable bookings.





1. Fees and charges to get a refund

Some people reported that they were left out of pocket due to travel and tourism businesses charging cancellation fees or charges, or otherwise withholding some funds. The amounts and reasons varied.

Some travel and tourism businesses tried initially to charge high fees, only to later reverse that decision or otherwise waive that aspect of their terms and conditions. Some of these changes may have been due to the action of regulators, as occurred when Flight Centre agreed to stop charging cancellation fees in response to ACCC pressure in May 2020.⁶

Other people continue to be in the dark about how much, if any, of their money they will receive back due to lack of communication on the part of the businesses they booked with.

We paid out over \$30,000...The travel agent has the credit vouchers. This week we have been offered airfare refund less fees of \$2,200 and tour refund less fees of \$1,000 which makes a \$3,200 loss on \$22,000 that was paid out. The further \$8,000 is in accommodation cost which is still in credit only.

...our travel agents were able to get a refund of our return flight to Australia from Emirates. However, this is in question as one of our party got \$200, I got \$600 and another got \$1,000 and we are trying to establish why we received different amounts when we all had the same booking!

Purchased ticket directly from Jetstar. Refund was quick and proceed within a month. Purchased ticket from Qantas via BYOjet (part of Flight Centre). At first they wanted to charge \$550 cancellation for the \$650 ticket. We were opposed to it and was cut off on the phone. After negotiations, they have agreed to reduce cancellation fee to \$250. We agreed to it. Couple weeks later, Flight Centre had announced that they will waive cancellation fee. In the end we were charged \$5 processing fee. All up took 6 months to process the refund. Accommodation, activities and car hire was refunded within a day upon cancellation.

Club Med own the airfare and accommodation bookings. They will only deal with the travel agency that made the booking on our behalf and will not speak or correspond with us. Club Med will charge 50% of our total cost if we choose to cancel. Our money is tied up with them in credit and a new booking that we may or may not be able to use must be made by October this year.

A number of people expressed dismay at commissions or fees associated with bookings made via travel agents. Although many were able to get their money back, it was often after much time, effort and stress.

...When we finally received a refund it was minus \$1113.00 which she had taken as her commission. A similar scenario happened with a cruise we booked through her...The refund from Scenic was not paid within the specified 120 days and we followed through direct with Scenic and after some pressure eventually received the refund minus the agent's commission of \$5,576. The agent told us in a phone call in November that she had spent it...We would have had no problem paying a cancellation fee...Strongly believe that commission on travel not taken should not be taken by the travel agent. Would not use a travel agent again.

I had no trouble with the refund from the airline, they gave a full refund. When I questioned the travel agent about the \$551 I was told the money was non-retrievable and had gone on taxes, commission which went towards wages, store rent, marketing overheads and bills and is also irretrievable.



2. Broken promises from businesses

Some people reported that they were offered credit vouchers in circumstances where they would have been entitled to a refund if they had waited for their service to be cancelled. Others reported that the businesses they booked with did not honour the terms and conditions of the booking.

It has been a nightmare. All our accommodation was booked directly and refunded almost immediately. Flight Center have been dishonest and unhelpful. They told us we would need to cancel, and offered a voucher, and did not explain that by accepting a voucher we were cancelling the flights and then would not be eligible for a refund. We have to travel by November this year or lose all our money which equates to about 7k between the group.

As COVID was getting worse we started to reconsider our overseas travel, I received an email advising if I was to cancel now I would be eligible for a credit voucher. I was unaware that if I had waited a little longer for my flight to be cancelled I would get a full refund, the way they advised us sounded like our only option for the voucher. Then when I asked for the money back as we were struggling through COVID as my partner lost his job we were basically told no as at the time we applied for the credit voucher the flight was still going even though it was cancelled a couple of days later, I felt almost like Jetstar had planned this all along to trap customers and keep their money, if I was aware of my options I would have waited the extra couple of days until my flight was cancelled and got the money back as we really did need it.

Virgin cancelled their Hong Kong route in February 2020, primarily due to declining ticket sales and political unrest. Aunt Betty initially offered to move me to another carrier but then later refused and told me the only option was a refund. In May Aunt Betty told me that they hadn't issued the refund and because Virgin changed their policy in April, a refund was no longer possible, even though it was offered and accepted before the change in policy. I contacted Amex to dispute the transaction, which was successfully challenged by Aunt Betty in reliance on the ACCC guidance, which said that a credit could be offered instead of a refund. What Aunt Betty failed to mention was that the ACCC guidance also stated that if a refund had been previously offered, that refund could not be later denied. They provided correspondence sent to me stating that a credit would be offered but did not include the correspondence, confirming that a refund was offered and accepted.

Some people also reported instances where businesses made it challenging to even request a refund.

Online forms made it hard to ask for a refund, as it wanted to give you a voucher valid for 12 months. To get a refund I had to ring up and speak to a person and ask for refund not vouchers...

Consumers also reported that some businesses changed their terms and conditions over time. Several travel and tourism businesses initially indicated that consumers would be charged fees but later waived them, resulting in full or partial refunds after many months of uncertainty. Other businesses initially only offered credits but later agreed to offer refunds. As noted above, some of these changes are likely to have been the action of regulators.

At first it was 'no refunds'. Then it was 'you'll have to pay cancellation fees'. Then it was 'you won't have to pay cancellation fees... but you might have to'. Then it was 'This isn't my problem you need to talk to the provider directly if you want your money back'. Flight Centre purposefully made this an extremely difficult process in order to try and force their customers into either giving up, paying fees, or taking a credit when you didn't want one. Intrepid ... tried to make us agree to terms and conditions that they made up after the fact, retroactively. Then when we pushed the issue further, asking why there was an arbitrary figure of 15%, they were unable to justify that with actual costs...

...Etihad continually changed their conditions and I needed to constantly check their website daily for months. Eventually they offered refund when they cancelled, which happened and I contacted Flight Centre and was offered refund. Contacting the different stakeholders was time consuming, difficult and stressful...

Emirates told me that I would be penalised \$500. Immediately after the date of the final flight, I received a full refund in my bank account. I guess there must have been a change of policy.

Rex offered only a credit at first but then changed to a full refund.

Flights booked through BYOjet in January 2020. Once flights were cancelled by the airline, Cathay Pacific refunded immediately to BYOjet, who held the money for 12 weeks. Their website changed their terms and conditions after the fact and tried to add cancellation fees. Spent many hours on hold, on the phone and emailing after they added a \$200/person cancellation fee. Made complaints to Consumer Affairs and the Office of Fair Trading. Eventually the fees were waived by the parent company Flight Centre...



3. Challenges with some non-refundable bookings

Consumers who had booked non-refundable services often lost their money. This included a number of examples of accommodation booked through Airbnb where individual accommodation providers had non-refundable terms and conditions.

I had booked an Airbnb in Sydney to spend time with my daughter who lives there, and who I hadn't seen because of COVID. It cost \$2800.00. Airbnb asked the host to approve a refund, but he refused. I offered to negotiate a partial refund, but he chose to keep my money

We had an Airbnb booked at Gordon in greater Sydney. Because we live in Queensland we had to cancel the booking or face two weeks hotel quarantine at our expense on arrival home. The owner refused to return our money as it was part of their terms and conditions. We appealed as it was not our fault, but he refused. Airbnb management also asked him to reconsider but he refused.

This was not a universal experience. Some travel and tourism businesses refunded customers even though their terms and conditions did not technically provide for this.

Analysis

There was an enormous degree of variation in what, if anything, people received by way of remedies where they had paid for a travel or tourism service that could not be provided.

- Some people received a full refund, even where the terms and conditions of a business did not provide for that.
- Others lost money through unexpected cancellation fees and charges.
- Some feel they have effectively lost their money as it is now tied up in credits or vouchers they are unable to use.
- Other reported that they are yet to receive anything back.

These consumer experiences reveal several acute concerns that require action by governments and regulators:

1. gaps in the Australian consumer protection framework;
2. challenges in recovering funds from businesses based and operating entirely overseas; and
3. misleading or deceptive behaviour by travel and tourism business.



1. Gaps in the Australian consumer protection framework

The confusion and poor outcomes experienced by consumers are the result of a patchwork legal framework, including:

- the Australian Consumer Law – specifically, section 267(1)(c), which provides that there is no remedy for breach of consumer guarantees as to services where the only reason for failure to comply was ‘an act, default or omission of...any person other than the supplier’;
- ‘force majeure’ clauses in contracts (which can relieve a party to a contract from performing its obligations due to an event outside its control);
- the common law doctrine of frustration (which in some circumstances relieves a party to a contract from obligations where the contract cannot be fulfilled due to unforeseen events that aren't the fault of either party); and
- state and territory legislation regarding frustrated contracts (which varies across jurisdictions).

This made it extremely difficult for consumer advocates like CHOICE and consumer regulators to provide consumers with information about their rights, because the answer in each individual case depended on factors such as

- the way in which a booking was cancelled;
- the nature of COVID-19 restrictions at that point in time;
- the terms and conditions of the businesses involved; and
- the jurisdiction in which the contract or contracts were made.

In reality, most people were left depending on the terms and conditions of their contract with the travel business through which they booked. These terms and conditions were often vague, confusing and difficult to interpret.

Many sets of terms and conditions imposed significant restrictions on the ability of a consumer to obtain a refund for a service that was not able to be provided. This situation was particularly unfair for people who needed a refund because they were in financial hardship or who found themselves with no realistic prospect of being able to receive the service they paid for due to health reasons or a material change to the service offered to them.

Given the number of consumers affected, the often large sums of money involved and the continued likelihood of services being affected by changing restrictions, this complex and variable legal patchwork is inadequate. **Just as other industries have been regulated to provide minimum consumer protections, a basic level of standardised consumer rights is required to provide clarity, consistency and confidence to consumers booking travel and tourism services in the future.**

Government should focus in particular on making it easier for consumers to obtain a refund where the supplier of a travel or tourism service conducts business within Australia or is otherwise bound by the Australian Consumer Law. This should apply regardless of whether a service was booked directly by the consumer or via a travel agent.



The United Kingdom and European Union require refunds in certain circumstances. For example, a package holiday provider must provide a refund within 14 days where a holiday is cancelled due to 'unavoidable and extraordinary circumstances' and an airline must provide a refund within seven days of a flight cancellation.⁷ Australian governments could use these protections as a model for reform.

2. Challenges in recovering funds from businesses operating entirely overseas

Consumers face greater complexity when their funds are remitted to intermediaries or suppliers based wholly in other jurisdictions. In many situations, money paid by consumers to travel agents (less any agent fees or commissions) are paid by agents to overseas intermediaries or suppliers within a short period of time. This means that agents – especially small businesses – may be unable to provide refunds unless they are in turn able to recoup them from the overseas businesses involved.

This is a problem that requires cross-sectoral and international collaboration to resolve. That is why CHOICE is advocating for the Federal Government to work with industry groups, consumer organisations and foreign governments to establish mechanisms that enable Australian-based consumers to obtain refunds. Current negotiations to establish the Australia-EU Free Trade Agreement and the Australia-United Kingdom Free Trade Agreement provide immediate opportunities to improve the rights of Australian consumers.

3. Misleading or deceptive conduct by travel and tourism businesses

Finally, CHOICE is concerned that some travel and tourism businesses may have engaged in misleading or deceptive conduct when communicating with consumers about their rights in relation to cancellations. The experiences reported to CHOICE by consumers suggest that some businesses gave consumers the impression that they were only entitled to a credit or voucher in circumstances where they may have been entitled to a refund.

Despite the gaps in the consumer protection framework outlined above, the general legal prohibition on misleading representations and misleading or deceptive conduct under the Australian Consumer Law apply. CHOICE encourages consumer regulators to take enforcement action where they become aware of any such conduct.⁸

Impactical or useless credits and vouchers

25% of survey respondents received a travel voucher or credit. 12% received a combination of partial refund and travel credits and a further 6% were given the ability to reschedule the booking to another time. This means that for 43% of respondents, the ability to obtain value from the remedy they were offered is dependent on their ability to use vouchers, credits or rebooking to travel at a future time.

Some travel and tourism businesses offered consumers incentives to take up credits towards future trips (for example, credits to the value of 110% or 125% of the value of the price paid for the original service). This was particularly the case with cruise operators.

Although some survey respondents were satisfied with credits or vouchers, many remain concerned that they won't be able to practically use them. Consumers questioned whether they would be able to use credits due to:

- continued border and travel restrictions;
- short expiry periods;
- travelers being elderly or vulnerable to COVID-19;
- inability to arrange time off work in the future;
- the large value of the voucher or credit and the need to spend it domestically instead of internationally; or
- routes or locations originally booked no longer being available.

A number of travel and tourism businesses initially gave vouchers with expiration dates in 2020, but have since extended the expiration date. Survey responders are unclear of what will happen if they are not able to use their credit or voucher before the expiration date.

We received accommodation deposit \$300 and insurance payment \$902 back. The rest is supposedly in credit voucher with Virgin. How are we going to spend \$9000 by 2022 in interstate travel?

Have zero chance of using up our flight credits by the deadline because the conditions are so tight and there are so many others who need to use them up in the same time frame.

My main challenge is with Scenic. I do not see myself using this credit. At my age I may not go O.S. again and who knows when it will be safe to travel. I am not likely to use their services within Australia...

In December 2020 I received a credit of \$146.86 from RCI-Our Vacation Centre. I don't know what that amount represents. I emailed RCI for clarification. They advised that \$550 was being held by them for any travel needs I may have in the next 12 months. \$800 was in credit with Celebrity Cruises to use on a future cruise. It is unlikely that I will book another cruise as I am now in my 80th year and I feel that cruises are not the healthiest/safest type of travel for me.

I asked for a refund for my friend and myself but Webjet exclusive refused and said they only issued gift vouchers. After a lot of emails and complaints we were given vouchers with an expiry date 04/02/2023 which is ok except I am now 81 and who says I will be able to travel then.

...the cruise provider only permitted a credit note. My husband was then without a job for 16 weeks and NO assistance or payments and we tried again for our credit refund – they said we have until 2022 or transfer to a family. Both solutions no help and we are talking over \$5000... I would prefer our money back to cover bills.



Analysis

These experiences demonstrate the need for specific and enhanced consumer rights around credits and vouchers.

Credits and vouchers are not dissimilar to gift cards. With effect from 1 November 2019, the Australian Consumer Law was amended to prescribe minimum consumer rights connected to gift cards, including a minimum three-year expiry period and a requirement to display expiry dates. Most post-purchase fees on gift cards have also been banned.⁹

These changes were introduced in recognition of the fact that consumers can experience unfair financial loss when a gift card expires. They also sought to address the complexity faced by consumers and businesses alike that came from a lack of national uniformity. The new consumer rights around gift cards were introduced to improve ‘...fairness for consumers, ensuring they have an appropriate period of time to redeem the balance of a gift card.’¹⁰

However, credits or vouchers provided in lieu of a travel or tourism service differ from a purchased gift card.

1. Generally, a consumer would have booked and paid their money with a specific service in mind (whereas many gift cards are for a value that can be used flexibly).
2. Money provided for travel services can equate to thousands or tens of thousands of dollars – far greater than the value of many gift cards offered by retail stores.
3. It is foreseeable that travel will continue to stop and start, or otherwise be disrupted due to public health restrictions. This means that consumers might be practically unable to use their credits or vouchers for long periods of time.
4. Services might have materially changed or be unavailable due to the impact of COVID-19 (including, for example, modes of travel like cruising being prohibited, international travel being suspended or severely restricted, routes of travel being suspended or businesses becoming insolvent).

Travel credits and vouchers have to be subject to minimum consumer protections to ensure that consumers can obtain value for the money they have paid. It is also essential for consumers and businesses to have clear and consistent information about their rights and responsibilities in connection with travel credits and vouchers. The reforms to gift cards provide a good basis for thinking about reforms to travel credits and vouchers.



PROBLEM FOUR: POOR PROTECTIONS WHEN COMPANIES BECOME INSOLVENT

As the effects of the COVID-19 pandemic drastically reduced the revenue of travel and tourism business, numerous businesses globally entered into administration or collapsed. Australian-based businesses affected in these ways included Fly 365, STA Travel, and Virgin Australia. Virgin Australia was subsequently acquired and has since re-commenced trading.

The same has happened with some businesses based overseas, with the uncertain status of Thai Airways affecting numerous Australian consumers.

Advice from Flight Centre was that Thai Airways were possibly to go insolvent and not liable for refunds. Still waiting for some resolution. I have no evidence that my funds were actually paid to Thai in the first place, as COVID was announced shortly after our money was deposited with Flight Centre.

In great hole due to STA no longer operating and Qantas refusing to speak to us because we didn't book with them directly.

...Just received email from STA administrators to say little likelihood of refund at all and again to contact the carrier and request refund directly – which I probably should have done at the beginning but this is the first time I have used a travel agent in at least 20 years. Now I have to go through another process to contact the airline. I have found this process daunting and complex having to politely assert myself and provide endless details.

...When STA travel went into liquidation, we were sent an email from Deloitte to fill in a proof of debt form. There was a lot of lingo which I didn't understand in the letter. I filled it in and sent it off but didn't receive and acknowledgement of receipt. I sent another letter asking if they had received it and tried to ring Deloitte who said I needed to send an email. Which I did. Still no reply. I tried contacting Delta directly which was difficult and when I put in the booking number supplied to me by STA travel, Delta said it didn't exist. ... Not much can be done but wait for Deloitte. It has been months and haven't heard anything. We don't have a lot of money and this whole process has caused me a fair amount of stress and I'm not sure what else I can do.

Analysis

Historically, consumers had protection in the event of the collapse of an Australian-based travel agent, with the Travel Compensation Fund (TCF) providing compensation. The fund was paid for by levies from travel agents.

However, this mechanism was disbanded in 2014 when licencing requirements for travel agents were also abolished as part of the Travel Industry Transition Plan. CHOICE opposed those changes in our submission to the draft Travel Industry Transition Plan.

The reasons that governments provided for proceeding with those changes at the time included the fact that changes in the industry meant that not all travel agents and intermediaries were covered by licensing requirements or the TCF, and that people could rely on credit card chargebacks or travel insurance to get their money back. Funds that existed when the TCF was disbanded went to establish the voluntary Australian Travel Agent Accreditation Scheme (ATAS), and to improve information and advice for consumers.¹¹

CHOICE is concerned that ATAS has been an ineffective self-regulatory scheme, that credit card chargebacks have not provided a suitable remedy for consumers, and that while some travel insurance covered insolvency of a travel 'provider', no travel insurance at the date of this report covered insolvency of a travel agent.

Given that insolvencies are likely to continue to affect the travel and tourism sectors, the ACCC market study that we propose in this report should examine options for improving consumer protection in the case of insolvency, including whether it is appropriate to establish an industry-funded last resort compensation fund.



LOOKING AHEAD: BUILDING BACK CONSUMER CONFIDENCE

Consumers recognise the challenges that COVID-19 has created for the travel and tourism sector

It is undeniable that the travel and tourism sector has faced very significant challenges caused by the onset of COVID-19 and associated public health restrictions. This is particularly so for those businesses that are reliant on international travellers.

Consumers are acutely aware of this and many reported feeling considerable sympathy for owners and employees of travel and tourism businesses. Many respondents to the survey recognised the considerable cost – in both time and money – that these conditions were creating for travel and tourism businesses.

Felt sorry for the operators – they have had a terrible time and many lost more than any individual.

We had hoped to be able to travel in Easter this year, so we asked for the cruise and accommodation bookings to be put on hold, but we didn't ask for a refund. We felt that the landlords and operators would be having a hard time with COVID cancellations so we thought it would be easier on them to keep our money, at least for the time being.

Negative experiences with some businesses have shattered consumer confidence

At the same time, the negative and protracted experiences of other consumers mean that they feel they can no longer trust some travel and tourism businesses with their money. Some have vowed never to use particular businesses again.

I can not understand how a business can be within its rights to take money for a service it can not deliver. There is no other business I know of that would be allowed to do that within the law. These businesses have now had access to our money for years and we feel they should not only be refunding the funds but do so with interest rather than taking fees. We feel the industry has done a lot of harm to itself through the lack of good will.

Overseas travel is extremely unlikely in 2021. Companies holding money for this long is unethical.

Dreadful. Constant chasing, ever changing estimates of payment date, staff changes and no continuity. The overall perception was that Flight Centres bottom line was more important.

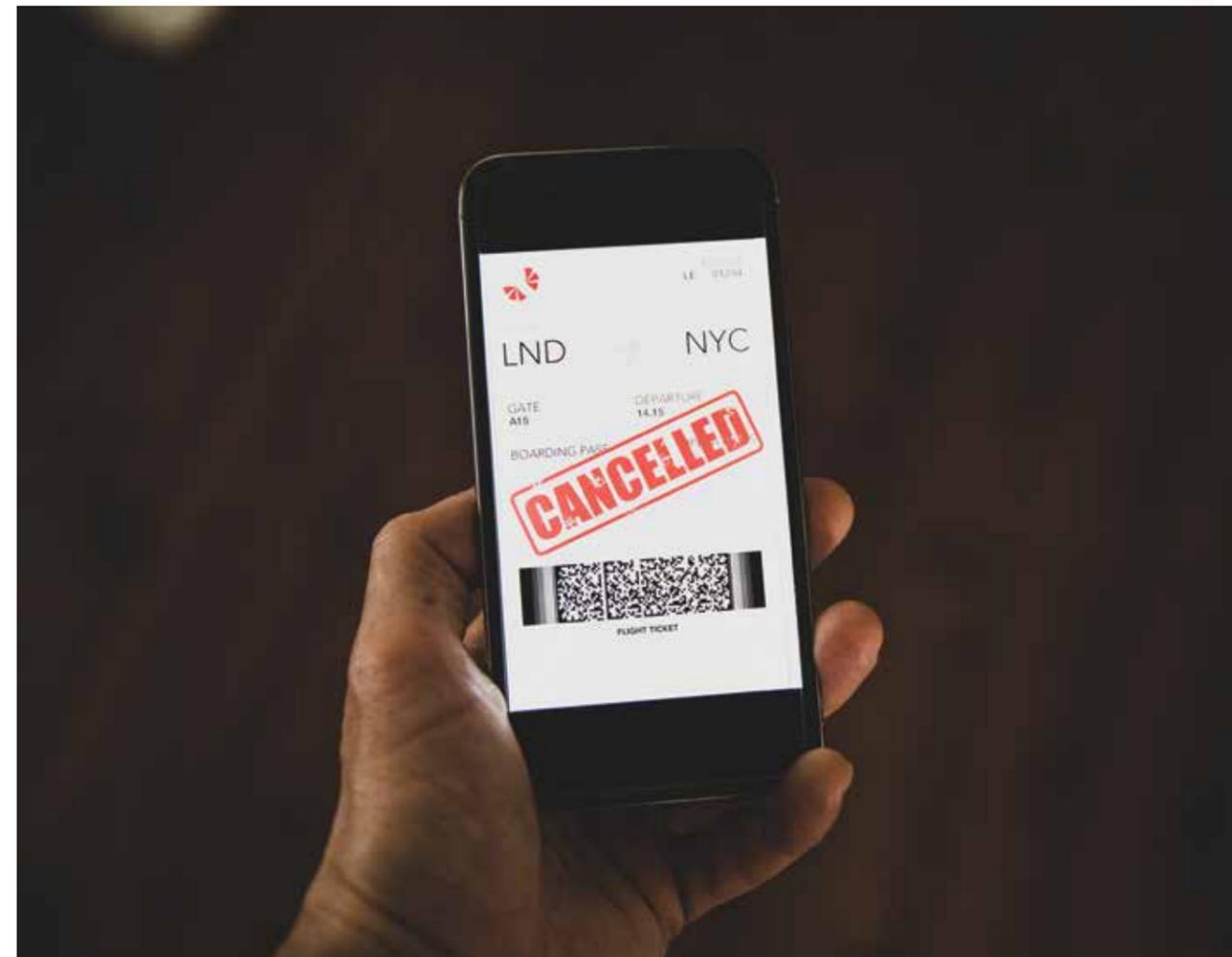
Trying to get a refund or travel credit has been so complicated and really put a downer with booking a holiday again.



Issues from 2020 need to be addressed

To address unsatisfactory practices of some travel and tourism businesses exposed by the COVID-19 pandemic, CHOICE is calling for continued enforcement action by consumer regulators against businesses that may have breached the Australian Consumer Law through:

- failure to adhere to terms and conditions (including through unreasonable fees or charges)
- unreasonable delay in issuing refunds; and
- misleading consumers about their rights to refunds or other remedies.



LOOKING AHEAD: BUILDING BACK CONSUMER CONFIDENCE

There's no doubt that Australians are eager to travel again. But it is absolutely foreseeable that the impacts of COVID-19 will continue to disrupt travel and tourism arrangements. This is evident from continued changes to state and territory travel restrictions and temporary suspensions of the 'Trans-Tasman Travel Bubble'.

Recent decades have also shown the vulnerability of travel to other unexpected events, including natural disasters, terrorism events, civil unrest and conflict.

This difficulty has happened before with Jetstar when they have cancelled flights due to the volcanic eruption in Bali and also due to an unserviced plane (their excuse).

Policy settings must reflect this reality and provide as much clarity and certainty as possible to consumers and businesses alike, so that when disruptions occur, everyone is better equipped to understand their rights and responsibilities.

The current state of affairs, dictated largely by terms and conditions set at the discretion of travel and tourism businesses, is wholly unsatisfactory.

It is essential that consumers are included in discussions about how to improve protections in the future, and that any public funding to support the travel and tourism industries is contingent upon improving outcomes for consumers, including adherence to codes of conduct around minimum consumer rights and service.

Governments have one chance to get this right. If they do, Australian consumers will be able to return to enjoying domestic and international travel as it becomes safe, with confidence that their rights will be protected.

ABOUT CHOICE'S TRAVEL SURVEY

CHOICE conducted an online survey on consumer experiences of travel cancellations due to COVID-19 on choice.com.au. CHOICE received 4443 responses.

The survey opened on 15 January 2021 and closed on 19 March 2021. CHOICE supporters were informed about the survey, but it was also open to members of the public. The survey is not nationally representative; instead it reflects the experiences of people motivated to share their story, especially of people who know of or are members of CHOICE. This group of people likely have a greater understanding of their consumer rights and are more confident requesting refunds.





CHOICE's vision for fairer and clearer consumer protections for travellers

Endnotes

- 1 Australian Competition and Consumer Commission, Travel problems top list of COVID-19-related reports (Media Release) accessed at <https://www.accc.gov.au/media-release/travel-problems-top-list-of-covid-19-related-reports>, 1 June 2021.
- 2 Airline Customer Advocate <http://www.airlinecustomeradvocate.com.au/General/Default.aspx>, 2 June 2021.
- 3 Airline Customer Advocate, Lodge a complaint – Special COVID-19 Notice accessed at <http://www.airlinecustomeradvocate.com.au/General/LodgeComplaintPre.aspx>, 10 May 2021.
- 4 See s 259(2), 260(1)(c) of the Competition and Consumer Act 2010 (Cth)
- 5 Australian Competition and Consumer Commission and ACL Regulators, ACCC and ACL Regulators best practice guidance for the Travel Industry for COVID-19 related travel cancellations (July 2020) accessible at <https://www.accc.gov.au/system/files/ACCC%20and%20ACL%20Regulators%20best%20practice%20guidance%20for%20the%20Travel%20Industry%20for%20COVID-19%20related%20travel%20cancellations.pdf>.
- 6 ACCC, “Flight Centre to refund cancellation fees”, 3 May 2020, accessed 24 June 2020 <https://www.accc.gov.au/media-release/flight-centre-to-refund-cancellation-fees>
- 7 European Union: Directive (EU) 2015/2302 of 25 November 2015 on package travel and linked travel arrangements, amending Regulation (EC) No 2006/2004 and Directive 2011/83/EU of the European Parliament and of the Council and repealing Council Directive 90/314/EEC accessible at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32015L2302>, Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91 accessible at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32004R0261> and The Package Travel and Linked Travel Arrangements Regulations 2018 (UK) accessible at <https://www.legislation.gov.uk/ukSI/2018/634/made>.
- 8 The ACCC and ACL Regulators have explained: Where travel services cannot proceed due to the actions of a third party, such as restrictions on travel imposed due to the COVID-19 pandemic, the consumer guarantees in the Australian Consumer Law (ACL) are unlikely to apply. However, other consumer protections contained in the ACL continue to apply during the COVID-19 pandemic. The pandemic does not permit businesses to engage in misleading, deceptive or unconscionable conduct, in contravention of the ACL. Nor does it excuse such conduct. See ACCC and ACL Regulators best practice guidance for the Travel Industry for COVID-19 related travel cancellations (July 2020).
- 9 The Treasury Laws Amendment (Gift Cards) Act 2018 inserted a new section into the ACL regarding gift cards. See Competition and Consumer Act 2010 (Cth) Sch 2, Ch 3, Part 3-2, Div 3A – Gift Cards.
- 10 Explanatory Memorandum, Treasury Laws Amendment (Gift Cards) Bill 2018, Circulated by authority of the Assistant Treasurer, the Hon Stuart Robert MP accessed at: https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bld=r6188, 21 May 2021.
- 11 CHOICE was provided with funding to provide consumer advice. That funding ended on 31 January 2021.