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## AUSTRALIAN CAMPS ASSOCIATION

### Cancellations: A general legal guide and FAQs

*Please note this document contains general information only and is not a substitute for seeking legal advice on your specific business contracts and circumstances. Each contract and the best course of action for your business should be evaluated on a case-by-case basis, taking into account the potential financial, operational, legal and reputational risks and impacts on the business, while maintaining customer and industry goodwill.*

#### What is in this document

Many of our members have contacted us with valid concerns about the appropriate legal and practical response to cancellations of bookings. In particular, our members have received various requests for refunds arising from the ongoing impacts of the COVID-19 (Coronavirus) pandemic and government policy affecting both our members and customers' ability or willingness to proceed with prior camp and accommodation bookings.

This guide provides a general overview of key legal issues, guidance and examples of the frequently asked questions (**FAQs**) from our members. Please note that each member will be affected differently, due to varying state government guidance, as well as different customer booking terms and conditions and cancellation policies. As the liability and rights of parties arise primarily from these individual contractual arrangements and specific circumstances, this document can only provide general guidance and suggestions.

Regulators such as the Australian Competition and Consumer Commission (**ACCC**) have publicly indicated their expectation that businesses must treat consumers fairly, and the reputation of and goodwill toward the camp and accommodation sector will depend upon the response of businesses to the pandemic. We know our members care about maintaining their customer relationships and industry goodwill in these unprecedented circumstances. Accordingly, when considering the most appropriate response for your business to customer requests, we recommend that you carefully balance your specific financial and legal obligations (including any applicable contract terms or cancellation policy) with long term potential relationship and reputational impacts in order to find fair, practical and ideally mutually agreed solutions for all parties concerned.

#### CONTRACTS: KEY CONCEPTS

##### Force Majeure Events, Frustration of Contracts and Cancellation Policies

In legal terms, there are a few key concepts that will determine how you must deal with contractual obligations in an environment where a party to the contract is prevented from performing the contract due to:

- a '**Force Majeure**' Event (like the Coronavirus pandemic); or
- a situation where a contract may be '**frustrated**'; or
- other circumstances in which your **cancellation policy** may apply.

Set out below are the common questions and issues facing our members, with FAQs and answers to provide general guidance. However, we appreciate that each of our members have differing contract terms and cancellation policies and are dealing with a wide range of customer circumstances and requests. We have assumed for the purpose of this guide that each member has some form of written booking terms (albeit varying in content). Accordingly,

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we have set out in **Schedule 1** the key principles relating to *Force Majeure Events, Frustration of Contracts* and *Cancellation Policies* for your reference and application to your particular circumstances. Whether you have written terms and conditions or not, upon a business accepting a booking, you create a form of contract between yourself and the booking party. It is in the interests of both parties that you have a clear understanding of what those contract terms and conditions are (and generally, the best way to do so is to have written terms and conditions).

### Specific Camp and Accommodation Cancellation FAQs

Set out below are some common questions we are receiving from members. You may also wish to suggest customers **check their travel insurance policy** (if any) to see if cancellations are covered – this will vary depending on each customer’s relevant circumstances and policy terms.

**Q: We had a booking for a school camp and the school has asked to cancel because of Department of Education recommendations for schools to consider cancelling for policy reasons or due to health risks such as COVID-19 (but there are no *mandatory* government restrictions on the school attending). Do we have to provide a full refund, or can we charge a cancellation fee?**

This will depend on the terms and conditions of the booking and any cancellation policy as to whether deposits or bookings are non-refundable, and if cancellation fees apply. The terms may, for example, state that a cancellation fee is payable, particularly where the cancellation is through no fault of the accommodation provider (ie. it is still open and *it is still lawful* for the school to attend). See below for slightly different circumstances of ‘frustration’ of contract where both the school and provider are *prevented* from fulfilling the contract due to mandatory policies or health directives by the government.

Also, be aware of unfair contract laws which in some circumstances may be considered ‘unfair’ and void where a business is permitted to retain the full deposit or payment without having delivered any goods or services. Ask yourself whether it is reasonably necessary to retain the full amount to protect legitimate business interests? It is unlikely to be unfair if you are covering costs you have incurred (e.g. charging a reasonable administration fee or covering unavoidable expenses incurred up to the time of cancellation).

**Q: If the government introduces restrictions on social and group gatherings, and a school with a group booking requests that we cancel their accommodation booking and receive a full refund. Technically we are still open, and in our view we have sufficient space to comply with any social distancing requirements. What are our options?**

If it is or becomes unlawful to host the group due to health directives and government restrictions on social or group gatherings, the contract will likely be frustrated as neither party can honour the booking. This would mean no cancellation fee would apply – that would be unfair in the circumstances. Technically if you are still open, the question is whether the ‘frustration’ is on the part of the school (e.g. are they unable to attend due to restrictions on public gatherings and groups) – see **Schedule 1** for the key principles relating to *Frustration of Contracts*. As an overarching principle, it is important to be aware of and avoid potentially unfair or unconscionable conduct, which

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is prohibited under the Australian Consumer Law, when dealing with customers in these circumstances.

**Q: A number of our bookings have been cancelled as a result of camps being classified as unsafe by the owners of the group of schools. Is this a Force Majeure Event?**

Whether an event or circumstance comprises a Force Majeure Event will depend on whether the terms and conditions includes the concept of 'Force Majeure' and the relevant definition of Force Majeure Event in those terms and conditions (if any). The definition will often refer either to an event 'outside of the reasonable control of a party' or list out the specific events that will be considered to be Force Majeure. Sometimes the event will need to satisfy both the above conditions to be a Force Majeure Event.

The applicable legal position in any particular situation can only be determined by considering the applicable terms and conditions of booking. However, it may be that there are circumstances where the classification of the camp as unsafe (and not permitted) by an entity in control of the school could comprise Force Majeure; for example, if the definition of Force Majeure Event refers solely to circumstances outside of the reasonable control of the school.

Depending on how strictly the schools is bound to follow the guidance from the owning entity, it may even be that it is actually *prevented* from attending the camp. See below our guidance on 'frustration' of contract, which depending on the circumstances, may apply.

**Q: We have had a private group booking request a refund because the campground is now closed due to government restrictions. Do we have to give them their money back or can we postpone to a later date?**

If the customer agrees to postpone, you can give them a credit note or book them in for a later date. If the campground is closed for the relevant dates of their booking, the contract is frustrated (as you cannot perform the accommodation services) and the customer is entitled to a refund. You may wish to offer them the options of a refund, credit note or voucher, but be careful not to mislead them as to their entitlement to a refund as that would be an offence under Australian Consumer Laws.

**Q: A family has notified us that they have decided not to attend our accommodation during their school holiday booking due to concerns regarding regional travel, social distancing and other health related issues. Are they entitled to a refund?**

Usually, if the family merely does not want to attend, that would be considered 'change of mind' and they would not be entitled to a refund, subject to any applicable booking terms and conditions or cancellation policy. For example, some booking terms and cancellation policies make accommodation fees fully refundable if cancelled within x period of time prior to the booking date.

If the family *cannot* attend the accommodation due to government directed closures, travel and other social distancing restrictions, the contract would be frustrated (and the obligation to pay discharged).

The timing of this is key, as they may not have been entitled to a refund initially, but in the event of stricter lockdowns subsequently occurring, the contract could be frustrated and a refund may apply. Of course, a better practical outcome would be for

the parties to agree to put the contract into 'hibernation' and postpone the booking date until after the restrictions are lifted.

**Q: In a school camp or large booking context, what is a reasonable cancellation fee? When is it reasonable to retain the deposit?**

This will depend on the terms and conditions of your contract. Assuming this is in 'change of mind' or pure cancellation circumstances (as opposed to frustration or Force Majeure), the timing of the cancellation and how much notice is given will be key as to whether the fees are enforceable. You must ask whether the fees are objectively 'reasonable' and reflect your legitimate business costs.

Usually, there will be some compromise on both sides and a business would likely (especially if it has a low risk appetite) apply some form of discount or only seek to cover actual out of pocket expenses and third party charges that it cannot get back. For this reason, you often see tiered cancellation policies that vary the (partial) amount refunded depending on how close it is to the booking dates. The size of the booking may impact this as well as it is much harder to rebook a whole site (and find say 100 replacement customers).

**Q: We suspect some of our customers are still using Covid-19 as an excuse to cancel where there has simply been a change of mind. What proof do we need to charge our cancellation fee?**

Establishing the truth of representations made by customers can be difficult, particularly when dealing with information regarding the health of attendees such as employees or students. If you suspect a customer is not representing the factual position correctly in their correspondence, you can always request evidence to support the cancellation. However, members should avoid requesting or receiving any confidential health information regarding individuals, as that information attracts special protection under Australian privacy laws.

The risks associated with wrongfully applying a cancellation policy – ie. where a contract has in fact been frustrated at law, where applying the applicable terms is 'unfair', or where the applicable fee is found to be a 'penalty' – will typically be greater than financial impact of accepting the customer's cancellation. Unless you have strong grounds to suspect that information provided by customers is false, the less risky position will usually be to accept the customer's reason for cancellation at face value.

**Q: We have a longstanding customer who has cancelled their regular yearly booking. We don't want to charge them the full cancellation fee to preserve the relationship, but what is a fair amount we can charge?**

Customer relationships are extremely important for our members and we appreciate some of our members find it difficult to raise the difficult subject of cancellation fees in their discussions with customers. However, there are ways to raise these matters tactfully while maintaining robust commercial positions, for example by pre-empting difficult emails with a telephone call to a regular contact at a customer business, by describing the financial impact resulting from the cancellation, or proposing mutually agreeable alternatives to cancellation.

Whether a cancellation fee is 'fair' will depend on the circumstances of each situation. It is unlikely to be unfair if the cancellation fee is to cover actual costs you will incur

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due to the cancellation (e.g. charging a reasonable administration fee or covering unavoidable supplier expenses incurred up to the time of cancellation).

**Q: Some of our interstate bookings have been cancelled due to government restrictions, but camps are still permitted in our camp location. Does this classify as frustration of contract?**

At law, the principle of frustration of contract applies where there is a radical change in the circumstances in which a contract is to be performed by *either party* (due to the occurrence of an unforeseeable, supervening event beyond their control). This means that even if you are still able to perform the contract, if the customer is no longer able to perform their side of the contract, then the contract could be considered 'frustrated'.

The more difficult question is whether the banning of school camps by the government could be considered 'unforeseeable', in the circumstances. We cannot provide a definitive answer to this question, as it will depend on the particular circumstances of the booking (including when the booking was made).

**Q: A number of our bookings have recently cancelled due to students or their families having contracted Covid-19 and needing to isolate. In some circumstances, schools have also cancelled their bookings because they are short of staff members available to attend the camp. Is that Force Majeure, Frustration of Contract or does our cancellation policy apply?**

As set out elsewhere in this document, whether an event or circumstance will be considered a Force Majeure Event will depend on the terms and conditions of the booking. If the terms and conditions contain a Force Majeure clause, this should be checked carefully to establish whether the relevant event described above is a 'Force Majeure Event' and the consequences set out in the clause. For example, does it excuse them wholly or just for part of their obligations (such as sending a decreased number of students without penalty). Note should also be taken of whether the customer needs to provide notice before they can take advantage of the Force Majeure provisions.

Irrespective of whether the event forcing cancellation of the booking comprises a Force Majeure under the terms and conditions, it may have frustrated the contract at law. If the attendees are *unable* to attend due to health orders, there could be a strong argument that this comprises frustration of contract. Similarly, if the school is short of staff and *it is impossible* to find replacement or casual staff to replace those staff members, then it could be that the school is *unable* to both attend the booking and satisfy its duty of care to students. This could be argued to constitute frustration of contract.

In the circumstances described above, members should be careful not to apply cancellation policies that result in fees being payable by the customer, unless it is clear that the parties' obligations have not been frustrated by the relevant event. This can be difficult and, where this represents a significant loss to a member, we recommend you seek legal advice.

**Q: We have a large booking from a group which comprises individuals with various disabilities and health issues. They wish to cancel at short notice due to health risks associated with the pandemic. Do we have to refund their payments, or can we retain them per our cancellation policy?**

Unconscionable conduct is prohibited under the Australia Consumer Law and care must be taken when dealing with vulnerable persons, or entities connected with their care. In considering whether conduct will be 'unconscionable', the courts will assess (amongst other things) whether the party against which the contract is being enforced against was in a situation of 'special disadvantage' or disability, as compared to the party seeking to enforce a contract. It is therefore important that businesses take care to be reasonable when exercising rights under a contract, taking all relevant matters into consideration.

In circumstances where a group is comprised of persons with health issues or disabilities, we would ordinarily expect that the entity or person(s) in charge of care of that group would be subject to a higher duty of care than would otherwise be the case. This could place that entity or person(s) at a disadvantage in their negotiations with you regarding the cancellation, in that they are required to balance their duty of care to vulnerable persons against their contractual obligations under your booking terms and conditions. Care should be taken to ensure that you do not take advantage of that special disadvantage in your dealings with that person or entity. The ACA strongly recommends you seek legal advice in these types of scenarios.

## ACCC AND AUSTRALIAN CONSUMER LAWS

The Australian Competition & Consumer Commission (**ACCC**) has indicated that it is alert to any instances of unfair or unconscionable conduct on the part of businesses in dealing with consumers, especially due to the ongoing effects of the pandemic. The ACCC has encouraged all businesses to continue to 'treat consumers fairly' and has issued some general guidance on booking cancellations which may be of use to members.

Businesses should be mindful of obligations under the Australian Consumer Law (**ACL**), which in addition to statutory rights ('consumer guarantees') to refunds or replacement services in certain circumstances, include:

- to **not mislead** customers, including about what the customer is entitled to under the business' terms and conditions or in relation to consumer guarantees and other ACL rights such as rights to a refund;
- to **not act unconscionably** when dealing with customers;
- to not seek to rely on **unfair terms** in standard form contracts with customers.

Businesses should also be aware that in many circumstances, small businesses are also defined as consumers (and so consumer rights and the ACL will apply), especially in relation to dealing with large businesses and for the purpose of unfair contract laws (see Schedule 1).

### Exceptions to ACL consumer guarantees

Consumers' rights are not limitless and the consumer guarantees under the ACL do not require you to provide a remedy unless one of the guarantees has not been met.

For example, you may not be required to provide a remedy if:

- a consumer simply changes their mind, decides they do not like the purchase or has no use for it;
- discovers they can buy the goods or services more cheaply elsewhere.

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Accordingly, cancellations prior to any government travel / gathering restrictions merely because the customer had health concerns (including concerns about COVID-19) may be treated as a 'change of mind', depending on the timing and circumstances.

Customer entitlements to a full or partial refund, credit note or voucher would also depend on your booking terms and cancellation policy (however regard also should be had to regulator expectations discussed below). Of course, where the government restrictions and health directions in your state have subsequently changed and if a party is now unable to perform the contract (due to lockdown, restrictions on public gatherings or otherwise), the contract law principles of frustration will apply (see **Schedule 1**).

## REGULATORY CONSIDERATIONS

### ACCC guidance for business

The ACCC is a highly active, effective and public facing regulator whose attention ACA members should take care to avoid, from both a legal and reputational perspective. The ACCC will prosecute businesses who treat consumers unfairly, and are effective in using their regulatory weight and best practice approach to encourage businesses to amend their refund and cancellation policies or potentially unfair contract terms so as to ensure consumer protection and a fair marketplace.

In July 2020 the ACCC issued specific guidance for the travel sector, setting out expectations for how the sector should manage COVID-19 cancellations. These expectations continue to apply and may be useful to consider to the extent relevant and applicable given the analogous challenges facing the travel and camps sectors.

### Hardship and special circumstances

The ACCC has specifically indicated it expects businesses to also take into account individual consumers' circumstances, especially exceptional cases and those who are experiencing particular hardship as a result of the pandemic, when processing COVID-19 related cancellations.

The ACCC recommends that:

*Businesses should consider providing refunds even where the contractual entitlement is to credit only, including in cases where:*

- *consumers are unlikely to be in a position to use the credit note before its expiry;*
- *consumers are experiencing financial hardship as a result of the COVID-19 pandemic (for example through loss of, or reduced, employment),*
- *consumers may not be able to travel while there is still any risk of COVID-19, for example, if they are immunocompromised, or*
- *the reason the travel was booked was to attend an event that due to its nature was a one-off event not capable of being carried out again.*

*In these cases, businesses should also consider whether it's appropriate to waive any entitlement they may have to retain amounts to cover expenses.*

However, it is noted that these are ACCC 'expectations' or best practice recommendations only (from a consumer protection perspective), and indeed the financial hardship facing an ACA member business may make these options commercially unviable.

Communication will be key, and it will be in the interests of businesses to find a balance between protecting their financial interests under their cancellation policies, compliance with ACL and

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'frustration of contract' obligations to provide refunds in certain circumstances, and incentivising customers to take up a credit note and rebook on appropriately flexible terms.

In doing so, businesses will need to be careful to not be misleading about options and rights to refunds vs credit notes. Businesses may also wish to consider adopting a flexible policy which allows for refunds to be granted in special or hardship cases (for example, people who are high risk due to underlying health conditions).

### Summary

We hope this guide is of use to our members. If you have any questions or are unsure of the best approach in your circumstances, we strongly recommend you seek specific legal advice. You may also access general resources on the ACCC website at [www.accc.gov.au](http://www.accc.gov.au). As a general principle, it is in the interests of our industry to balance the financial position, legal and contractual obligations of your business with the impacts on long term reputation and customer goodwill in order to reach a mutually agreeable outcome for all parties. On that basis, and subject to your individual legal and contractual rights and obligations and considerations set out above, our suggestion is to, where possible, offer customers a credit for future booking dates OR a refund (especially where you are closed and unable to provide the service).

**Rod Thomson**

**CEO, Australian Camps Association**

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*If you require legal advice for your specific circumstances, please contact Suzie Leask, Director at Australian Business Lawyers & Advisors on [suzie.leask@ablawyers.com.au](mailto:suzie.leask@ablawyers.com.au) or 1300 565 846 for a confidential discussion and fee estimate. You can also access further legal guides and articles on our website at [www.ablawyers.com.au](http://www.ablawyers.com.au).*



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## SCHEDULE 1

### KEY LEGAL CONCEPTS

#### 1. What is a Force Majeure Event?

A Force Majeure Event is an identified event set out in a contract that prevents one of the parties from performing their obligations in that contract. It is usually defined as an ‘act of God’ or some other extraordinary event that is outside the control of the parties. Firstly, you should check your customer contract (or relevant booking terms and conditions) to confirm:

- (a) if it contains a Force Majeure clause providing relief from non-performance or delayed performance; and
- (b) whether or not the Coronavirus pandemic falls within the contract’s definition of Force Majeure Event (or equivalent) in order to access the protections offered by the clause.

A Force Majeure Event will only trigger a contractual remedy if the contract contains a Force Majeure clause. It does not automatically apply under law in the absence of such a clause.

If a contract contains a Force Majeure clause, typically the person whose performance of the contract is hindered or prevented by a Force Majeure Event is relieved from their obligations and liabilities to the extent they are unable to perform the contractual obligations due to the occurrence of that Force Majeure Event. This can be a complete or partial excusing of obligations or liabilities often due to specific events which are outlined in the contract clause, sometimes by way of a definition. Sometimes the clause will include a right to terminate the Contract following the continued occurrence of a Force Majeure Event for a certain period.

#### *Practical Tips*

**Contract interpretation:** Read your contract carefully to see what circumstances are covered. For example, a Force Majeure clause may be narrowly drafted with reference to specific types of events such as war, strikes, natural disasters, or more relevantly: *‘pandemics’, ‘acts of government’, ‘changes in law’* etc. Alternatively, the clause may be broadly drafted in general terms, for example, *‘as a result of unforeseen circumstances beyond the party’s control’* or words to similar effect. You may need to seek legal advice to determine how broadly a Force Majeure clause can be interpreted to confirm whether the Coronavirus pandemic is covered.

**Notice and timing:** If you do have a Force Majeure clause in your customer terms and conditions or other type of contract (and COVID-19 is covered), it is important to also check for any technical notification obligations or relevant time periods which apply to exercising your Force Majeure (and any termination) rights.

**No Force Majeure clause:** If you don’t have a Force Majeure clause in your contract, it may be possible to rely on the common law doctrine of ‘frustration’, however this is quite a high bar.

#### 2. When is a Contract ‘Frustrated’?

The common law principles of ‘frustration’ acts to relieve parties of liability where, due to the occurrence of an unforeseeable, supervening event beyond the control of the parties, there is a radical change in the circumstances in which a contract is to be performed. The simple alteration of circumstances in which a contract is to be performed is not enough. The event must have a substantial impact.

Importantly, the ‘frustrating’ event must have been unforeseeable at the time the contract was entered into. The event must not have been caused by the fault of either party to the contract. As with Force Majeure, if alternative arrangements can be made in order to perform the contract then the doctrine of frustration cannot be invoked. It will be difficult for a party to rely

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on the frustration principle merely because it has been let down by one of its suppliers or employees, change of mind, delays or if performance of the contract has simply become more expensive.

Certain legislation addresses some of these issues. For example, in NSW the *Frustrated Contracts Act 1978* (NSW) addresses what happens in the case of frustration and the mechanisms controlling it. If, for example, a party performed a service before the frustrating event, the other party must pay them based on the performance. Similarly, if a contract is frustrated and a party pays money before the performance of the obligation, then the money is to be returned (note frustration is a higher standard than mere cancellation).

### **What is the effect of frustration on a contract?**

If a contract is frustrated, the entirety of the contract will be discharged (ie. no longer binding and the parties released), other than obligations which survive termination or expiry. There is no right for a party to the contract to claim damages (note damages is a different concept to refunds). In other words, losses lie where they fall. No party can claim damages for non-performance because no party is at fault.

Of course if the parties are happy with current arrangements and a contract can remain on foot (e.g. by complying with social distancing and other government COVID-19 legislation or by postponing booking dates) you can effectively avoid frustration of contract issues by agreement.

### **3. Cancellation Policies**

Where your contract does not have a Force Majeure clause (or it is not drafted broadly enough to cover the Coronavirus pandemic) and the circumstances do not quite constitute 'frustration', you should look to your cancellation policy, if you have one. It is important to ensure your cancellation policy has been appropriately incorporated into the contract with your customer (e.g. in your contract terms, by notice on your website or a tick box style agreement).

Cancellation policies should be **clearly expressed and transparent**, and should set out:

- in what circumstances customers may cancel;
- any timing or notice requirements for cancellations;
- cancellation or administration fees (see unfair contracts section below);
- in what circumstances customers are entitled to a refund (e.g. cancellations at least 7 days prior to the booking date, or such other specified time frames).

The terms of the cancellation policy must be **fair and reasonable**, and if online booking platforms are used, relevant terms and conditions of sale including the cancellations policy should be clearly identifiable online at the time of booking.

#### **Cancellation Fees**

A business' ability to claim cancellation fees from a customer depends on the circumstances of the cancellation. If the business charges a cancellation fee or administrative charge, the fee should not be excessive otherwise it may be regarded as an unfair contract term or as a penalty which generally cannot be enforced.

Businesses should generally limit any cancellation fee to the reasonable costs associated with carrying out the cancellation.

The ACCC has indicated that businesses proposing to charge a cancellation fee, or to retain an amount to cover expenses, should:

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- (a) clearly communicate to consumers at the time the remedy is offered:
- (i) that the cancellation fee will be charged;
  - (ii) the reasons or circumstances in which the fee is being charged; and
  - (iii) the amount of the fee to be charged;
- (b) expressly identify for consumers the legal source of their right to the fee or amount to be retained; and
- (c) on request, provide an itemised breakdown justifying the amount charged or retained.

The ACCC and ACL Regulators expect that:

- only a single fee or deduction will be applied to a booking; and
- in most circumstances, any amount charged or retained will be a nominal sum relating to reasonable administrative expenses incurred.

### **Examples**

If, for example, a customer has paid a deposit, then cancels the booking without a good reason (eg. if they just change their mind), the business will usually be able to keep the deposit depending on the terms of the contract. Generally, a fair deposit (from a consumer perspective) would not be more than 10 per cent of the total cost of the accommodation or service booked, unless the potential loss or inconvenience justifies a higher amount (such as in a large group / school booking). Otherwise, such a higher amount may be seen as a pre-payment.

Pre-payments are usually refundable, minus any actual or reasonable costs the business may have incurred before the booking was cancelled.

In some (but very limited) circumstances, forfeiting a much higher percentage (or all) of the price may be a reasonable cancellation fee. E.g. Where the customer has paid upfront in full but cancels the booking 12 hours before the booking date simply due to a change of mind. In such circumstances the business will face great difficulty in securing a replacement booking at such short notice, may have perishable food items and other costs and so a higher percentage fee would likely be classed as reasonable. However, care should always be taken to mitigate any losses and to ensure cancellation fees are reasonable, consider providing at least a partial refund or credit note wherever possible.

### **Credit notes**

A 'credit note', rather than a refund, may be an appropriate remedy in certain circumstances. Businesses should advise consumers upfront about any terms that govern the use of a credit note.

The ACCC and ACL regulators have expressed an expectation that any credit notes provided should have:

- at a minimum, the same value as the amount paid for the booking;
- an expiry date that will allow the consumer a reasonable period in which to use the credit, or alternatively, no expiry date.

They also recommend businesses should be prepared to extend any expiry period to take into account the extension of any travel restrictions, to allow the consumer a reasonable period in which to use the credit, or to otherwise receive a refund.

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### **Option of refund or credit note**

Businesses may wish to offer consumers who are entitled to a refund the option of accepting a credit note instead. It is to be noted that in these circumstances, the choice between accepting a credit note or refund lies entirely with the consumer.

For businesses who are struggling with cash flow and would prefer to encourage customers to take up the option of a credit note, industry and regulators have identified that consumers may be more likely to accept a credit note instead of a refund where the credit:

- (a) has a value higher than the value of the original ticket or booking;
- (b) can be used for any product or service offered by the business (rather being restricted to original booking types);
- (c) has a very long, or no, expiry date;
- (d) is transferrable within a broader family group; or
- (e) is convertible to a refund, at the consumer's discretion, after a fixed period.

***Note:** Businesses should exercise great caution to ensure they do not, in suggesting the above options, mislead consumers regarding the circumstances in which they are required to accept a credit note rather than a refund.*

Any terms and conditions that govern the use of any credit note offered should be notified to the consumer up front so that consumers can make an informed decision about which option they will choose.

### **Timing of refunds**

Where a consumer is entitled to a refund, the refund must be paid within a reasonable time. However the ACCC has acknowledged that in some circumstances, it may take longer than usual for businesses to be able to process the volume of cancellation and refunds. Businesses should communicate regularly with consumers about the timing of any refunds.

Businesses should also endeavour to minimise their monetary losses following a cancellation. If the contract allows the business to reclaim losses from a customer, without taking reasonable steps to avoid them, it may be deemed unfair under the ACL.

Where a refund is due following a cancellation, a business should generally give those refunds in the same form as the customer's original payment.