



## Cancellation FAQs

Set out below are some frequently asked questions and relevant answers relating to cancellations along with any applicable rules.

This document was prepared for the ACA by Australian Business Lawyers and Advisors in January 2020.

### **When can a customer cancel a booking?**

Generally speaking, a customer can cancel a service if they have a major problem with the service, or a minor problem that can't be fixed within a reasonable time and it is:

- provided with an unacceptable level of care and skill;
- unfit for the purpose they asked for; or
- not delivered within a reasonable time (when there is no agreed end date).

Generally speaking, a customer cannot cancel a service contract or get a refund if the customer:

- changed their mind;
- insisted on having a service provided in a particular way, against the provider's advice; or

failed to clearly explain their needs to the business.

### **When can a business cancel a booking?**

Businesses generally cannot cancel a booking which they have accepted unless they are legally permitted to do so under a valid term of the contract or if performance of the contract would be frustrated.

### **What steps should a business take to ensure cancellations are legally conducted?**

First and foremost, to capture the terms and conditions relating to cancellations, a business should ensure it has a clearly expressed and transparent cancellation policy.

Any cancellations should be carried out in accordance with the terms and conditions of the business' cancellation policy.

### **What should a cancellation policy include?**

A cancellation policy should include the following:

- what happens if the business or a customer cancels a booking;
- the process required for a customer to cancel a booking; and
- any cancellation fees which may be imposed.

It is important that the terms of the cancellation policy are fair and reasonable – for example, allowing a business to cancel services at any time without cause would be deemed unfair under the unfair contracts regime of the ACL.

### **Is having a cancellation policy enough?**

No, a business should also ensure that its customers are aware of the cancellation policy prior to booking as failure to disclose the relevant cancellation conditions could also be considered as unfair due to lack of transparency.

If a business has an online bookings mechanism, the terms and conditions of sale including the cancellations policy should be clearly identifiable online at the time of booking to avoid possible disputes.

### **Can a business charge cancellation fees?**

Yes, however, these fees must be reasonable and not excessive.

Businesses should generally limit any cancellation fee to the reasonable costs associated with carrying out the cancellation, for example, the cost of liaising with the relevant accommodation provider and re-advertising etc.

In some circumstances, forfeiting 100% 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 and so a 100% fee would likely be classed as reasonable.

### **How should a business deal with deposits when a customer has cancelled?**

Generally, a fair deposit 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.

If for example a customer has paid a deposit, then cancels the booking without a good reason (for example, if they just change their mind), the business will usually be able to keep the deposit depending on the terms of the contract.

### **Once a customer cancels, is a business required to do anything?**

Businesses should endeavour to minimise their monetary losses following a cancellation (e.g. trying to re-book for the available slot).

If the business' cancellation policy allows the business to reclaim losses from a customer, without taking reasonable steps to avoid the losses, that term may be deemed unfair under the Australian Consumer Law.

### **How should businesses deal with natural disasters?**

Extreme weather events and natural disasters, such as bushfires, will generally result in the contract for services between a business and customer to be frustrated (i.e. unable to be performed). Both the business and the customer will be released from the contract if, for example:

- the accommodation has been destroyed;
- access roads have been closed; or
- the authorities have advised that the area is not safe to enter.

There may also be other circumstances in which a business or its customers are required to leave an area, or are prevented from entering.

In the above scenarios, the customer would be entitled to a refund of any payments already made. However, the law may also entitle the business to deduct any reasonable expenses incurred before the customer cancelled.

Additionally, if for example the customer is required to leave part way through their stay due to emergency services intervention or evacuation this would also be classed as a frustrated contract and the customer would be entitled to a refund for the relevant period their stay was cancelled (less any reasonable business expenses).

**What if there is a natural disaster, or other event, which would inconvenience a customer and they rely on that reason to cancel? Does the business have to offer a full refund?**

A contract is not frustrated (i.e. unable to be performed) if the situation means that it is only inconvenient, difficult or expensive to carry out.

For example, if a facility is still open for business but there is smoke haze which may cause guests discomfort but is not otherwise regarded as harmful/severe, customers may feel that they will not be able to do all the things they had planned and so would prefer not to come at all. In this instance, the contract is still valid and if the customer chooses to cancel, the business can apply its cancellation policy.

To cater for 'grey area' situations such as this, a business should clearly advise its customers, in advance of their booking, of any circumstances in which the business or the customer may cancel their stay and the repercussions of such cancellations (e.g. cancellation fees may be applicable). A business should also ensure that such terms or conditions do not take away any rights that may arise as a result of the contract being frustrated.

**Example scenario 1: There is a flood at the nominated campsite and emergency services are mandating road closures and evacuations of the campsite.**

This would be a frustrated contract, where the customer would be entitled to a refund but the business can deduct reasonable expenses incurred in the booking and cancellation.

**Example scenario 2: The State Department of Education has chosen to ban excursions to fire affected areas long after the danger has passed.**

This is not a frustrated contract so the terms of the cancellation policy would ordinarily apply. However, consider flexibility in such a scenario given the end-user of the services would be school students who in this scenario, may be better served by attending camps in non-fire affected areas.

**Example scenario 3: A group has decided to cancel a booking due to subjective issues like poor air quality (unless this is advised by the EPA).**

Unless the group can provide medical evidence which supports their inability to travel to those sites, this is not a frustrated contract so the terms of the cancellation policy would apply.

**Example scenario 4: A group cancels a booking due to a fear of potential fires and/or extreme temperatures which are not based on substantiated reports.**

Unless there is an inability to deliver the services this will not be a frustrated contract so the terms of the cancellation policy would apply.

Generally you should of course also apply some commercial judgment and decide these matters on a case by case basis so as to avoid reputational damage and maintain your loyal customers where exceptional circumstances apply.