



AUSTRALIAN COMPETITION  
& CONSUMER COMMISSION

# The impact of COVID-19 on consumers and fair trading

**An update on the work of the ACCC during the  
pandemic**

November 2020

Australian Competition and Consumer Commission  
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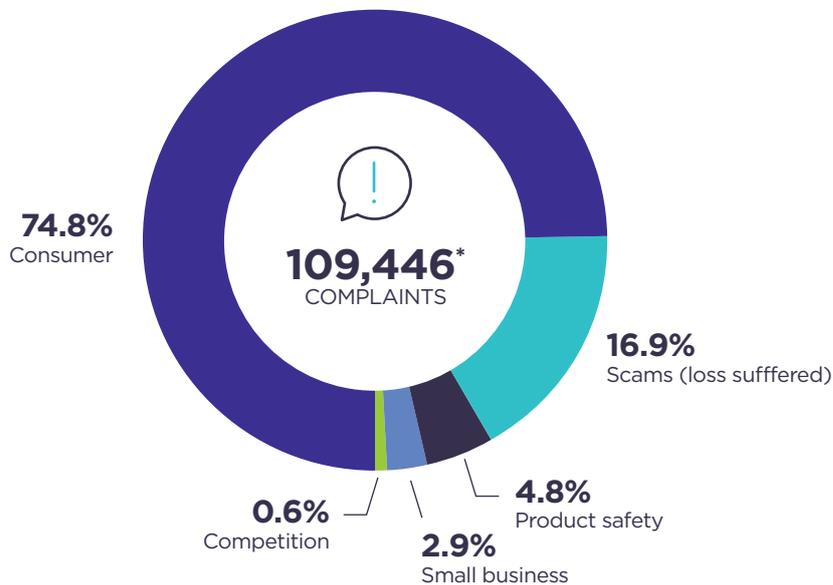
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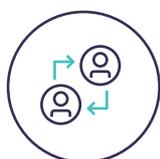
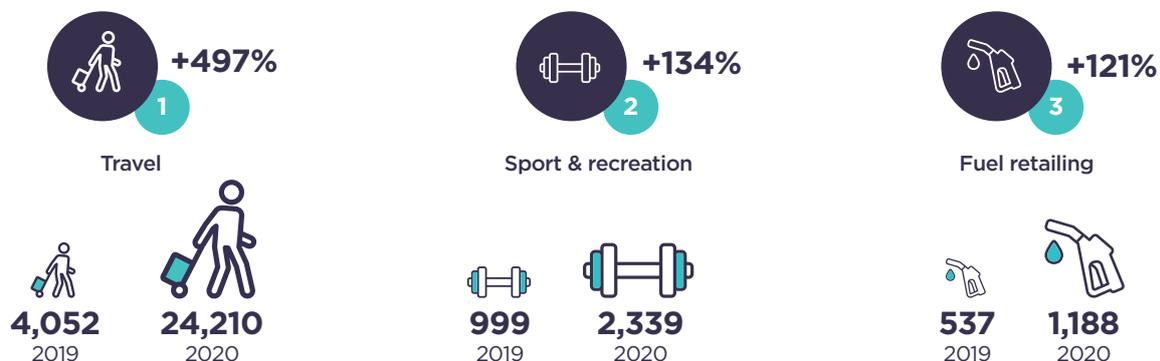
# COVID-19 activities snapshot

1 January to 31 October 2020

## TYPES OF COMPLAINTS RECEIVED



## AREAS WITH GREATEST COMPLAINT GROWTH FROM 2019



Closely engaged with **113 businesses**, including **50 travel businesses**, regarding issues or conduct of concern impacting hundreds of thousands of consumers



Released 3 key COVID-19 guidance publications for consumers and industry:



Responded to over **350 media queries** and conducted over **170 media interviews**

- 1 Consumer guidance viewed more than **345,000 times**
- 2 Business guidance viewed more than **55,000 times**
- 3 Travel industry best practice guidance downloaded more than **2,900 times**

\* These figures exclude over 20,000 complaints that did not raise concerns under the *Competition and Consumer Act 2010* (Cth), and scam reports that did not involve any loss being suffered.

# Executive Summary

The COVID-19 pandemic has significantly disrupted the domestic and global economy. As the national competition and consumer law regulator, the Australian Competition and Consumer Commission (ACCC) has had a significant role in assisting Australian consumers and businesses deal with the effects of COVID-19.

In recognition of the continuing issues likely to be faced by consumers and small business as Australia emerges from the pandemic, the ACCC has prepared this report based on its experience to date, and to outline its proposed priorities and activities going forward.

In response to the pandemic, the ACCC adjusted the focus of its compliance and enforcement activities toward prioritising competition and consumer issues arising from COVID-19. To facilitate this, an internal COVID-19 Taskforce was established to address, to the extent possible, immediate harm to consumers and small business arising from the pandemic.

The ACCC also collaborated closely with state and territory Australian Consumer Law (ACL) regulators and other government agencies regarding COVID-19 issues.

Our primary approach has been to educate consumers and businesses about their rights and obligations. Additionally, we have been engaging directly with businesses in a collaborative manner and at an earlier stage, with the primary purpose of seeking to understand and resolve issues through pragmatic solutions. Our approach has sought to achieve prompt changes in businesses' behaviour and redress for impacted consumers in the most efficient way possible, rather than seeking compliance through court-based outcomes.

The majority of COVID-19 related consumer reports we have received concern the travel industry. These reports have increased by 497% in the period January to October 2020, compared to the same period in 2019. This is unsurprising given the immense impact that domestic and international travel restrictions, and the subsequent cancellation of travel bookings, have had on both consumers and travel businesses. The situation with respect to travel cancellations has been complicated further by the majority of travel insurance products excluding cancellations resulting from the pandemic.

To prevent potential widespread and significant detriment to consumers and travel businesses as a result of these issues, the Taskforce primarily focused its efforts on addressing travel-related concerns. To achieve this, the Taskforce engaged directly with around 50 travel businesses to effect behavioural change on issues impacting hundreds of thousands of Australian consumers. In many instances this engagement resulted in travel businesses changing their approach to ensure they were offering consumers refunds or other remedies for cancelled travel in accordance with their entitlements under the terms and conditions of their contract.

The ACCC recognises that many businesses in the travel sector have assisted consumers by implementing hardship policies and providing refunds for those consumers in exceptional circumstances of health or financial hardship. Unfortunately, other businesses have been less willing to accommodate hardship claims.

Beyond the travel sector, the Taskforce has conducted industry engagement, compliance and education initiatives with over 60 businesses from a range of other sectors including live performance and ticketing, fitness and gymnasiums, online selling platforms, local and community sports, professional sports, supermarket retailers and food suppliers.

As a result of the pandemic, many businesses were forced to make substantial changes to their operations. This was coupled with significant uncertainty about their future viability. Concerns were raised by small business about misconduct by larger businesses that they supply to or acquire services from. These allegations of misconduct related to leasing issues, pressure for retail stores and franchises to open in a COVID-19 environment and a lack of relief regarding the payment of fees by small business despite economic hardship.

As the primary competition regulator in Australia, the ACCC is closely monitoring key markets and industries to determine the impact of the pandemic on competition in the economy. The ACCC's

COVID-19 Taskforce continues to investigate reports of anti-competitive practices and alleged contraventions of the fair trading provisions affecting the small business sector.

The pandemic will have a long-term impact on a number of businesses, and entire industries. Whilst the ACCC's COVID-19 Taskforce has been able to achieve a number of outcomes on behalf of consumers and businesses to date, this work will continue as issues persist. In the future as economic activity increases and restrictions ease, the ACCC will also need to ensure that there is ongoing compliance with Australia's competition and consumer laws.

Throughout our engagement with businesses, the ACCC has been conscious of the impact of the pandemic on economic viability. At the same time, we are also conscious that many consumers have suffered significant financial hardship. Where appropriate, the ACCC has therefore encouraged consumers and businesses to engage fairly during this period. However, businesses still need to comply with their legal obligations, and work to maintain the confidence of their customers by addressing legitimate consumer concerns and requests for assistance. Failure to do so may tarnish the reputation and viability of businesses in the long-term.

# 1. Background

The ACCC's purpose is to make markets work for the benefit of consumers, business and the community. The ACCC seeks to achieve this by taking action that promotes the proper functioning of Australian markets, protects competition and improves consumer welfare. The ACCC also seeks to stop conduct that is anti-competitive or harmful to consumers.

During COVID-19, however, the role of the ACCC has taken on added significance. The pandemic has disrupted global and domestic markets so significantly that it has completely changed the economic landscape. Many Australian businesses are struggling to remain financially viable, particularly small business, and the future is uncertain for many. Consumers have also experienced wage or job losses, placing them in financial hardship.

Given the significant impact of COVID-19 on business and consumers, the ACCC publically [announced](#) in March 2020 that it would be adjusting the focus of its regulatory activities to prioritise consumer and competition issues arising from the impact of COVID-19.

This priority shift led the ACCC to alter its day-to-day operations and direct a proportion of its resources to COVID-19 specific work streams, including establishing an internal ACCC COVID-19 Taskforce to address immediate harmful consumer and small business problems arising from the crisis.

The Taskforce has also been working closely with other state and federal government agencies and regulators to share information and coordinate COVID-19 related activities. For example, the ACCC has been liaising regularly with:

- state and territory ACL regulators, and the New Zealand Commerce Commission, on consumer protection issues
- the Australian Securities and Investments Commission (ASIC) regarding issues relating to financial products including insurance
- the Therapeutic Goods Administration (TGA) on potentially false or misleading COVID-19 specific product claims
- the Department of Health regarding private health insurance as well as personal protective equipment supply chain issues.

## 2. ACCC COVID-19 Taskforce intervention approach

The ACL is not able to resolve all consumer issues arising from the cancellation of services due to government restrictions. Consumers' rights under the consumer guarantees provisions in the ACL are restricted in their application when a business is unable to meet its consumer guarantee obligations due to the actions of a third party, such as when government restrictions prevent the business from fulfilling its obligations. Where the consumer guarantees do apply, the outcome will vary depending on the individual circumstances of each situation.

In general, whether consumers are entitled to a credit note or a refund for services cancelled due to government restrictions will therefore depend on the terms and conditions of their booking.

However, consumers may also have other remedies outside of the ACL, for example where a contract is held to be frustrated. While the ACCC does not have the power to enforce contractual terms or seek remedies for frustration on behalf of consumers, some State and Territory ACL regulators may provide guidance or conciliate disputes involving State legislation relating to frustration.

Although the consumer guarantee provisions are restricted in their application in these circumstances, the Taskforce has been investigating, and will continue to investigate, common types of COVID-19 related misconduct which do raise concerns under the ACL. These include:

- businesses misleading or deceiving consumers about their rights or entitlements to a refund or other remedy under the terms and conditions of their contract
- businesses misleading or deceiving consumers by seeking to deduct cancellation fees, or other costs, from refunds or other remedies when there is no contractual basis to do so
- businesses seeking to unilaterally impose and/or rely on unfair contract terms in their standard form contracts with consumers or small business
- businesses engaging in misleading or deceiving conduct, or making false or misleading representations in advertising or marketing material about the provision of future goods or services
- businesses taking or seeking payment for goods or services when there are reasonable grounds to believe the goods or services won't be supplied
- businesses taking payment without prior consent for services that are materially different from the service that the consumer originally contracted for with the business.

The Taskforce has focused its efforts on engaging with industry representatives and over 100 individual businesses in relation to these issues to understand their position, advise of their obligations and, if necessary, encourage changes to their approach. This engagement has resulted in hundreds of thousands of Australian consumers receiving the remedies they are entitled to under the terms and conditions of their contract.

The Taskforce is aware that many businesses have been struggling to process high numbers of cancellations and respond to consumer queries during COVID-19. This difficulty has been heightened by both the financial impact of the pandemic and social distancing restrictions, leading to businesses closing call centres, implementing working from home arrangements or reducing staff capacity.

Despite these difficulties, the ACCC encourages businesses to review their communications, particularly regarding consumer entitlements to remedies, and make improvements where necessary. In addition to benefiting consumers, early and effective communication serves to protect business interests. For example, when communication from a business is poor, consumers are more likely to report their concerns to a regulator or their local Member of Parliament. Some consumers may also seek to recover costs from the business by lodging a Tribunal claim. By the time the matter reaches this point, businesses need to expend greater resources to resolve the dispute than if they had effectively engaged with their customers in the first place.

## 3. Complaints analysis

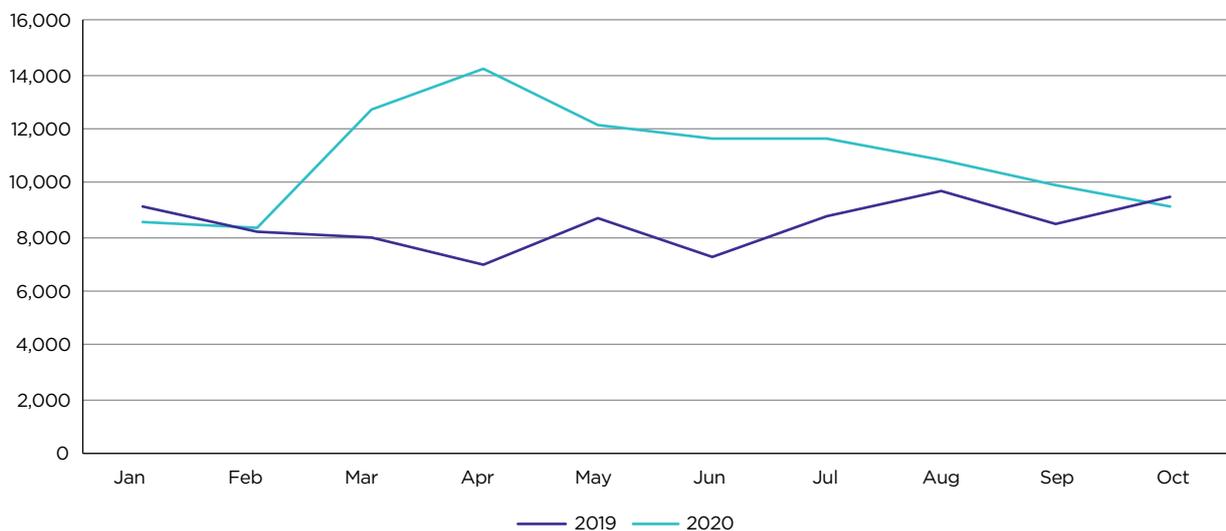
### 3.1 Number of contacts received

The ACCC has received a significantly higher number of contacts to date in 2020 compared to 2019.<sup>1</sup> The vast majority of these contacts have raised consumer ACL concerns or issues (almost 75% of total contacts received).

Contacts started to rise significantly in March 2020 (almost a 60% increase compared to March 2019), with the biggest increase occurring in April 2020 (almost a 103% increase compared to April 2019). During May to July 2020 contacts were about 40-60% higher than this period last year, although these figures have started to stabilise in recent months.

Figure 1 shows the number of contacts received by the ACCC (excluding scams) from 1 January to 31 October 2020, compared to the same period in 2019.

**Figure 1: Contacts received in 2020 compared to 2019 (excluding scams)**



### 3.2 Type of reports received

#### Top ten reported industries

Figure 2 shows the top ten industries with the greatest increase in contacts from 1 January to 31 October 2020, compared to this period last year. It demonstrates that there has been a significant increase in the number of contacts received about the tourism/accommodation industry (+589%) and air/sea passenger transport industry (+358% increase) to date in 2020, compared to 2019.

There were also noticeable increases in the number of contacts received about fuel retailing (+121%), pharmaceutical (+86%), supermarket/grocery sectors (+60%), due to concerns raised about the price of these goods, and any significant price increases, during the pandemic. The increases in contacts about the sport and recreation sector (+134%), insurance sector (+104%), hardware and outdoor equipment (+41%), real estate sector (+34%) and other store based retailing (31%) is also reflective of the particular impact that COVID-19 had on the operation or viability of these sectors.<sup>2</sup>

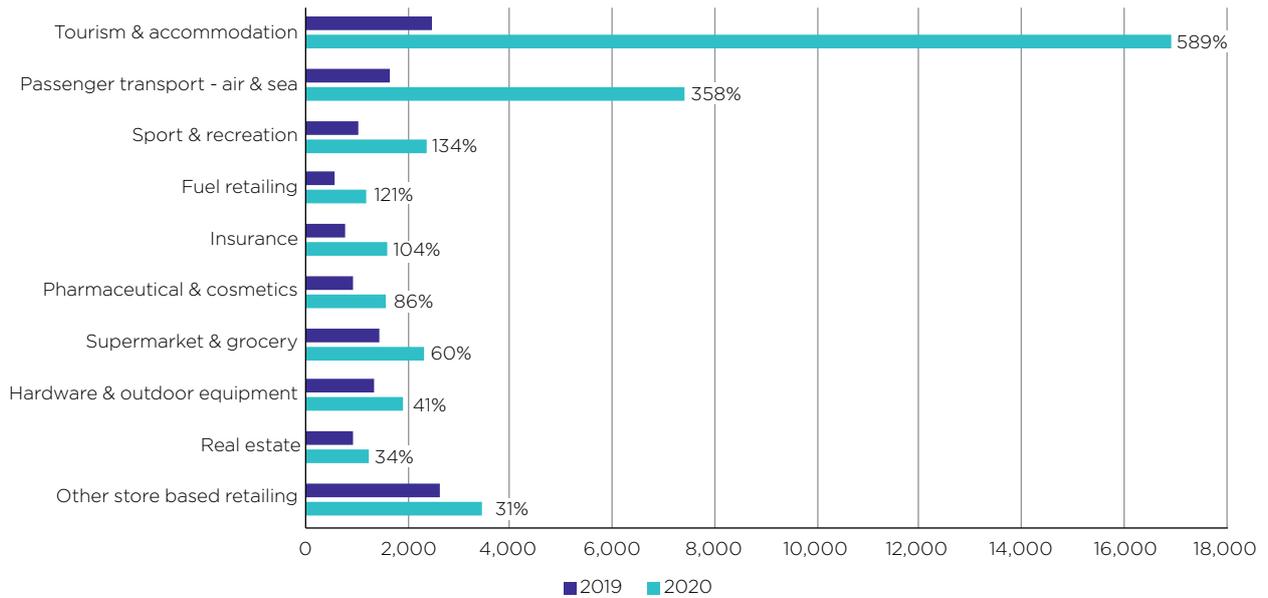
<sup>1</sup> 'Contacts' includes both enquiries and reports received by the ACCC.

<sup>2</sup> Personal protective equipment, including face masks, are commonly sold in hardware and outdoor stores which means that price related complaints about these products may also have been associated with these stores during the pandemic.

Concerns have also been raised by consumers regarding their ability to claim on travel insurance for cancelled travel, as well as limitations in accessing non-essential services under private health insurance hospital and extras cover due to COVID-19 restrictions. Most financial products including travel insurance fall within ASIC’s jurisdiction and the ACCC has been liaising with ASIC regarding these travel insurance issues.

While being in the scope of state and territory regulators’ jurisdiction, the ACCC also received substantial numbers of reports regarding residential and commercial real estate. These reports largely related to difficulties in negotiating rent reductions where tenants are experiencing financial hardship. The retailing sector was greatly impacted by physical store closures.

**Figure 2: Top ten industries with greatest increase over 2019 contacts**



# 4. ACCC in action—Interventions in the travel sector

## 4.1 Background

The highest volume of COVID-19 complaints were received about travel issues. From 1 January to 31 October 2020, the ACCC received 24,210 travel-related complaints, compared to 4,052 complaints for this period in 2019 (+497% increase). The majority of travel complaints were about travel agencies and airlines.

The volume of travel complaints received reflects the extraordinary impact that domestic and international travel restrictions, and the subsequent cancellation of travel bookings, have had on the travel sector as well as consumers.

Further, following the announcement of these travel restrictions, the ACCC also received a high volume of travel-related queries from journalists about consumer entitlements to remedies for cancelled travel services. These queries often focused on the conduct and policies of specific companies; for example, cancellation fees charged by Flight Centre for cancelled bookings.

As the pandemic continued, there was an increase in complex and nuanced queries such as refund delays. There were also concerns raised about certain travel businesses going into administration, such as STA Travel and Virgin Australia, and the potential impact this might have on consumers who had received credits or were yet to receive refunds.

## 4.2 Taskforce activities and interventions

As noted previously, the taskforce has engaged with multiple businesses in the travel sector. While some of these outcomes have been announced publically, including [Flight Centre](#), [Qantas](#) and [Etihad](#), the majority of resolutions have been obtained through quick confidential intervention and engagement with the business in question. The case studies at Appendix A illustrate some of the other outcomes we have achieved for consumers, both from travel service providers and third party intermediaries.

In March 2020 the ACCC published [guidance](#) for consumers relating to COVID-19 travel cancellations. This was updated on a continuing basis as issues arose. In July 2020, the ACCC and state and territory ACL regulators also released [Best Practice Guidance](#) for the travel industry, which sets out for businesses their legal obligations and outlines how to appropriately deal with consumers regarding COVID-19 cancellations.

The ACCC recognises the complexity of issues arising for both consumers and the travel industry because the legal position may depend on the circumstances of each case. Complicating factors include:

- the limited application of the consumer guarantees in circumstances where businesses have cancelled services due to government restrictions. This means that the terms and conditions of consumers' travel bookings, and contract law, are relevant to determining consumers' rights in this situation
- the complex operating models of many travel businesses, which often involve third party intermediaries, such as a travel agent or tour operator passing funds paid by the consumer to a number of primary travel suppliers (such as airlines, accommodation or cruise providers). This creates added complexity for consumers in recovering funds for cancelled services, as their ability to do so will depend not only on their terms and conditions with their travel suppliers but also with their agent or tour operator. This situation becomes more complex where multiple contracting parties are involved; for example, where a travel agent utilises an online booking platform to book flights for a client

- the limited protections of travel insurance policies which commonly exclude force majeure events, such as pandemics. As a result, the consumers' only recourse is to attempt to recover funds for COVID-19 related travel cancellations from travel agents and suppliers directly.

## 4.3 Conciliation involving travel and consumer hardship cases

The ACCC is not a complaints handling body, and therefore it rarely becomes involved in individual consumer disputes. State and Territory ACL regulators, however, play an important role in facilitating dispute resolution between consumers and traders in relation to goods and services covered by the ACL.

While the ACCC does not conduct individual dispute resolution, in our COVID work we have on numerous occasions facilitated the conciliation of consumer disputes as part of our ongoing engagement with businesses.

In our dealings with businesses across different sectors, the ACCC has consistently outlined its expectations that businesses should take into account individual consumers' circumstances. This means that in some cases the ACCC considers that businesses should consider requests for refunds, even where they are only obligated to provide credits under their terms and conditions. This includes where:

- consumers are unlikely to be in a position to use a credit 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 utilise a service while there is still any risk of COVID-19, for example, travel if they are immuno-compromised
- the reason the service 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 relation to issues of hardship, the ACCC has received a mixed response. Some businesses have demonstrated best practice by diligently applying hardship policies in considering requests for remedies, despite the business also struggling financially during COVID-19.

An example of such best practice conduct was demonstrated by an airline which introduced a comprehensive hardship policy to provide consumers with refunds for cancelled flights if the consumer can demonstrate medical, financial or other genuine hardship. The airline introduced this policy despite only being required under its terms and conditions to provide credits to consumers for cancelled flights. The airline also took a pragmatic approach to the proof required for hardship.

In other cases, we have seen businesses being inconsistent in their consideration of hardship cases, by going above and beyond their contractual obligations to provide fair outcomes for some consumers facing hardship or other extenuating circumstances, while treating other consumers in similar situations less favourably. Some of these businesses have demonstrated significant improvement in their consumer response after ACCC intervention.

## 4.4 Ongoing travel issues

The Taskforce has observed that certain other travel booking issues have emerged as the COVID-19 situation has changed, but the pandemic continues to impede both domestic and international travel. These issues include:

- travel restrictions at the destination being lifted, but local travel restrictions preventing consumers from leaving their home state or country. Added complexities may arise where a consumer has booked flights, accommodation, and extras like tours via separate providers (including travel agents), each with their own terms and conditions around cancellations and refunds. If the travel company is based in another country, the laws of that country might apply, adding further complexity

- consumers anticipating, based on comments from politicians and experts, that travel restrictions will continue for some time yet, but travel providers have not yet cancelled their booking as the status of restrictions for the planned travel period is not yet certain.

The ACCC is continuing work to understand the legal obligations of travel providers in these complex scenarios, so that it can provide accurate guidance and support to consumers and small business as required. However consumers' entitlements and businesses' rights and obligations in these instances will depend on the specific circumstances in each case. We will continue to monitor these issues and take any necessary action where we identify systemic problems.

The ACCC and ACL regulators also remain concerned about the approaching expiration date of some credit vouchers provided to consumers for cancelled bookings earlier in the year. The ACCC and ACL regulators' best practice guidance for the travel industry sets out that businesses should be prepared to extend any credit note expiry period to take into account the extension of any travel restrictions, to allow consumers a reasonable period in which to use the credit after the COVID-19 restrictions are lifted, or to otherwise receive a refund. Alternatively, businesses may provide credit notes with no expiry periods, or expiry periods that do not start to run until after the COVID-19 restrictions are lifted.

# 5. ACCC in action—Interventions in other sectors

## 5.1 Fitness

Similar to the travel sector, the fitness and gyms sector has been particularly impacted by government restrictions implemented in response to COVID-19.

The mandatory gym closure period which came into effect on 23 April 2020 led to a significant increase in queries and complaints from consumers. The most common issues raised by consumers related to gyms or fitness providers continuing to deduct ongoing membership or freeze fees from member accounts during the closure period, without obtaining prior consent to do so. This conduct by some fitness providers would contravene the prohibition under the ACL which prevents businesses from taking payments for goods or services when there are reasonable grounds to believe the services won't be supplied.

Other common complaints related to gyms or fitness providers:

- Charging freeze fees where they did not have a contractual basis to do so; for example, where the gym or fitness provider charged freeze fees during the closure period but was only entitled to charge these fees under the contract where the consumer elected to freeze their membership.
- Charging consumers for access to 'online membership' services during the closure period, which the consumer did not wish to access and had not consented to pay for.

The ACCC quickly responded to these complaints using a combined approach of industry education and engagement and compliance activities which included:

- contacting large national fitness groups and gyms to raise concerns regarding their activities, which resulted in a change in behaviour
- publishing [guidance](#) for consumers and businesses relating to gym and fitness industry issues on the ACCC website
- engaging with major third party payment processing companies for gyms and fitness providers to understand the compliance measures they had implemented to avoid processing payments without consumers' consent.

This intervention resulted in the vast majority of gym facilities, fitness providers, and third party payment processors ceasing to charge members for services during this period unless they had the members' prior consent. Many members who were charged by gyms or fitness providers during this period, where they did not have a contractual basis to do so, have also since been refunded or credited.

However, as gyms and other fitness facilities have reopened for business in recent months, the ACCC has observed new patterns in complaints regarding gyms. These complaints largely relate to the inability of some gyms to provide consumers with the services they originally contracted for given the social distancing measures that remain in place. For example, where gyms reduce the use of shared equipment and modify or cease classes that involve close physical contact to reduce the risk of COVID-19 exposure. These changes will impact consumers who contracted with the provider primarily to access those services.

Other complaints relate to gyms not appropriately managing membership freeze and cancellation requests at this time. For example, allegations that gyms are misleading or deceiving consumers about their entitlement to cancel their contract.

## 5.2 Ticketing/events

The events and entertainment industry was also hit hard by the restrictions imposed in response to COVID-19. Social distancing requirements in combination with the impact of travel restrictions and the financial impact on the industry has meant that many events could not be rescheduled and had to be cancelled.

In general, where event organisers cancelled events, remedies were provided to consumers in a timely manner in the circumstances. Ticket holders were generally provided with the option of refunds, or the ability to elect to use their ticket for a rescheduled event. This action from the industry has meant that the ACCC received a relatively low amount of contacts from consumers about ticketing and events providers, considering the significant impact of COVID-19 on the industry.

The ACCC provided guidance to consumers regarding event cancellations. The ACCC also engaged closely with industry to provide guidance. In particular, the ACCC engaged with Live Performance Australia (LPA) regarding the issues arising, and to provide feedback on the LPA's proposed guidance to its members.

The most significant issue that has arisen in relation to ticketing and events is the position of consumers when an event is postponed or rescheduled rather than cancelled outright. Some event organisers advised ticket holders that an event was postponed, or would be rescheduled, and they would be able to use their tickets for the rescheduled event, or otherwise request a refund once the specific date of the rescheduled event is announced. However the uncertainty of when COVID-19 related travel restrictions and/or social distancing requirements would be eased meant that many event organisers could not, and still cannot, announce a definite new date for their event. Consequently, many consumers remain concerned about their possible inability to attend a rescheduled event and having to wait for a possibly indeterminate amount of time to be able to obtain a refund for their ticket.

The ACCC provided guidance to the industry noting concerns if event organisers announce an event is postponed, rather than cancelled, to avoid providing ticket holders with remedies, and subsequently delaying rescheduling the event for many months. The ACCC expects that if an event is postponed the event organiser should:

- have an estimated date (i.e. the month and year) for the rescheduled event that they publicly announce they are working towards
- take genuine reasonable steps to rescheduling the event for that date.

The ACCC also provided guidance to the industry around the need for clear communications to ticket holders at the time an event is cancelled or postponed in relation to the event, their ticket, and refunds or other remedies. The ACCC also expects the industry to consider consumers' personal circumstances and provide earlier access to refunds for consumers in health, financial or other hardship circumstances.

## 5.3 Price increases and supply shortages

During the early days of COVID-19, there was significant media attention and consistent reports to the ACCC regarding significant price increases for items in high demand. These goods included personal protective equipment (PPE) including P2/N95 face masks, gowns and gloves, and supermarket goods such as fresh produce, toiletries and hygiene/cleaning products. Concerns were also raised about the price of fuel which was slow to decrease in response to reduced consumer demand for fuel during the pandemic.

The ACCC cannot prevent or take action to stop excessive pricing, and it has no role in setting prices. However, the ACL may cover related conduct. For example, in extreme circumstances excessive pricing may be considered unconscionable under the ACL, for example, where the product is critical to the health or safety of vulnerable consumers. Further, if businesses make misleading claims about the reason for price increases, they may be in breach of the ACL.

Despite limitations in the ACCC's ability to intervene in these issues, the Taskforce took the following steps to address concerns relating to supply chains and pricing:

- Conducting targeted intervention with suppliers where substantial concerns were raised regarding price increases for goods that are critical to the health or safety of vulnerable consumers. This involved requesting that suppliers provide information to explain the reason for their price increases, including supplying any relevant evidence to support their reasoning.
- Engaging with major online selling platforms about the steps they were taking to address significant price increases by sellers for in-demand goods.
- Monitoring retail petrol price movements to determine whether falls in international crude oil and refined petrol prices from January 2020 were flowing through to consumers.
- Liaising with other relevant government agencies, such as the TGA and the Department of Health, to discuss and address PPE supply chain concerns.
- Liaising with major supermarket retailers to better understand supply chain issues and the reasons for any significant product price increases.
- Contributing to the Supermarket Taskforce led by the Minister for Home Affairs, which focused on supermarket supply chain issues.

The ACCC's consideration of excessive pricing issues revealed that price increases were generally reasonable responses to a number of unprecedented factors affecting demand and supply, including COVID-19 restrictions in relation to travel and movement of goods, which led to significant supply chain disruptions.

## 5.4 Small business issues/franchising

Small business contacts about COVID-19 have been relatively low in 2020 (representing just under 3% of total contacts received). Reasons for this may include small business being fearful of reprisal if they report misconduct by other businesses, particularly those they supply or have a commercial relationship with.

Similarly, franchisees may have reservations about reporting potential breaches of the Franchising Code of Conduct due to the impact this may have on their relationship with the franchisor.

The ACCC has raised concerns with a number of large companies in relation to allegations of unilateral extensions of payment terms for their suppliers, or demanding large discounts on goods already delivered. The ACCC will continue to consider and monitor allegations of this behaviour by large companies, particularly where the conduct is widespread.

The ACCC has also considered many other issues raised by small business, including threats of eviction, failure by large companies to pay invoices, and issues around fees and other payments for franchisees while their businesses were significantly impacted by restrictions.

### ► Case Study—change in supplier terms

The ACCC is investigating large retail chains that wrote to their suppliers and unilaterally made changes to payments terms. In one case a retailer applied an additional 180 days payment term on outstanding invoices. In another case, a retailer notified suppliers they would be paid on settlement terms and an additional 30 days plus an additional 5% settlement discount over and above current terms. These investigations are ongoing.

The ACCC has published [guidance](#) on its website to help businesses understand their rights and obligations when their operations are impacted by COVID-19.

Through the ACCC's [guidance](#) on specific issues to the franchising sector, a key focus involved providing information on the appropriateness and applicability of franchising fees given the impact of COVID-19.

### ► Case Study—change in franchise fees and commissions

The ACCC has received complaints from franchisees about proposed changes to their franchising fees. The franchisees were unable to open their premises due to COVID-19 restrictions. The ACCC engaged with the franchisor about this issue, and the franchisor extended the time for its franchisees to make a decision about options available to them, including paying reduced monthly fees, deferring payments until businesses were able to reopen or switching to a percentage of income fee.

## 5.5 Professional and local sports

Both professional and local sporting groups have been impacted by COVID-19 restrictions. Many groups were required to suspend 2020 sporting seasons during the early onset of COVID-19, with some having to ultimately cancel these seasons.

Many consumers contacted the ACCC enquiring about their right to refunds for membership and other fees paid toward suspended or cancelled sporting seasons. The ACCC also received a small number of reports alleging that local or professional sporting clubs or leagues were continuing to debit membership fees, or refusing to refund any membership fees already paid.

The Taskforce took a largely educative and proactive approach to these issues which involved:

- engaging with state and federal government sporting bodies to understand the relationships in place between National and State Sporting Organisations and local clubs, and the types of fees paid to each entity
- issuing guidance to local and community sporting organisations via sporting associations to ensure they understand their obligations to consumers with respect to remedies for suspended or cancelled sporting seasons
- publishing related [guidance](#) for consumers regarding their right to remedies for suspended or cancelling sporting seasons on the ACCC website.

With respect to professional sporting bodies, the Taskforce engaged with the NRL and AFL, including all individual clubs, to understand their approach to handling refund requests. This involved seeking information about whether clubs were complying with any obligations under their membership terms and conditions to provide refunds to consumers where requested. This included honouring any financial hardship policies in place. We also requested information regarding clubs' plans to compensate consumers if their 2020 sporting seasons were ultimately cancelled.

## 5.6 Scams

The ACCC received 4,734 Scamwatch reports about scams specifically related to COVID-19, with approximately 16.7% of these reports involving losses totalling over \$5.48m.

The ACCC has been monitoring reports of COVID-19 related scams since late January, and sharing updates with other government agencies and responding to an increasing number of media inquiries about COVID-19 scams. The ACCC used this information to develop various public education campaigns to alert consumers.

The ACCC raises public awareness of scams that are particularly persistent, prevalent, or harmful via its Twitter page, website, and media releases. These awareness campaigns have focussed on general COVID-19 scams as well as specific scams such as early-access superannuation scams, puppy scams, and government impersonation scams.

The ACCC provided intelligence about COVID-19 scams to taskforces set up by the Department of Home Affairs and has provided weekly updates to the members of the Scams Awareness Network (SAN), a network comprising both state and federal government agencies, to increase the reach of its awareness campaigns and to allow these agencies to better inform their stakeholders and communities.

The ACCC also provides some government agencies, including police departments, intelligence on COVID-19 scams regularly and when requested for specific investigations or activities. The ACCC has shared over 110 intelligence reports with other agencies relating to COVID-19 scams.

COVID-19 has seen a rise in certain types of online shopping and phishing scams, including sophisticated impersonations of government. A cooperative response across government has prevented much of the potential harm.

Online shopping scams involving fake web page stores selling non-existent masks, heavy vehicles, and puppies increased substantially. The inability to inspect goods meant these scams were more successful than usual as scammers could plausibly state 'we are unable to allow you to inspect the item'.

One highly sophisticated phishing scam involved text messages. A number of scams send spoofed messages of 'MyGov' and 'Gov' to create an impression of legitimate content which actually link to malicious websites. The ACCC and other agencies continue to work with the Australian Cyber Security Centre to remove the websites as quickly as possible (within hours in some cases) to prevent harm.

The ACCC continues to meet regularly with government departments, regulators and law enforcement to share intelligence and coordinate responses to scam activity throughout COVID-19.

## 5.7 Other activities

In addition to the above, the Taskforce has progressed work in relation to a number of other COVID-19 related issues causing consumer or small business detriment. These issues relate to the impact of COVID-19 on weddings, subscription services, telecommunication services, business closures, delivery delays, COVID-19 specific claims and country of origin labelling. Further details about these issues and ACCC interventions are outlined at Appendix B.

## 6. Future issues and next steps

As detailed in this report, the consumer guarantees regime under the ACL is restricted in terms of its ability to effectively address issues arising from the impact of COVID-19. The ACCC will work with government and the state and territory ACL regulators to consider whether any policy reforms may be required to address issues which have arisen in the pandemic.

Despite these issues, as outlined in this report, the ACCC has been able to identify and intervene in a large number of significant consumer issues arising from COVID-19. Our investigations and engagement are continuing in relation to a number of issues.

As government restrictions have gradually eased throughout Australia, the Taskforce has also turned to identifying and monitoring emerging consumer and small business issues and trends arising from COVID-19. This work includes:

- monitoring the ongoing impact of existing domestic and international travel restrictions on travel businesses and consumers, particularly in circumstances where businesses are able to provide travel services but consumers are prevented by restrictions from accessing these services
- ensuring that businesses are adequately complying with their ACL obligations in providing services to consumers while operating under COVID-19 social distancing restrictions
- actively monitoring forward sales practices by travel businesses, particularly given the uncertainty of when travel restrictions will be lifted and consumers will be able to access these services.

While the ACCC is actively monitoring any consumer and competition issues that may arise from COVID-19 in the long-term, we also recognise that businesses face additional challenges in complying with their obligations in the short-term. For example, there is likely to be added complexity in navigating ACL obligations while operating under COVID-19 social distancing restrictions. There also may be uncertainty for businesses in how to handle various requests from consumers and small business to acquire or cancel services in the face of changing restrictions.

Despite these challenges, businesses must ensure they understand their obligations and how they apply to the changing environment in which they operate. Of fundamental importance is that consumers and small business are treated in accordance with their rights and entitlements under both their contracts and the ACL, and that they are not misled about these rights. This is particularly the case in sectors which have been, and continue to be, significantly impacted by COVID-19 restrictions.

## 7. Further resources/contact us

**ACCC Infocentre:** 1300 302 502

**ACCC Small Business Helpline:** 1300 302 021

**ACCC website guidance:**

- [COVID-19 \(coronavirus\) information for consumers](#)
- [COVID-19 \(coronavirus\) information for businesses.](#)

# Appendix A—Taskforce travel intervention case studies

The Taskforce is conducting targeted intervention with travel businesses, including both primary travel suppliers and third party intermediaries, to ensure that these businesses are complying with their obligations under the contract and the ACL in dealing with COVID-19 cancellations. Some of these interventions are outlined below.

## Airlines

Key issues raised with airlines included:

- airlines not acting in accordance with their terms and conditions in dealing with COVID-19 related flight cancellations
- airlines potentially misleading or deceiving consumers about their entitlements to remedies for flight services cancelled due to COVID-19.

### ► Case study—Airline demonstrating best practice in a credits-only policy

The ACCC received a number of complaints in relation to a particular airline not providing refunds to consumers. A review of the airline's terms and conditions showed that in the event of a flight being cancelled, the discretion as to whether to apply a refund or a credit rested with the airline rather than the consumer, and the airline was abiding by its contract with consumers in only issuing credits.

The expiry periods of the credit notes were initially for a period in which consumers may not have been able to use them due to COVID-19 restrictions remaining in place. As such, the ACCC engaged with the airline and it explained that it was carefully monitoring the COVID-19 situation and incrementally extending the expiry period for credits to ensure consumers will have a reasonable time to book and then travel with them when border restrictions ease. Two extensions have been provided to date, and the airline undertook to continue to extend the validity period as restrictions continue.

Most consumers will also be able to use their credit for the same type of trip as their original booking without needing to make further payment, even if that same trip is more expensive in the future, which is likely to prove advantageous to consumers in future market conditions.

### ► Case study—Airline making potentially misleading representations to consumers

The ACCC engaged with an airline regarding its representations that consumers were only entitled to credits for cancelled flights, when consumers were entitled to refunds under the airline's terms and conditions. Further, the Taskforce was concerned that the airline was making representations that its terms and conditions no longer applied, which was not the case. Following the Taskforce's engagement, the airline agreed to provide full refunds to all consumers, including those who had previously accepted credits from the airline or via the travel agents they booked through.

### ► Case study—Airline providing credits when it had previously offered refunds

The ACCC received complaints from consumers who had accepted the offer of a refund from an airline, but were subsequently provided with a credit. It became apparent that the airline had required those consumers to re-confirm their request for a refund, and if they did not, they were provided with a credit by default. Following engagement with the Taskforce, the airline agreed to provide those consumers with a refund unless they expressly contacted the airline and stated that they wanted to keep their credit.

## Cruises

The Taskforce has engaged with major Australian ocean cruise operators to understand:

- the approach of cruise operators to COVID-19 related cruise cancellations, and their plans to handle future cancellations should they be required due to the extension of current government restrictions
- the measures being put in place by cruise operators to ensure they meet their obligation under the ACL consumer guarantees to provide services with due care and skill to consumers when cruise services resume.

The Taskforce's assessment at this time is that the major ocean cruise companies have generally been acting in accordance with the terms and conditions of their bookings, and offering consumers the remedies they are legally entitled to for cancelled cruises. Some of these cruise companies have also introduced more flexible COVID-19 policies to offer consumers greater remedies than those which they are entitled to under the terms and conditions of their booking.

However, the Taskforce continues to monitor complaints received about ocean and river cruise lines and has intervened where concerns are raised in relation to the treatment of consumers by cruise operators in respect of cancelled cruises. The Taskforce's engagement with some of these cruise companies is still ongoing.

### ► Case study—Cruise company delaying the availability of refunds

The ACCC received complaints that a cruise operator was informing consumers that it was only providing credits for cancelled travel, and that refunds would not be provided until the expiry of the credit voucher at the end of a 2-year period. This was despite the terms and conditions providing consumers with the option of a refund on request. Following engagement with the ACCC, the operator acknowledged consumers' entitlement to a refund, improved its communications to consumers, and is now processing full refunds to all consumers in accordance with its terms and conditions, with no additional criteria to be met.

## Accommodation

Key issues raised with accommodation providers include:

- accommodation providers potentially misleading consumers about their entitlement to a remedy for cancelled bookings under contractual law or the ACL
- potential use of unfair contract terms by accommodation providers relating to remedies for cancelled bookings.

### ► Case study—Denial of remedies for cancelled accommodation bookings

A short-term accommodation rental provider was refusing to provide remedies to consumers where they were unable to attend their booking due to domestic COVID-19 travel restrictions. The accommodation providers' terms and conditions did not address consumer entitlements in this situation, which meant that the principle of contractual frustration became relevant in determining entitlements. The ACCC intervened and raised its concerns with the business regarding its attempts to rely on the consumer cancellation provisions of its terms and conditions to deny consumers remedies, when these provisions did not apply. Following this engagement with the ACCC, the provider offered credits to over 30 affected consumers which enabled them to rebook their accommodation service within the next three years. The business also agreed to remove some potentially unfair contract terms in their terms of hire.

### ► Case study—Potential unfair contract terms relating to remedies for cancelled accommodation bookings

A holiday accommodation provider was only offering consumers a credit for bookings cancelled as a result of COVID-19, and requiring consumers to pay a substantial fee to receive that credit. While this was consistent with the business' terms and conditions, the Taskforce had concerns that these terms may be unfair within the meaning of unfair contract terms under the ACL. Following engagement with the Taskforce, the business agreed to refund consumers half the fee and to amend its terms and conditions so that no fee would be payable in future scenarios where a booking needed to be cancelled as a result of government restrictions on travel. The business also introduced a policy enabling consumers to obtain a refund if they could demonstrate genuine hardship.

### ► Case study—Engagement with online accommodation booking service regarding its COVID-19 cancellation policy

The Taskforce engaged with an online accommodation booking service regarding its COVID-19 cancellation policy. The company implemented a policy at the start of the pandemic which required accommodation providers to provide refunds to consumers, regardless of whether the consumer's original booking was 'refundable' or not under the provider's terms and conditions. However, to balance the interests of both consumers and accommodation providers, the scope of the policy was limited in terms of the time period for which bookings were covered. This time period was incrementally broadened as the pandemic progressed. Further, the policy only applied to bookings made before a specified date in early 2020, on the basis that after this time, consumers were on notice of the pandemic and could take that into account when making their booking.

## Travel agents

Over the first ten months of 2020, the ACCC received the highest number of travel-related complaints about travel agents. This may be reflective of the particular complexity of issues involved where consumers have contracts in place with both their travel agent and their various travel suppliers, and possibly also with a travel aggregator (e.g. online booking platforms) where these may have been used by the agent.<sup>3</sup>

Common complaints raised in relation to travel agents include:

- a lack of transparency over the efforts of agents to recover funds from suppliers for cancelled services, and whether or when these funds had been received by the agent. In some instances agents have not been transparent with consumers regarding the travel suppliers they have booked,

<sup>3</sup> Complaint figures about travel agents may also be slightly inflated by consumers reporting concerns about their agent even where their issue is with the primary provider. This often occurs where the consumer is unable to deal directly with the provider.

or that they have used online booking platforms to book this travel. This means that consumers are unaware that their entitlements will depend on the policies of these suppliers or platforms and consumers are also unable to contact them

- agents potentially misleading consumers regarding the agent's ability to charge cancellation fees to consumers, or retain costs from refunds for travel impacted by COVID-19 (particularly where suppliers had agreed to fully refund consumers at no cost)
- inconsistency in communications from travel agents and suppliers to consumers regarding their entitlement to a refund or other remedy. For example, a consumer might be told by their hotel that they are entitled to a refund for their cancelled booking, whereas their travel agent might tell them that they are only entitled to a credit for that same booking. Or a supplier might tell a consumer it has processed their refund, but fails to mention that the refund has not yet been approved which means the agent will be unable to release it
- delays regarding the provision of remedies to consumers via agents.

► **Case study—Online travel agent potentially misleading consumers regarding their entitlement to a refund in accordance with the terms and conditions of their booking**

The ACCC received hundreds of complaints that an online travel agent was denying refunds to consumers, and only offering credit, for cancelled travel despite consumers being entitled to refunds in certain circumstances under the terms and conditions of their booking. After the ACCC engaged with the travel agent, it agreed to update its website to clarify the remedies available to consumers under its terms and conditions, and to proactively offer these refunds to eligible consumers going forward. The ACCC also required the business to review the booking details of hundreds of consumers to provide retrospective refunds to consumers in accordance with its terms and conditions, even where consumers had already accepted a credit. This included consumers who had made complaints to the ACCC. As a result of this intervention, over 200 consumers received retrospective refunds and the broader impact will flow onto other consumers.

► **Case Study—Engagement with various online travel agents regarding remedies for cancelled bookings and delays in communicating with consumers**

The Taskforce has engaged with a number of online travel agents (OTAs) which provide booking services for both flights and accommodation. The ACCC received complaints from consumers who had been unable to contact their OTA prior to their scheduled booking or flight departure date, or who were not satisfied with the remedy they received for their cancelled booking.

For flight bookings, OTAs generally pass on the remedy provided by airlines under the airlines' terms and conditions. For accommodation bookings, OTAs have often gone beyond the requirements of their terms and conditions to offer remedies for consumers who have purchased a 'non-refundable' booking, by seeking to ensure that consumers are able to at least obtain a credit voucher. The Taskforce has engaged directly with the OTAs to ensure their COVID-19 policies are applied consistently in respect of Australian consumers.

Generally speaking, OTAs experienced a very sharp increase in contacts to their call centres at the start of the COVID-19 pandemic, at the same time as those call centres were experiencing significant staffing difficulties also resulting from COVID-19. This meant that many consumers experienced very long wait times or were not able to reach their OTA at all prior to their scheduled booking or flight departure date. As such, the Taskforce has engaged with OTA to ensure they have systems in place to contact consumers who were not able to reach them at the start of the COVID-19 pandemic and retrospectively provide them with the appropriate remedy.

# Tour operators

The services offered by tour operators involve complex back-end arrangements with many service providers. There are also some tour operators that offer expensive packages which many consumers save for some time to afford the ‘trip of a lifetime’. The ACCC and other ACL regulators have received significant numbers of consumer complaints about tour operators. The ACCC continues to investigate ongoing concerns about tour operators:

- charging cancellation fees, or retaining unrecoverable cost amounts from refunds, which the ACCC considers the operators are not entitled to do under their terms and conditions
- failing to provide refunds or other remedies in accordance with their terms and conditions, including allegations of misleading and deceptive conduct and false representations by the tour operators in their responses to consumers’ requests for refunds.

## ▶ Case study—Tour operator failing to properly communicate consumer entitlements

The ACCC received complaints that a tour operator had changed its terms and conditions to deny customers a refund for cancelled travel. The ACCC reviewed the tour operator’s website and considered it contained several unclear statements about what consumers were entitled to receive for cancelled bookings. Following engagement with the ACCC, the tour operator updated its website guidance to clearly state that its terms and conditions had not changed and that customers still had the same cancellation options available under those terms and conditions.

## ▶ Case study—Experience operator failing to properly communicate consumer entitlements

The ACCC received consumer complaints, including from international tourists, who had booked a tourism experience that had been cancelled due to COVID-19. They had been offered credit vouchers, and invited to reschedule their experience at a suitable date in the future. However the operator’s terms and conditions also provided that consumers could receive a refund if the experience could not be rescheduled at their convenience. Following engagement with the Taskforce, the operator advised that affected consumers who have requested a refund, rather than agreeing to accept a credit voucher, would be issued a full cash refund once the experience reopened and the operator had sufficient cash flow to pay refunds. The operator also updated its website and agreed to improve its communications with affected consumers regarding their entitlements. On reopening, the business ended up providing refunds to over 70 customers.

## ▶ Case study—ACCC advocating on behalf of consumers

The ACCC received a number of complaints about a tour operator failing to provide customers with a refund pursuant to the terms and conditions. The tour operator confirmed that it was in fact providing refunds to consumers upon request, and that the issue may have been confusion on the part of consumers when communicating with travel agents about potential remedies. By intervening directly the Taskforce was able to arrange for the tour operator to consider individual complaints and provide refunds where appropriate.

# Appendix B—Other Taskforce activities

The ACCC has also released COVID-19 related consumer and business guidance, and engaged with businesses where required, in relation to the following topics.

## Weddings

COVID-19 restrictions impacted celebrations such as weddings, which have been reduced in size or cancelled altogether. Associated goods and services were also impacted, with delays in the delivery of items like wedding dresses, venues closing, and travel for attendees restricted.

The ACCC published [guidance](#) on its website to help consumers understand their rights in relation to these types of issues. ACCC also published related [guidance](#) for small business to help them understand their obligations regarding cancelled functions and events.

## Subscription services

The ACCC provided [guidance](#) to consumers regarding subscription service platforms impacted by COVID-19, including fresh food delivery services affected by food supply chain issues. Sporting subscription services were also impacted by the cancellation or suspension of live sport by major sporting leagues.

The ACCC also provided general [guidance](#) around subscription services for small business about their obligations where they are no longer able to provide services to consumers.

## Telecommunication services

Telecommunication services were impacted by higher use as well as consumers' decreased ability to pay for them. Higher than usual usage impacted connection speeds, and some video on demand providers chose to restrict access to services like HD streaming to help manage the initial surge of demand on networks.

The ACCC issued [guidance](#) to consumers about their rights if the service they receive has been affected, including directing them to the Telecommunications Industry Ombudsman if they are unable to resolve service issues with their telecommunications provider.

## Business closures

Many businesses were required to reduce or cease their in-store operations as a result of COVID-19 restrictions. The ACCC issued [guidance](#) to consumers on what to do if they have been impacted by the closure of a business, such as where they have purchased goods on lay-by, gift cards or paid for services in advance and that business has temporarily closed or become insolvent.

In addition, the ACCC also published [guidance](#) for businesses on their obligations if, for example, they are no longer able to provide goods that consumers have paid for due to supply issues.

## Delivery delays

The COVID-19 pandemic led to a large increase in the volume of online commerce. The ACCC issued general guidance to [consumers](#) and [small business](#) around online commerce, including what to do in the event of delivery delays, which continues to be an ongoing source of complaints to the ACCC.

### ► Case study—Australia Post

The ACCC engaged with Australia Post after receiving consumer complaints regarding Australia Post delivery delays for its Express Post service and more generally. Due to COVID-19 restrictions, Australia Post has seen a substantial increase in consumer demand for its services and at the same time, a reduction in its capacity to provide that service.

On 20 April 2020 Australia Post announced a suspension of the next business day delivery guarantee for Express Post services due to these impacts. Australia Post provided information to customers about delivery delays on its website, social media channels, and in store, continuing to update customers about the issues and delays. Australia Post continues to charge the same price for the express post products as it did pre-COVID-19 restrictions, despite the suspension of the next business day guarantee and delivery delay issues. However, all Australia Post services have been subject to delays due to the impacts of COVID-19 restrictions. The Express Post service is receiving priority over other Australia Post's other services and continues to be Australia Post's fastest delivery option, so that customers are still obtaining a better service for the additional cost incurred.

Australia Post is considering requests for refunds of postage costs or other compensation for delayed or lost deliveries in certain cases. Consumers can lodge requests for compensation with Australia Post for consideration. Compensation claims generally won't be successful where the delay was due to factors other than Australia Post's delay (e.g. incorrect addressing, failure to sign the aviation security declaration).

## COVID-19 Specific Claims

The ACCC works closely with the TGA in relation to various claims made that certain products treat or provide protection from COVID-19. In many instances the TGA was the appropriate regulator to investigate and respond to the allegations of misleading or deceptive conduct. The TGA has made this area a priority and issued a number of infringement notices in relation to misleading COVID-19 claims.<sup>4</sup> The ACCC continues to investigate allegations of false and misleading representations in relation to products outside of the TGA's jurisdiction claiming to provide COVID-19 'protection'.

## Country of Origin Labelling

The ACCC published [guidance](#) on its website to respond to enquiries received from food suppliers about the impact of COVID-19 on supply chain or manufacturing processes, and subsequently on country of origin labelling.

A small number of businesses enquired with the ACCC about their ability to comply with country of origin labelling requirements until the business had resolved supply chain issues and/or was able to amend its packaging. The ACCC engaged with these businesses to understand their supply issues and the steps they were taking to ensure any labelling concerns were managed appropriately.

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4 <https://www.tga.gov.au/media-release/warning-about-products-claiming-treat-or-prevent-novel-coronavirus>.



AUSTRALIAN COMPETITION  
& CONSUMER COMMISSION

