

## COMPETITION AND CONSUMER ACT 2010

Undertaking to the Australian Competition and Consumer Commission given for the purposes of section 87B

by

**Jetstar Airways Pty Ltd ABN 33 069 720 243**

### Person giving the Undertaking

- 1 This Undertaking is given to the Australian Competition and Consumer Commission (ACCC) by Jetstar Airways Pty Ltd ABN 33 069 720 243 of 10 Bourke Road, Mascot, 2020, in the State of New South Wales (**Jetstar**) for the purposes of section 87B of the *Competition and Consumer Act 2010* (Cth) (the **CCA**).

### Background

- 2 On 20 December 2017, the ACCC published its *Airlines: Terms and Conditions Report* (the **Report**). In the Report, the ACCC noted that between 1 January 2016 and 14 December 2017, it had received complaints about airlines including in relation to 'no refund' statements and issues relating to consumer guarantees.

#### *Jetstar*

- 3 Jetstar is an Australian airline that operates up to 1806 domestic flight services per week in Australia and up to 328 international flight services per week to/from Australia. The airline also operates a number of domestic New Zealand services and international services to/from New Zealand. In the 2018 financial year, the Jetstar Group (in so far as it consists of Jetstar's operations in both Australia and New Zealand) carried over 20 million passengers.
- 4 Consumers in Australia can purchase domestic Australian flight services and international flight services to and from Australia operated by Jetstar (**Flight Services**) through Jetstar's booking platform on its website ([www.jetstar.com/au](http://www.jetstar.com/au)) (the **Website**), its mobile site or its mobile app (together, the **Booking Platforms**).
- 5 Jetstar offers a basic Starter fare that includes only a seat and carry-on baggage. Jetstar's Booking Platforms allow passengers to choose whether to purchase "extras" such as checked baggage, in-flight entertainment, food and flight flexibility, either as separate items or as a discounted "bundle" (**flight bundle**).
- 6 The Flight Services are subject to Jetstar's *Conditions of Carriage, Fare Rules and Compensation and Refunds* page, which can be accessed and viewed on the Booking Platforms.
- 7 *Conditions of Carriage:* Jetstar's *Conditions of Carriage* set out the conditions that apply to the contract for the booking and acquisition of the Flight Services.
- 8 *Fare Rules:* Jetstar's *Fare Rules* provide passengers with specific information for each fare type about flight changes and cancellations in some circumstances (including refunds), and are separate from and in addition to the consumer guarantees contained in the Australian Consumer Law (**ACL**).
- 9 *Compensation and Refunds page:* Jetstar's *Compensation and Refunds* page provides information about available compensation and refunds in the case of delay, cancellation or

overbooking in respect of Flight Services, and is separate from and in addition to the consumer guarantees contained in the ACL.

#### *Australian Consumer Law*

- 10 The ACL in Schedule 2 to the CCA provides consumers with a guaranteed level of protection for goods and services they acquire within Australia. Consumer guarantees under Part 3-2 of the ACL cannot be excluded, restricted or modified by contract.
- 11 Consumers who are supplied goods or services that fail to meet the consumer guarantees under Part 3-2 of the ACL are entitled to remedies under Part 5-4 of the ACL, against the supplier of the goods or services depending on whether the failure is major or not.
- 12 Section 62 of the ACL provides that, if a person supplies, in trade or commerce, services to a consumer, there is a guarantee that the services will be supplied within a reasonable time.
- 13 Section 18 of the ACL provides that a person must not, in trade or commerce, engage in conduct that is misleading or deceptive, or is likely to mislead or deceive.
- 14 Section 29(1)(m) of the ACL provides that a person must not, in trade or commerce, in connection with the supply or possible supply of services or in connection with the promotion by any means of the supply or use of goods or services, make a false or misleading representation concerning the existence, exclusion or effect of any condition, warranty, guarantee, right or remedy (including a consumer guarantee under the ACL).
- 15 Representations by a supplier that purport to limit or exclude remedies available under the ACL, including statements such as 'no refunds' or 'non-refundable', may contravene the ACL because they imply that refunds are not available in circumstances where they may be available under the ACL.

#### *Conduct of concern*

- 16 In December 2018, the ACCC instituted proceedings against Jetstar in the Federal Court of Australia alleging that Jetstar had, between at least 10 April 2017 and 13 March 2018, made certain false and misleading representations to consumers in respect of the Flight Services about the nature and potential application of their consumer guarantee rights, including about the remedies that consumers may be entitled to in the event of flight delays or cancellations.
- 17 The ACCC and Jetstar have agreed to resolve the proceedings by consent with Jetstar making admissions that it made false and misleading representations about consumers' refund rights. The parties have agreed to make joint submissions to the Court in support of a proposed agreed penalty and declarations. Jetstar has also agreed to make a contribution to the ACCC's costs.
- 18 Jetstar has admitted that between at least 10 April 2017 and 13 March 2018 it made representations that:
  - (a) its 'Economy Starter' fares and 'Plus Bundle' fares were not refundable, and that customers were only entitled to refunds on fares if they purchased a flight bundle at additional costs;
  - (b) the Flight Services were not subject to any statutory guarantees or warranties (including those in the ACL); and
  - (c) to the extent the consumer guarantees in the ACL applied to the Flight Services, Jetstar's liability was limited to either supplying the services again or paying the cost of having the services supplied again, at its discretion;

in circumstances where:

- (d) Flight Services are subject to consumer guarantees contained in the ACL;
- (e) the consumer guarantees cannot be excluded, restricted or modified by contract;
- (f) consumers may be entitled to a range of remedies in accordance with the consumer guarantee provisions (including, in certain circumstances, refunds and compensation for reasonably foreseeable losses) if there has been a failure to comply with a consumer guarantee;
- (g) these remedies are available in accordance with the ACL at the election of the consumer, not Jetstar; and
- (h) Jetstar is not entitled to limit its liability for a failure to meet the consumer guarantees to supplying the services again or paying the cost of having the services supplied again;

and thereby, in trade or commerce, Jetstar engaged in misleading and deceptive conduct and made false and misleading representations concerning the existence, exclusion or effect of a guarantee, right or remedy, in contravention of sections 18 and 29(1)(m) of the ACL.

19 In addition, Jetstar:

- (a) has voluntarily responded to the ACCC's enquiries and cooperated with the ACCC to design the commitments set out in this Undertaking; and
- (b) has made amendments to its Website, including its *Fare Rules*, *Conditions of Carriage* and *Compensation and Refunds* page, to address the ACCC's concerns.

### **Commencement of this Undertaking**

20 This Undertaking comes into effect when:

- (a) this Undertaking is executed by Jetstar; and
- (b) this Undertaking so executed is accepted by the ACCC.

(the **Commencement Date**).

21 This Undertaking has effect for three (3) years after the Commencement Date (the **Term**).

22 Upon the Commencement Date, Jetstar undertakes to assume the obligations set out in **Attachment A** for the Term of the Undertaking for the purposes of section 87B of the CCA.


### **Acknowledgements**

23 Jetstar acknowledges that:

- (a) the ACCC will make this Undertaking publicly available including by publishing it on the ACCC's public register of section 87B undertakings on its website;
- (b) the ACCC may, from time to time, make public reference to this Undertaking, including in news media statements and in ACCC publications; and
- (c) this Undertaking in no way derogates from the rights and remedies available to any other person arising from the alleged conduct.

**Executed as an Undertaking**

Executed by Jetstar Airways Pty Ltd ABN 33 069 720 243 pursuant to section 127(1) of the Corporations Act 2001 by:

  
Signature of director

ALAN JOYCE  
Name of director (print)

  
Signature of director/company secretary

Andrew Finch  
Name of director/company secretary (print)


10 December 2018  
Date

10 December 2018  
Date

Accepted by the Australian Competition and Consumer Commission pursuant to section 87B of the Competition and Consumer Act 2010 (Cth) on:

14/12/18  
Date

and signed on behalf of the Commission:

  
Rodney Graham Sims  
Chair

14/12/18  
Date

## Attachment A

- 1 Upon the Commencement Date of this Undertaking, Jetstar undertakes for the purposes of section 87B of the CCA to assume the obligations set out below.

### *Comprehensive review of Jetstar's policies, compliance programs, website and booking systems*

- 2 Jetstar will, within 3 months of the Commencement Date of this Undertaking, cause a comprehensive review to be undertaken of:
  - (a) its policies, procedures and Consumer Law Compliance Programs, having regard to AS ISO 19600:2015 (*Compliance management system – Guidelines*); and
  - (b) its Booking Platforms;and make any changes necessary, to ensure that:
  - (c) appropriate consideration of consumers' rights under, and arising from, the consumer guarantees contained in the ACL are clearly represented in all relevant systems, policies, procedures and practices;
  - (d) any representations made on its platforms and in its policies and procedures are consistent with the ACL; and
  - (e) consumers are aware of any lawful remedies they are entitled to arising from the ACL and are not denied any of those remedies.

### *Update internal policy outlining Jetstar's commitment to compliance with the ACL*

- 3 Jetstar will, within 3 months of the Commencement Date of this Undertaking, update its internal policy outlining Jetstar's commitment to compliance with the ACL (**Compliance Policy**). Jetstar will ensure that the Compliance Policy:
  - (a) contains a statement of commitment to compliance with the ACL;
  - (b) contains an outline of how commitment to ACL compliance will be realised within Jetstar;
  - (c) contains a requirement for all staff to report any ACL compliance concerns to Jetstar's Compliance Officer; and
  - (d) contains a statement that Jetstar will take action internally against any person who is knowingly or recklessly concerned in a contravention of the ACL and will not indemnify them in the event of any court proceedings in respect of that contravention.

### *Notify relevant employees of Jetstar's obligations to consumers under the ACL and Jetstar's Compliance Policy*

- 4 Jetstar will take reasonable steps to ensure its directors, officers and employees whose duties may include communicating with Australian consumers of Flight Services or dealing with their enquiries or complaints about Flight Services, are made aware of the Compliance Policy and any changes made as a result of the review undertaken at paragraph 2 above.

*Creation of an Australian Consumer Law webpage on the Jetstar Website*

- 5 Jetstar will, within 30 days of the Commencement Date of this Undertaking, create an 'Australian Consumer Law' webpage on its Website to provide a clear and concise statement of consumers' rights under the ACL. The webpage will include, at a minimum, a description of the consumer guarantees that apply to goods and services, and the ACL remedies available to consumers against Jetstar, in the event of a failure to comply with those guarantees.

*Inclusion of hyperlink to Jetstar's Australian Consumer Law webpage in communications sent to consumers in the event of cancellations and/or flight delays*

- 6 Jetstar will, within 2 months of the Commencement Date of this Undertaking, ensure that a hyperlink to its 'Australian Consumer Law' webpage (referenced at paragraph 5 above) is prominently included:
- (a) in emails;
  - (b) in letters; and
  - (c) on its customer self-service system, "Manage my Booking", a hyperlink to which is provided to consumers by text message or other form of alert;

in circumstances where Jetstar ordinarily sends communications to passengers making reference to its 'Compensation and Refunds' Policy, such as when passengers' Flight Services are delayed or cancelled.

*Staff training*

- 7 Jetstar will, within 6 months of the Commencement Date of this Undertaking, cause a comprehensive review to be undertaken of its existing training material for all relevant customer-facing staff, and ensure that it includes training on compliance with relevant provisions of the ACL, including those provisions relating to consumer guarantees and misleading and deceptive conduct.
- 8 Jetstar will:
- (a) within 6 months following completion of the review referred to in paragraph 2 above, complete compliance training for all customer-facing staff, and thereafter provide compliance training every two years; and
  - (b) provide compliance training for new customer-facing staff within 6 months of the commencement of their employment.

*Past complaint review*

- 9 Jetstar will, within 12 months of the Commencement Date of this Undertaking, appoint a suitably qualified legal practitioner with appropriate expertise in the ACL, to commence a review of past complaints by:
- (a) identifying any Relevant Complaints; and
  - (b) reassessing each identified Relevant Complaint to determine whether the consumer was entitled to a remedy, or a more extensive remedy, under the ACL.

- 10 A Relevant Complaint:
- (a) means any complaint recorded in Jetstar's customer relationship management system during the period 10 April 2017 and 13 March 2018, where following a delay or cancellation to a Flight Service:
    - (i) the complainant was refused a remedy by Jetstar; or
    - (ii) the complainant was dissatisfied with the remedy they received; and
  - (b) does not include those consumers whose complaints were resolved in a Court or Tribunal.
- 11 Where Jetstar determines that a consumer was likely to be entitled to a remedy under the ACL (which was not offered/provided) or was entitled to a more extensive remedy under the ACL than the remedy that was provided (**Relevant Complainant**), Jetstar will contact the Relevant Complainant to offer them a remedy, or choice of remedies, in accordance with their rights under the ACL (**Revised Remedy**).
- 12 Jetstar will, within 90 days of completion of the Past Complaint Review, provide a report to the ACCC that includes the following information:
- (a) an explanation of the process used to identify Relevant Complaints and Relevant Complainants;
  - (b) the number of Relevant Complaints and Relevant Complainants identified; and
  - (c) a list of Relevant Complainants, and for each Relevant Complainant, a summary of the issue complained of and any Revised Remedy offered.
- 13 Jetstar will maintain a record of all documentation relating to the review of each Relevant Complaint, including the assessment and recommendation made by Jetstar, for the Term of this Undertaking.

#### *Statement*

- 14 Jetstar will, within 30 days of the Commencement Date of this Undertaking, publish or cause to be published on its Website and mobile site a statement in the form and terms of the **Annexure** to this Attachment, ensuring that:
- (a) the notice is prominently hyperlinked at the top of the homepage of the Website and mobile site; and
  - (b) the notice remains on the Website and mobile site for no less than 30 days; and
  - (c) the notice shall:
    - (i) have a bold type heading in at least 16 point type and the body of the notice shall be in a type not less than 11 point;
    - (ii) include the business logo of Jetstar at the top.

#### *Future compliance with this Undertaking*

- 15 Jetstar will, within 6 months of the Commencement Date of this Undertaking, implement a program to monitor compliance with this Undertaking whereby Jetstar will review a sample of 20 consumer complaints received and resolved every month in relation to consumer guarantee issues and/or consumers who were seeking a remedy following a delay or cancellation to their

Flight Services (in so far as 20 or more such complaints are received by Jetstar in any given month).

- 16 Jetstar will, within 12 months of the Commencement Date of this Undertaking, report to the ACCC on the outcomes reached by the ongoing complaint review program. If any potential issues with ACL compliance are identified, Jetstar will advise the ACCC of the steps it has taken or will take to address those issues.

#### *Risk review*

- 17 Jetstar will, for the duration of this Undertaking, appoint an officer responsible for conducting two reviews, at least one year apart, of the commitments made in this Undertaking, and that responsible officer will report to the Group Executive of Qantas Airways Limited on the effectiveness and implementation of the commitments made in this Undertaking.
- 18 As part of the review, the officer will conduct an ACL risk review (**Risk Review**), which sets out in the form of a written report:
  - (a) any areas of Jetstar's promotion or supply of Flight Services which are at risk of not complying with the provisions of the ACL regarding the consumer guarantees, or misleading and deceptive conduct (including sections 18 and 29(1)(m)) in relation to consumers' rights and remedies under the consumer guarantees;
  - (b) the procedures put in place by Jetstar in relation to its promotion or supply of Flight Services to minimise the risk of not complying with the provisions or contravening the provisions of the ACL regarding the consumer guarantees or misleading and deceptive conduct (including sections 18 and 29(1)(m)) in relation to consumers' rights and remedies under the consumer guarantees;
  - (c) any material gaps in Jetstar's existing procedures for managing these risks; and
  - (d) recommendations for any action to be taken to address these risks.
- 19 Jetstar will, as soon as reasonably practicable following the Risk Review, implement any reasonable and appropriate recommendations made by the Risk Review.

#### *ACCC enquiries*

- 20 For the purposes of monitoring compliance with this Undertaking, the ACCC may make reasonable enquiries with Jetstar, and Jetstar will respond to such enquiries within a reasonable period of time.
- 21 If requested by the ACCC during the Term of this Undertaking, Jetstar will, at its own expense, cause to be produced and provided to the ACCC copies of all documents (excluding any legally privileged documents) evidencing the obligations set out above in this Undertaking and their implementation.



Annexure  
**Statement**

[Jetstar logo]

**Jetstar provides Undertaking to ACCC and agrees to  
resolve proceedings**

On 20 December 2017, the ACCC published its *Airlines: Terms and Conditions* Report. In the Report, the ACCC noted that between 1 January 2016 and 14 December 2017, it had received complaints about airlines including in relation to 'no refund' statements and issues relating to consumer guarantees.

In December 2018, the ACCC instituted proceedings against Jetstar in the Federal Court of Australia. The ACCC and Jetstar have agreed to resolve the proceedings by consent, with Jetstar making admissions that, between at least 10 April 2017 and 13 March 2018, it made representations to consumers in respect of domestic Australian flight services and international flight services to and from Australia operated by Jetstar (**Flight Services**) that:

- (a) its 'Economy Starter' fares and 'Plus Bundle' fares were not refundable, and that customers were only entitled to refunds on fares if they purchased a flight bundle at additional costs;
- (b) the Flight Services were not subject to any statutory guarantees or warranties (including those in the Australian Consumer Law); and
- (c) to the extent the consumer guarantees in the Australian Consumer Law applied to the Flight Services, Jetstar's liability was limited to either supplying the services again or paying the cost of having the services supplied again, at its discretion;

and thereby, in trade or commerce, engaged in misleading and deceptive conduct and/or made false or misleading representations, in contravention of sections 18 and 29(1)(m) of the Australian Consumer Law.

Jetstar and the ACCC have agreed to make joint submissions to the Court in support of a proposed agreed penalty and declarations. Jetstar has also agreed to make a contribution to the ACCC's costs.

Jetstar has addressed the ACCC's concerns by:

- cooperating with and responding to the ACCC's inquiries;
- amending its Website, including its *Fare Rules*, *Conditions of Carriage* and *Compensation and Refunds* page; and

- providing the ACCC a court enforceable undertaking under section 87B of the *Competition and Consumer Act 2010* which includes a review of past complaints and the potential offer of remedies.

More information about your consumer guarantee rights under the ACL where Jetstar has delayed or cancelled your flight can be found at <https://www.jetstar.com/au/en/book-a-trip/flights/rights-under-the-acl.html>