

COMPETITION AND CONSUMER ACT 2010

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

by

Tiger Airways Australia Pty Limited ABN 52 124 369 008

Person giving the Undertaking

- 1 This Undertaking is given to the Australian Competition and Consumer Commission (**ACCC**) by Tiger Airways Australia Pty Limited ABN 52 124 369 008 of 56 Edmondstone Road, Bowen Hills, 4006, in the State of Queensland (**Tigerair Australia**) for the purposes of section 87B of the *Competition and Consumer Act 2010* (Cth) (**CCA**).

Background

- 2 On 20 December 2017, the ACCC published its *Airlines: Terms and Conditions Report (Report)*. In the Report, the ACCC noted that between 1 January 2016 and 14 December 2017, it had received over 1,400 complaints about airlines, largely in relation to 'no refund' statements, excessive fees for cancelling or changing flights and issues relating to consumer guarantees.

Tigerair Australia

- 3 Tigerair Australia is an Australian airline, and operates over 500 domestic flights per week to more than twelve Australian cities and centres.
- 4 Consumers can purchase flights operated by Tigerair Australia through Tigerair Australia's booking platform on its website (www.tigerair.com.au) (**Website**), its mobile site or its mobile app (together, the **Booking Platforms**). Approximately 65% of all flight bookings made for Tigerair Australia's flight services are purchased through the Website.
- 5 Tigerair Australia's flight services are subject to its *Conditions of Carriage* and *Fare Conditions*, which can be accessed and viewed through the Booking Platforms. Tigerair Australia also operates a *Customer Compensation Policy*, which can also be accessed and viewed through the Booking Platforms.
- 6 *Conditions of Carriage*: Tigerair Australia's *Conditions of Carriage* set out the conditions that apply to the contract for the booking of its flight services.
- 7 *Fare Conditions*: Tigerair Australia's *Fare Conditions* are incorporated into the *Conditions of Carriage* by reference, form part of Tigerair Australia's contract of carriage with its customers for flights, and provide passengers with information about the flexibility of fares (including refunds). A customer's right to change or cancel a Tigerair Australia flight booking as set out in the *Fare Conditions* is separate from, and in addition to, a customer's right to request a replacement flight service or a refund in the event of a flight delay or cancellation under the consumer guarantees contained in the Australian Consumer Law (**ACL**).
- 8 *Customer Compensation Policy*: Tigerair Australia's *Customer Compensation Policy* sets out the compensation and assistance Tigerair Australia will provide to passengers when their flight has been delayed or cancelled.

Australian Consumer Law

- 9 The ACL in Schedule 2 to the CCA provides consumers with a guaranteed level of protection for goods and services they acquire (**consumer guarantees**). Consumer guarantees cannot be excluded, restricted or modified.
- 10 Relevantly, 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.
- 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 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.
- 13 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).
- 14 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 at any time.

Conduct of concern

- 15 The ACCC is concerned that Tigerair Australia's Booking Platforms may have created an overall impression that risked misleading consumers 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.
- 16 In particular, the ACCC is concerned that, during a period estimated to be from at least 1 January 2017 to 31 March 2018, Tigerair Australia may have made representations to consumers that:
 - (a) refunds would only be provided if consumers paid a "refund admin fee"; and
 - (b) consumers were limited to receiving a remedy only in the form of a credit, and valid only for 6 months.
- 17 These representations were either express, or were implied from:
 - (a) Tigerair Australia's *Fees and Charges* page on its Website; and/or
 - (b) Tigerair Australia's *Customer Compensation Policy* for 'Disruptions – within 72 hours of departure'.
- 18 By making these representations in circumstances where:
 - (a) consumers are entitled to a remedy of a refund or resupply of the service in accordance with the consumer guarantee provisions if there has been a major failure to comply with a consumer guarantee; and/or

- (b) consumers may be entitled to recover reasonably foreseeable damages they incur as a result of a failure to comply with the consumer guarantees in certain circumstances, in accordance with the consumer guarantee provisions;

the ACCC is concerned that Tigerair Australia may have made false or misleading representations about the existence or effect of the rights or remedies available to consumers, which could constitute contraventions of sections 18 and 29(1)(m) of the ACL.

- 19 In response to the ACCC's concerns, and consistent with its desire to be as transparent as possible with its customers, Tigerair Australia:
 - (a) has acknowledged the ACCC's concerns that its conduct could have constituted contraventions of sections 18 and 29(1)(m) of the ACL;
 - (b) has voluntarily cooperated with and responded to the ACCC's enquiries; and
 - (c) has enhanced its messaging to consumers by making amendments to its Booking Platforms, including its *Fare Conditions*, *Conditions of Carriage* and *Customer Compensation Policy*, to address the ACCC's concerns.

Commencement of this Undertaking

- 20 This Undertaking comes into effect when:
 - (a) this Undertaking is executed by Tigerair Australia; and
 - (b) this Undertaking so executed is accepted by the ACCC.

(Commencement Date).
- 21 This Undertaking has effect for three (3) years after the Commencement Date (Term).
- 22 Upon the Commencement Date, Tigerair Australia 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 Tigerair Australia 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 Tiger Airways Australia Pty Limited ABN 52 124 369 008 pursuant to section 127(1) of the Corporations Act 2001 by:



Signature of director



Signature of director/company secretary

JOHN BORGHETTI

Name of director (print)

SHARYN PAGE

Name of director/company secretary (print)

06/12/2018

Date

06/12/2018


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, Tigerair Australia undertakes for the purposes of section 87B of the CCA to assume the obligations set out below.

Comprehensive review of Tigerair Australia's policies, compliance programs, website and booking systems

- 2 Tigerair Australia will, within 6 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) Tigerair Australia's relevant systems, policies, procedures and practices reflect Tigerair Australia's obligations to consider remedies available to its customers under the ACL in the event of flight delays or cancellations;

- (d) any representations concerning remedies available to consumers in the event of a breach of the consumer guarantees which it makes on its Booking Platforms and in its policies and procedures are consistent with the ACL; and

- (e) Tigerair Australia makes available to consumers information about remedies they are entitled to under the ACL.

Issue an internal policy statement outlining Tigerair Australia's commitment to compliance with the ACL

- 3 Tigerair Australia will, within 3 months of the Commencement Date of this Undertaking, issue an internal policy statement outlining Tigerair Australia's commitment to compliance with the ACL (**Compliance Statement**). Tigerair Australia will ensure that the Compliance Statement:

- (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 Tigerair Australia;

- (c) contains a requirement for all staff to report any ACL compliance concerns to the Chief Legal Officer or any other senior manager appointed to ensure compliance with this Undertaking;

- (d) contains a commitment that whistleblowers with ACL compliance concerns will not be prosecuted or disadvantaged in any way and that their reports will be kept secure and will only be used for the purposes of investigating the identified compliance concern in accordance with the Virgin Australia Group's internal whistleblower policies; and

- (e) contains a statement that Tigerair Australia will take action, against any person who is knowingly or recklessly concerned in a contravention of the ACL.

Notify relevant employees of Tigerair Australia's obligations to consumers under the ACL and Tigerair Australia's ACL Compliance Statement

- 4 Tigerair Australia will take reasonable steps to ensure its directors, officers and those employees whose duties include dealing with enquiries or complaints made by Australian consumers are made aware of the Compliance Statement and any changes made to Tigerair Australia's compliance policies as a result of the review undertaken at paragraph 2 above.

Creation of a Consumer Guarantees webpage on the Tigerair Australia Website

- 5 Tigerair Australia will, within 30 days of the Commencement Date of this Undertaking, create a 'Consumer Guarantees' 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 flight services, and the ACL remedies available to consumers against Tigerair Australia, in the event of a failure to comply with those guarantees as they apply to flight services.

Inclusion of hyperlink to Tigerair Australia's Consumer Guarantees webpage in communications sent to consumers in the event of cancellations and/or flight delays

- 6 Tigerair Australia will, within 3 months of the Commencement Date of this Undertaking, ensure that a hyperlink to its 'Consumer Guarantees' webpage (referenced at paragraph 5 above) is prominently included in:

- (a) emails; and
- (b) any other form of alerts or notices (where it is technically possible to include the hyperlink);

in circumstances where Tigerair Australia ordinarily sends communications to passengers, such as when passengers' flights are delayed or cancelled. Where it is not technically possible to include a hyperlink in the alert or notice, Tigerair Australia will ensure that the alert or notice makes specific reference to:

- (c) a location on its Website; or
- (d) an email Tigerair Australia sends to customers regarding the flight delay or cancellation;

which includes a hyperlink to the Consumer Guarantees webpage.

Staff training

- 7 Tigerair Australia 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 customer-facing staff (including ground staff, online customer support staff and telephone customer support 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 Tigerair Australia will, within 3 months following completion of the review referred to in paragraph 2 above complete compliance training for all customer-facing staff who are primarily responsible for responding to customer queries and complaints from Tigerair Australia customers, and thereafter provide annual compliance training
- 9 Tigerair Australia will, from the Commencement Date of this Undertaking, ensure it provides compliance training for new customer-facing staff who are primarily responsible for responding to customer queries and complaints from Tigerair Australia customers within 3 months of the commencement of their employment.

Annual review

- 10 Tigerair Australia will, for the duration of this Undertaking, appoint an appropriately qualified individual to be 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 Chief Executive Officer of Tigerair Australia on the effectiveness and implementation of the commitments made in this Undertaking.
- 11 As part of their annual review, the officer will conduct an ACL risk review (**Risk Review**), which sets out in the form of a written report:
 - (a) a review of 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 service. The review will consider the outcomes reached in each of the complaints reviewed, any potential issues with ACL compliance that are identified and the steps taken or that will be taken to address those issues;
 - (b) the relevant areas of Tigerair Australia's promotion or supply of flight services in Australia (being the Booking Platforms, *Conditions of Carriage*, *Fare Conditions* and *Customer Compensation Policy*) (**Relevant Areas**) which are at risk of misrepresenting to consumers that they are not entitled to remedies under the consumer guarantees for flight delays or cancellations (**Identified Risks**);
 - (c) the procedures put in place by Tigerair Australia in relation to the Relevant Areas of its promotion or supply of flight services in Australia to minimise the Identified Risks;
 - (d) any material gaps in Tigerair Australia's existing procedures for managing the Identified Risks; and
 - (e) recommendations for any action to be taken to address the Identified Risks.
- 12 Tigerair Australia will, as soon as reasonably practicable following the Risk Review, implement any reasonable and appropriate recommendations made by the Risk Review.

ACCC enquiries

- 13 For the purposes of monitoring compliance with this Undertaking, the ACCC may make reasonable enquiries with Tigerair Australia, and Tigerair Australia will respond to such enquiries within a reasonable period of time.

