

07 May 2020

Mr Rami Greiss
Executive General Manager | Enforcement Division
Australian Competition & Consumer Commission
Level 17, 2 Lonsdale St
Melbourne VIC 3000

Re: Complaint with regard to Slater & Gordon Misleading Consumers

Dear Mr Greiss,

As you are aware, the Council of Australian Tour Operators (CATO) is the peak industry association representing Australia's outbound land-supply tourism industry. On behalf of our members we are:

- formally expressing our deep concern about the emotive statements being delivered to Australian consumers through mainstream media by commentators and law firm Slater & Gordon in connection with their mooted class action against travel operators; and
- urging the ACCC to take action to prevent statements being made that could reasonably have the effect of misleading consumers about their rights to refunds where travel services have been rendered impossible to perform.

Slater & Gordon's statements in mainstream media insinuate that consumers are being misled by airlines and travel companies and that consumers have rights to full cash refunds even where services are impossible to perform due to Covid-19 associated government restrictions, border closures and other similar matters.

We do not represent airlines; only tour operators.

During our previous positive engagements with ACCC, CATO has always acknowledged that operators who (under booking conditions in effect at the time of contract with the customer) have promised refunds in circumstances where services are undeliverable due to reasons outside of their control, should be fulfilling such obligations.

We have no issue with this and have advised our members they have no legal basis to unilaterally and retrospectively change their booking conditions.

Even so, as we have consistently represented, booking conditions which commit operators to fully refund payments in current circumstances are extremely rare.

We understand that a significant proportion of booking conditions applied by operators include force majeure provisions, which often limit the quantum of cash refunds to recoverable expenses less a reasonable amount for work done.

Indeed, operators would ordinarily have paid out funds to suppliers to secure in-destination services many months in advance of travel and would have done significant work preparing the travel arrangements prior to their delivery becoming impossible. In addition to this, as a result of Covid-specific legislative changes in many foreign destinations, in-destination suppliers are themselves only offering to credit these payments for future services – not just to Australian tour operators but for tour operators from every country around the world.

Operators whose booking conditions do not specifically contemplate obligations to refund in current circumstances are relying on principles of contract law, particularly frustration of contract, to guide their legal obligations to refund.

The result generally being (subject to specific State legislation) that those operators are obliged to refund recoverable expenses less fair compensation for work already done.

In this regard, the vast majority of our members are offering credits equal to monies paid where possible (or greater in many cases) as a far better outcome for the consumer.

We acknowledge that the industry also benefits through the issue of credits; however we would note that if operators were obliged (outside of specific booking conditions) to make full cash refunds to customers, in circumstances where their own suppliers have not (in many cases pursuant to local law) refunded them, then a significant number of operators would likely financially fail, and consumers would be worse-off.

We note that there are many individual circumstances where consumers are requesting refunds in lieu of credits on compassionate grounds, and we understand these requests are being considered by our members on their merits.

Any law firm representing that consumers are by right entitled to a 100% cash refund where services have been made impossible to perform due to uncontrollable and unforeseen events, is misleading the consumer.

With respect to Slater & Gordon's statements specifically, we have been advised by members that their statements have caused consumers to be confused as to their rights, which has led to many hostile and aggressive discussions with customers.

At a time when a large cohort of our members are experiencing their own financial pressures and associated mental health challenges, this is extremely disappointing and in our view bordering on the unconscionable.

In this respect, we have also been made aware that since a potential class action was theorised, many travel agents around Australia have found the need to post signs in their offices stating that abusive behaviour towards staff will not be tolerated.

We are appalled that consumers seem to have been misled about their rights and have consequently resorted to such abusive behaviour.

We look forward to your support in addressing this issue as a matter of urgency.

Kind regards

A handwritten signature in black ink, appearing to read 'Brett Jardine', written in a cursive style.

Brett Jardine

Managing Director

Council of Australian Tour Operators (CATO)

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