

## Customers who want to cancel

Fact Sheet 15  
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### Guidance for Tourism Businesses

#### **Cancellations & Customer Service**

In most cases customers will cancel for a reason that is genuine and important to them. If you or your staff deal with cancellations it is worth remembering that they may be a customer in the future. It is highly desirable to part on good terms if you can.

It is inevitable that some visitors to a destination affected by a crisis such as a bushfire will decide to cancel or postpone their visit. They may feel that they would not be able to do all the things that they had planned so would prefer not to come at all. If this happens where do you stand?

#### **Your Cancellation Policy**

Your cancellation policy should explain what happens if either you or a customer cancels a booking. This policy must comply with the law. If you do not have a cancellation policy in place it may well be something you want to consider for the future as it avoids any ambiguity. Having a written cancellation policy that clients agree to at the time of booking will make matters considerably easier should it be necessary to make a claim for losses from cancelled bookings.

Your ability to claim cancellation costs from a consumer will depend on the circumstances described below.

#### **THE LEGAL FRAMEWORK**

If you or a customer cancels accommodation or tour booking, the following advice may assist you.

*Please note that this advice is a guide only and you must take specific advice from your legal advisor with respect to your individual situation.*

An excellent guide is Consumer Affairs Victoria's A Guide to the Fair Trading Act and other Legislation for Accommodation Providers. This Guide is available from Consumer Affairs Victoria.

#### **What if a customer cancels a booking due to adverse weather conditions?**

You cannot be held responsible for external environmental conditions outside your control, for example; lack of snow or rainy weather at the beach. These are the normal risks associated with any holiday booking. If a customer chooses to cancel an accommodation booking at the beach because of cooler than expected weather, they would not be entitled to a refund. Your usual cancellation policy should be applied in this situation.

#### **What happens if a customer cancels due to bushfires?**

To answer this question it is useful to think of two scenarios. In the first case, the accommodation has been destroyed by fire or the authorities have closed roads and/or issued explicit advice not to go to certain areas due to safety concerns. In this scenario, both you and the consumer are released from the contract and the consumer is entitled to a refund of any deposit paid less any expenses reasonably incurred before the consumer cancelled.

If your facility is still open for business but there is a lot of smoke about which might make it uncomfortable for consumers and they choose to cancel, the contract is still valid and your cancellation policy can be applied.

The best advice in both of the circumstances described above is to talk to the consumer to see if you can negotiate something to suit you both, for example hold the deposit over for a different time.

#### **Are there any situations when I have to refund the deposit paid?**

You have to refund a deposit paid if:

- A customer tells you they have a specific requirement that you agree to but then do not fulfil or
- You make other claims about the accommodation which you cannot fulfil, for example; no water restrictions apply if they do.

When you enter a contract with a consumer certain conditions are implied into the contract. These are set out in Part 2A of the Fair Trading Act 1999. Essentially, accommodation must be fit for purpose and as represented.

If you make claims about accommodation which cannot be fulfilled, this may also be considered misleading conduct. This is prohibited by the Fair Trading Act 1999.

## When can I charge cancellation fees?

Where a guest cancels a booking or checks out early (and there is no booking condition) you should apply your cancellation policy. However as noted above, it is preferable for you to talk to the customer to negotiate alternative arrangements especially if there is a real threat of bushfire.

If you charge a customer a cancellation fee, booking fee or administrative charge (including any held deposit or advance payment), the fee should not be excessive and should be limited to the costs of booking accommodation and/or the costs of making the accommodation available to the customer.

A cancellation fee should be based on the principle of fair compensation for legitimate costs incurred by your business. In setting cancellation fees, you should take into account the likelihood that losses can be limited by re-booking with another consumer when a booking is cancelled. While the scope for limiting loss through re-booking diminishes closer to the booking date, you must make reasonable efforts to re-let the accommodation. However, the extent and level of the loss depend on each business's circumstances.

## How much money can I claim from a cancellation?

You must make every effort to reduce your loss by trying to find a new customer. If you re-let the room at the same price you should have no loss and will have no basis for making a claim.

If the contract term allows you to reclaim losses from a consumer that could have been avoided had you taken reasonable steps to do so, this may be deemed an unfair contract term under the Fair Trading Act.

The Fair Trading Act prohibits the use of unfair terms in consumer contracts that cause a significant imbalance of rights and obligations between you and the con-

sumer. This may include any terms that allow you to claim the total cost of accommodation from a consumer regardless of when the booking was cancelled.

## Can I deduct a cancellation fee from a credit card?

Accommodation and tours booked on the telephone will often be confirmed by credit card. It is important that customers are advised at the time of booking that their card will be charged in the event of cancellation and that the client accepts that condition. You also need to reach agreement with the customer regarding these conditions. Otherwise it may be considered an unauthorised transaction under the Australian Securities and Investment Commission's Electronic Funds transfer Code of Conduct. To protect your position, it is best to give your reservations staff a script to follow or issue a written confirmation. This will provide proof to the credit card company that you met their conditions.

## What if I have to cancel?

If you cancel a booking that you have already accepted, you are in breach of contract. The customer is entitled to claim damages from you to compensate him/her for any loss. This might include the cost of taxi fares to find alternative accommodation or coaches to transfer guests to another venue. The customer has a duty to keep their losses to a reasonable level and may not claim for a 5 star hotel if they originally booked a B&B.

## WHAT ALTERNATIVES CAN YOU OFFER?

Resorting to legal process will probably be expensive in time and money so it is always better to find an outcome that satisfies both you and your customer.

## Credit Notes

If the customer is entitled to a refund they may be persuaded to accept a credit note. This has the advantage of keeping cash in

the business and allows you to keep your relationship with your customer. You will need to decide some basic issues:

- Validity of the credit note
- Any special conditions, for example; is it transferable?
- Can it be used for other services than those originally booked?
- What will your accounts system need if the credit note is valid in a new financial year?

## Transferring the Booking

Your customer may be willing to postpone their visit and wish to book for some new dates. The issues you need to think about here include:

- What is my policy if the new date is in high season and more expensive?
- How will I handle repeated requests for different dates?

## Transferring within a Group of Businesses

If your business is part of a group, for example a motel chain, then it may be that you can offer an alternative to the customer that meets their needs. A hotel may be able to offer rooms in a different hotel; an attraction could offer a different venue for a function. The key here is to ensure that you are offering a good alternative to the customer so that they feel that they are getting good service and not being penalised.

## Goodwill and Flexibility

You and your staff will be operating under pressure. Try to remember that this crisis will not last forever and your business is for the long term. If you can keep the goodwill of your customers in these difficult times it will pay dividends in the end.

Tourism Alliance Victoria has summarised this text from material sourced from Consumer Affairs Victoria. Original text © State of Victoria 2007.