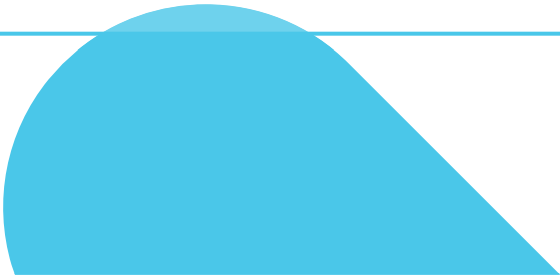


# The AFCA Approach to COVID-19 travel insurance complaints

- 1 At a glance ..... 2**
- 1.1 Scope ..... 2
- 1.2 Who should read this document? ..... 2
- 1.3 Summary of our approach ..... 2
- 2 In detail ..... 3**
- Complaints regarding a request for travel credit / refund ..... 3**
- 2.1 General approach ..... 3
- 2.2 Key considerations ..... 3
- Complaints regarding a COVID-19 related claim decline ..... 4**
- 2.3 General approach ..... 4
- 2.4 Key considerations ..... 5
- 3 References ..... 6**

We have created a series of AFCA Approach documents, such as this one, to help consumers and financial firms better understand how we reach decisions about key issues.

These documents explain the way we approach some common issues and complaint types that we see at AFCA. However, it is important to understand that each complaint that comes to us is unique, so this information is a guide only. No determination (decision) can be seen as a precedent for future cases, and no AFCA Approach document can cover everything you might want to know about key issues.



# 1 At a glance

## 1.1 Scope

AFCA recognises the COVID-19 pandemic affects, amongst other things, the ability for people to travel as they once did. This has resulted in the cancellation of existing or upcoming travel bookings, both domestic and international.

This purpose of this document is to explain AFCA's approach to complaints about:

- requests for travel credit / refund
- COVID-19-related claim declines.

## 1.2 Who should read this document?

- Financial firms, consumers and consumer representatives who have a complaint at AFCA that includes COVID-related travel insurance claims.
- Anyone who wants to understand how AFCA applies legal principles, industry codes and good industry practice when considering complaints where the issue of COVID-19 and travel insurance is raised.

The AFCA Approach to section 54 of the Insurance Contracts Act and the AFCA Approach to proof of despatch provide further guidance on dealing with these issues.

## 1.3 Summary of our approach

When considering complaints about a request for travel credit / refund, AFCA will consider:

- Does the insurer's credit provide real value? This includes understanding if the individual has extenuating circumstances which may prevent them from travelling in the next 18 months
- If any refund offered is fair and proportionate.

Where an individual's travel insurance claim has been declined because of pandemic-related clause, AFCA will:

- Seek to understand if the individual established a valid claim
- Consider if the insurer has established an exclusion entitling them to deny the claim, if a valid claim has been accepted. This will include taking into account section 54(5) of the Insurance Contract Act
- Consider a premium refund a fair outcome if we decide an insurer is entitled to deny the claim based upon a blanket exclusion.

## 2 In detail

### Complaints regarding a request for travel credit / refund

#### 2.1 General approach

AFCA encourages consumers to be proactive in engaging with their travel and accommodation providers to mitigate their losses. If the consumer no longer has claimable losses, then the only 'loss' may be the premium they paid for their travel insurance policy which is no longer of any benefit.

AFCA considers it fair in these circumstances, where the policy has no work to do, that the insurer looks at offering either a credit or refund of the relevant premium.

#### 2.2 Key considerations

##### 2.2.1 What if a credit is offered?

###### A credit must offer real value

Insurers may offer a credit to cover the insurance premium for future travel. AFCA believes any credit must reasonably be able to be used by the customer.

While guidance may change over time, as of May 2020, the Australian Government is indicating overseas travel is likely to commence in early 2021.

Generally, AFCA considers a credit of at least 18 months from the time of issue offer real value to a customer. In the event a credit for this timeframe cannot be provided, we are likely to hold the view that a premium refund ought to be provided.

###### Extenuating circumstances may mean a credit does not offer real value

There may be extenuating circumstances which prevent an individual from traveling in the next 18 months. Examples may include:

- health and / or age
- severe financial hardship (loss of employment, business etc.)
- purpose of travel no longer relevant (e.g. destination wedding, birthday celebration, etc.)
- travel agency, airline or tour provider no longer in business.

AFCA encourages insurers to work with their customers to understand if any extenuating circumstances apply. If there are extenuating circumstances, then a premium refund is likely to be more appropriate rather than a credit.

## 2.2.2 What if a refund is offered?

### The amount of refund will depend upon a few factors

The refund amount may also depend on whether:

- the policy was an annual or single trip policy
- the trip covered by the policy had commenced at time of cancellation.

AFCA considers a proportionate refund for an annual policy is fair in the circumstances. In providing a proportionate refund, insurers should clearly outline to the customer how the refund amount was calculated.

In the event the trip covered by the policy had not commenced at time of cancellation, AFCA will generally consider a full refund a fair outcome.

## Complaints regarding a COVID-19 related claim decline

### 2.3 General approach

Unique to the COVID-19 pandemic, some policies may include exclusions relating to:

- pandemic / epidemic
- closure of government borders; or
- travel against government warnings.

People may be left in situations where they are not covered regardless of whether they cancel, or proceed, with their travel arrangements.

### Insurers must clearly inform consumers of pandemic / epidemic exclusion

Travel Insurance is a prescribed contract under the *Insurance Contracts Regulations 1985* (Cth). Under the prescribed contract there is no exclusion for pandemics / epidemics. Insurers therefore need to show that before the contract was entered into, it had clearly informed the consumer in writing of the nature and effect of the exclusion.

### Proof of despatch of documents may be required

In determining whether an insurer has clearly informed a consumer, AFCA will request proof from the insurer that relevant policy documents were provided to the consumer. The [AFCA Approach to proof of despatch](#) provides guidance on this issue.

### PDS and policy schedule sufficient to clearly inform

Generally, if the Product Disclosure Statement and policy schedule are provided to a consumer prior to the contract being entered, that will be sufficient to satisfy the 'clearly informed' test.

In these circumstances the insurer can rely on the terms and conditions of the policy when assessing claims. This means that where a policy excludes cancellations as a result of a pandemic, the insurer is entitled to rely on these to decline a claim, unless the terms of cover have been misrepresented during the sales process.

### **Sales through intermediary and misrepresentation**

AFCA often receives complaints that the terms of cover were misrepresented, particularly where the sale was through an intermediary, such as a travel agent or operator.

Consumers alleging this will need to establish to AFCA, on the balance of probabilities, that the insurer (or intermediary) misled them.

If we are satisfied an insurer establishes an exclusion applies to a COVID-19 travel claim, AFCA may then consider how fairness applies to the complaint. This may include what value the policy now provides when no cover can be afforded.

For a consumer who paid for their policy, fairness may mean they should be entitled to a refund of the unused portion of the premium. Where a policy is complimentary to a bank card, that is, the consumer did not pay for the travel insurance cover, we may consider it fair for the insurer to decline the claim with no further remedy.

## **2.4 Key considerations**

### **Establishing a valid claim**

Like all claims, the complainant must first establish a valid claim. This is important to first consider if a valid claim has been established, even though an exclusion may apply.

### **Determining the proximate cause where more than one exclusion is relied upon**

Where an insurer finds there is more than one exclusion it seeks to rely on to deny a claim, it is critical to determine what the proximate cause of the loss is.

For example, an insurer may seek to deny a claim based on a pandemic exclusion as a financial default exclusion (i.e. bankruptcy, financial collapse of travel provider). If the evidence suggests the travel provider went bankrupt due to COVID-19 factors, the proximate cause is likely to be the pandemic and thus the pandemic-related exclusion is the prevailing exclusion which will be considered.

### **Disinclination to travel and / or Government border-related exclusions**

If an insurer seeks to rely on these sort of exclusions, the travel cancellation date and the 'known event' date will be relevant to the investigation. While each case will depend upon the specific facts and circumstances:

- if a customer's disinclination to travel was before the 'known event' date, it is likely their claim decline will be upheld

- if a customer's disinclination to travel was after the 'known event' date, an insurer should consider section 54(5) of the Insurance Contract Act.

### A refund of premium is a fair outcome if a COVID-19 related exclusion applies

After investigating a complaint, AFCA may determine an insurer is entitled to deny a claim due to a COVID-19 related exclusion, for example, a blanket pandemic exclusion.

In such a case, we consider a premium refund is a fair outcome. The appropriate refund amount will be in line our consideration above under the heading 'The amount of refund will depend upon a few factors'.

## 3 References

Term	Definition
Complainant	a person who has lodged a complaint with AFCA
Financial firm	a financial firm such as an insurer, who is a member of AFCA

### Useful links

Document type	Title / Link
<a href="#">Insurance Contracts Act</a>	This Commonwealth statute can be found here: <a href="http://legislation.gov.au/Details/C2019C00115">legislation.gov.au/Details/C2019C00115</a>
<a href="#">Approach</a>	Australian Financial Complaints Authority <i>Section 54 of the Insurance Contracts Act</i>
<a href="#">Approach</a>	Australian Financial Complaints Authority <i>Proof of despatch</i>
<a href="#">Austlii</a>	Austlii is a free resource that contains a full extract of most of the judgments issued in Australia <a href="http://austlii.edu.au">austlii.edu.au</a>