

WESTERN AUSTRALIA

**ENFORCEABLE UNDERTAKING UNDER
THE AUSTRALIAN CONSUMER LAW (WA)**

BETWEEN

REGIONAL EXPRESS HOLDINGS LIMITED (ACN 099 547 270)

AND

COMMISSIONER FOR CONSUMER PROTECTION

RECITALS

WHEREAS:

Regional Express Holdings Limited

- A. **REGIONAL EXPRESS HOLDINGS LIMITED (Rex)** carries on business under the business name 'REGIONAL EXPRESS AIRLINES' and provides regional airline services to consumers in Australia, including Western Australia.
- B. The *Fair Trading Act 2010 (WA)* (**FTA**) and the *Australian Consumer Law (WA)* (**ACL**) apply to Rex pursuant to section 11(3)(a) of the FTA and section 24(1)(a) of the ACL.
- C. Consumers in Australia, including Western Australia, can purchase regional Australian flight services operated by Rex (**Flight Services**) through Rex's booking platform on its website <http://www.rex.com.au/> and its mobile site (together, **Websites**).
- D. The booking platforms on the Websites take a consumer through an online multi-stage booking process in which a consumer can select from the various categories of fares offered by Rex (**Fare Types**) for the Flight Services.



- E. The Flight Services are subject to Rex's Fare Rules and Conditions of Carriage, which are available on the Websites.
- F. Fare Rules: Rex's Fare Rules provide specific information to consumers of Flight Services about the Fare Types, including the circumstances where flight changes, cancellations and refunds are available. The Fare Rules are separate from the consumer guarantees contained in the ACL.
- G. Conditions of Carriage: Rex's Conditions of Carriage set out the conditions that apply to the contract for the booking and acquisition of the Flight Services.

Conduct of Concern

- H. A number of webpages on the Websites (including, but not limited to, the Fare Rules webpage and webpages available during the booking process) contain statements that:
 - i. the 'Rex Saver', 'Rex Net', 'Rex Net Plus', 'Rex Promo', 'Rex Senior' and 'Rex Child' Fare Types are 'non-refundable'; and
 - ii. the 'Rex Flex' and 'Rex Bix' Fare Types are refundable only if cancellation is made at least 60 minutes or 2 hours (respectively) before the scheduled time of departure and is subject to an admin fee.
- I. The **COMMISSIONER FOR CONSUMER PROTECTION (Commissioner)** acknowledges that since these matters were brought to Rex's attention, Rex has included some reference to statutory guarantees on the Fare Rules page and in a pop-up box that appears during the booking process.
- J. However, the Commissioner remains concerned that these amendments are not sufficient to remedy the overall impression that:
 - i. for some Fare Types, a refund is not available in any circumstances; and
 - ii. for other Fare Types, a refund is only available if cancellation is made before the scheduled time of departure and a fee is paid.

Australian Consumer Law (WA)

- K. Part 3-2 of the ACL in Schedule 2 of the FTA provides consumers with consumer guarantees that cannot be excluded, restricted or modified by contract.
- L. 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.

- M. 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 goods or 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).
- N. Representations by a supplier that purport to limit or exclude remedies available under the ACL, including statements such as 'non-refundable' and 'no refunds', may contravene the ACL because they imply that refunds are not available, in circumstances where they may be available under the ACL.
- O. This Enforceable Undertaking is accepted under section 218 of the *Australian Consumer Law (WA)* by the Commissioner.
- P. Upon the Commissioner being satisfied of a breach, this Enforceable Undertaking is enforceable by a court upon the Commissioner's application.
- Q. This Enforceable Undertaking is not confidential and may be published by the Commissioner.



UNDERTAKING

REGIONAL EXPRESS HOLDINGS LIMITED upon this Enforceable Undertaking being accepted by the **COMMISSIONER, UNDERTAKES**, pursuant to section 218 of the *Australian Consumer Law (WA)*, that:

Creation of Rex 'Australian Consumer Law' Webpage

1. Rex will, within twelve months of this undertaking being accepted, create an 'Australian Consumer Law' webpage (**ACL Webpage**) on its Website to provide a clear and concise statement of consumers' rights under the ACL.
2. The ACL Webpage will include, at a minimum, a description of the consumer guarantees that apply to flight services, and the remedies available to consumers under the ACL where Rex fails to comply with those guarantees.

Hyperlinks to Rex 'Australian Consumer Law' Webpage

3. Rex will, within twelve months of this undertaking being accepted, ensure that a hyperlink to its ACL Webpage is prominently included:
 - 3.1. on all webpages on the Websites that include or refer to the Fare Rules, Fare Types, and/or Conditions of Carriage;
 - 3.2. on all webpages on the Websites that refer to cancellations, delays and/or refunds; and
 - 3.3. in all communications sent to consumers of Flight Services:
 - 3.3.1. on confirmation of purchase of a Flight Service; and
 - 3.3.2. in the event of cancellations and/or flight delays.

Review of policies, procedures and Websites

4. Rex will, within twelve months of this undertaking being accepted, cause a comprehensive review to be undertaken of:
 - 4.1. Rex's policies and procedures; and
 - 4.2. the Websites;and make any changes necessary, to ensure that:

- 4.3. consumers' rights under, and arising from, the consumer guarantees contained in the ACL are clearly represented in all relevant policies and procedures;
- 4.4. any representations made on its Websites and in its policies and procedures are consistent with the ACL; and
- 4.5. consumers are aware of any remedies they are entitled to under the ACL and are not denied any of these remedies.

Report to Commissioner

5. On completion of the review referred to in clause 4, Rex will provide the Commissioner with a comprehensive written report outlining any changes made to:
 - 5.1. Rex's policies and procedures; and
 - 5.2. the Websites

as a result of the review.

Notify relevant employees of Rex's obligations to consumers under the ACL

6. Rex will take reasonable steps to ensure its directors, officers and employees whose duties may include communicating with consumers of Flight Services or dealing with enquiries or complaints about Flight Services, are aware of:
 - 6.1. on an ongoing basis, Rex's obligations to consumers under the ACL, and
 - 6.2. any changes made as a result of the review undertaken at clause 4 above.

Compliance Training

7. Without limiting the obligations under clause 6, Rex will, within twelve months of this undertaking being accepted, cause a comprehensive review to be undertaken of its existing training material for all relevant customer-facing employees, and ensure that it includes training on compliance with relevant provisions of the ACL, including those provisions relating to consumer guarantees and the remedies available for breaches of consumer guarantees (**Compliance Training**).
8. On completion of the review referred to in clause 7, Rex will provide to the Commissioner a comprehensive written report outlining all changes made as a result of the review and the content of the Compliance Training.

9. Rex will, within twelve months following the completion of the review referred to in clause 7 above, complete Compliance Training for all customer-facing employees, and thereafter provide Compliance Training every two years.

10. Rex will provide Compliance Training for new customer-facing employees within twelve months of the commencement of their employment.

Commissioner enquiries

11. For the purposes of monitoring compliance with this undertaking, the Commissioner may make reasonable enquiries with Rex, and Rex will respond to such enquiries within a reasonable period of time.

Signed for and on behalf of:

A. **REGIONAL EXPRESS HOLDINGS PTY LTD**

ACN 099 547 270

in accordance with section 127 of the
Corporations Act 2001 (Cth)

NEVILLE HOWELL)

(Print name)

Director

RICHARD KWAN)

(Print name)

Company Secretary

B. LANIE CHOPANG)

**COMMISSIONER FOR
CONSUMER PROTECTION**

DATE UNDERTAKING ACCEPTED

10/08/2020