

**Undertaking to the Australian Competition and Consumer Commission**  
Given under section 87B of the *Competition and Consumer Act 2010* (Cth) by Qantas  
Airways Limited (ACN 009 661 901)

**1. Person giving the Undertaking**

- 1.1 This undertaking is given to the Australian Competition and Consumer Commission (**ACCC**) by Qantas Airways Limited (ACN 009 661 901) (**Qantas**) for the purposes of section 87B of the *Competition and Consumer Act 2010* (Cth) (**CCA**) (the **Undertaking**).

**2. Background**

- 2.1 Qantas is a publicly listed company incorporated in Australia.
- 2.2 Qantas is the largest airline in Australia. It is a domestic and international airline that supplies air transport services to consumers within Australia and to and from Australia. Qantas also operates airline related businesses including freight operations and various airline subsidiaries such as Jetstar and regional airlines, QantasLink and Network Aviation.

**3. Court proceedings and admissions**

- 3.1 The ACCC commenced proceedings against Qantas on 31 August 2023 in the Federal Court of Australia (the **Court**) in Proceedings VID685/2023 (**Proceedings**). In the Proceedings, the ACCC alleged that Qantas engaged in misleading or deceptive conduct, and made false or misleading representations, in contravention of sections 18, 29(1)(b), 29(1)(g) and 34 of the Australian Consumer Law (**ACL**), which is Schedule 2 to the CCA, by offering for sale, and selling, tickets on flights which it had already cancelled, and continuing to display flight information on the 'Manage Booking' page to consumers who held tickets for cancelled flights after Qantas had cancelled those flights.
- 3.2 Qantas admits that, between 21 May 2021 and 26 August 2023, it:
- (a) offered tickets for sale on each of the flights listed in **Confidential Schedule 1**, scheduled to depart between 1 May 2022 and 10 May 2024, to the public for 2 or more days after Qantas had made a decision to cancel the flight, and Qantas sold tickets to consumers on some of those flights (the **Continued Sale Conduct**); and
  - (b) continued to display flight details for each of the flights listed in **Confidential Schedule 2**, scheduled to depart between 1 May 2022 and 1 May 2024, on the 'Manage Booking' page of consumers that had purchased tickets or made bookings for those flights for 2 or more days after Qantas had made a decision to cancel the flight with no indication that the flight had been cancelled (the **Delayed Notification Conduct**).
- 3.3 By engaging in the Continued Sale Conduct, Qantas, in trade or commerce, represented to consumers that:
- (a) the relevant flights with the corresponding stated flight number and scheduled date and time were still available (**Scheduled Flight Representations**); and
  - (b) it would use reasonable endeavours to operate the relevant flights at the scheduled date and time (**Reasonable Endeavours Representations**).
- 3.4 By engaging in the Delayed Notification Conduct, Qantas, in trade or commerce, represented to consumers that:
- (a) the relevant flight with the stated flight number and scheduled date and time displayed on the 'Manage Booking' page was unchanged (**Flight Unchanged Representations**); and
  - (b) it would use reasonable endeavours to operate the flight displayed on the 'Manage Booking' page at the scheduled date and time (**Manage Booking Representations**).
- 3.5 The Scheduled Flight Representations and the Flight Unchanged Representations were false and misleading in respect of each of the relevant flights because, at the time the Representations were made, there was no longer a flight with the stated flight number and scheduled date and time

because Qantas had already decided to cancel it.

- 3.6 The Reasonable Endeavours Representations and the Manage Booking Representations were false and misleading in respect of each of the relevant flights because Qantas did not have reasonable grounds for making the representation because Qantas had already decided to cancel the flight.
- 3.7 By making the Scheduled Flight Representations and the Reasonable Endeavours Representations, Qantas contravened sections 18(1), 29(1)(b), 29(1)(g) and 34 of the ACL.
- 3.8 By making the Flight Unchanged Representations and the Manage Booking Representations, Qantas contravened sections 18(1), 29(1)(b) and 29(1)(g) of the ACL.

#### **4. Agreed resolution**

- 4.1 Qantas and the ACCC have agreed to seek a resolution of the Proceedings with Qantas making the admissions outlined at clauses 3.2 to 3.8 above. Qantas and the ACCC will jointly seek relief orders from the Court in connection with the Proceedings, including declarations, pecuniary penalties and an order that Qantas pay a contribution to the ACCC's costs.
- 4.2 As part of the resolution of the Proceedings, Qantas has offered this Undertaking to the ACCC.

#### **5. Commencement of this Undertaking**

- 5.1 This Undertaking comes into effect when:
  - (a) this Undertaking is executed by Qantas; and
  - (b) this Undertaking so executed is accepted by the ACCC.
- 5.2 The **Commencement Date** of this Undertaking is the later of 6 May 2024 and the date on which this Undertaking comes into effect in accordance with clause 5.1.
- 5.3 This Undertaking has effect for three years after the Commencement Date (**Term**).
- 5.4 Upon the Commencement Date, Qantas undertakes to assume the obligations set out in clauses 6.1 to 6.15 for the purposes of section 87B of the CCA.

#### **6. Undertakings**

##### ***Cessation of Conduct by Qantas***

- 6.1 Qantas undertakes that in respect of Qantas Group marketed and operated flights, where Qantas decides to cancel a flight on or after the Commencement Date, it will:
  - (a) send a communication to all existing ticketholders informing them of the cancellation and update the 'Manage Booking' page of all existing ticketholders as soon as practicable, and in any case within 48 hours of the cancellation decision; and
  - (a) cease offering tickets for sale for that flight as soon as practicable, and in any case within 24 hours of the cancellation decision,(together the **Cancellation Processing Obligations**), other than in exceptional circumstances involving events beyond Qantas' control and for which there was no reasonable opportunity for Qantas to prepare for that event in advance (such as the effects of a significant cyber-attack).
- 6.2 Qantas will inform the Compliance Auditor of any instance where it does not meet the Cancellation Processing Obligations (**Cancellation Processing Notice**), with the Cancellation Processing Notice to be given within 28 days of the completion of the cancellation process for the relevant flight(s). The Cancellation Processing Notice provided to the Compliance Auditor will include the particulars of the flight(s), number of passengers affected, re-accommodation options provided to passengers (if applicable) and the reasons that contributed to the Cancellation Processing Obligations not being met.
- 6.3 Qantas undertakes to procure all relevant subsidiaries of Qantas based, or operating, in Australia to comply with clauses 6.1 and 6.2 of this Undertaking.

### **Remediation Program**

6.4 Qantas will implement the remediation program outlined in Schedule 3 (the **Remediation Program**).

### **Appointment of Compliance Auditor**

6.5 Within 21 days of the Commencement Date, and at its own cost, Qantas will seek ACCC approval of an independent auditor or auditors that have suitable qualifications or experience to conduct the audit of Qantas' compliance with this Undertaking (**Compliance Auditor**).

6.6 The Compliance Auditor will qualify as independent on the basis that the person:

- (a) did not design, implement or manage the portal used to give effect to the Remediation Program, including eligibility assessment and collection of payment information for payment of remediation;
- (b) is not a present or past staff member or director of Qantas or its related bodies corporate;
- (c) has not acted and does not act for, and does not consult and has not consulted to Qantas, unless agreed by the ACCC; and
- (d) has no significant shareholding or other interests in Qantas or its related bodies corporate.

6.7 The terms of appointment for the Compliance Auditor will include obligations on the Compliance Auditor to:

- (a) conduct compliance audits;
- (b) produce reports to Qantas' Board in accordance with clause 6.8; and
- (c) provide the following reports to the ACCC:
  - (i) scheduled written reports as described in clause 6.8; and
  - (ii) a report of any issues that arise in relation to compliance with this Undertaking, including between Audit Reports.

### **Reporting**

6.8 The Compliance Auditor must conduct an audit and prepare a detailed report:

- (a) two months after the Commencement Date;
- (b) every month thereafter for the first 12 months of the Undertaking; and
- (c) annually for the remaining Term of the Undertaking,  
(the **Audit Report**).

6.9 Each Audit Report must include:

- (a) the Compliance Auditor's procedures in conducting the audit, or any change to audit procedures and processes since the previous Audit Report;
- (b) a full audit of Qantas's compliance with this Undertaking, including details of any Cancellation Processing Notices and any findings of non-compliance;
- (c) an update on the Remediation Program, including:
  - (i) uptake of passenger remediation;
  - (ii) an update on the total amount of money paid;
  - (iii) the number of passengers who have submitted a request for payment;
  - (iv) an update on the steps Qantas has undertaken to identify and contact passengers eligible for remediation in accordance with Schedule 3 of this Undertaking who have not yet submitted a claim.
- (d) identification of any areas of uncertainty or ambiguity in the Compliance Auditor's

interpretation of any obligations contained in this Undertaking;

- (e) all of the reasons for the conclusions reached in the Audit Report; and
  - (f) any qualifications made by the Compliance Auditor in forming their views.
- 6.10 In assessing whether Qantas has complied with the Cancellation Processing Obligations to take action as soon as practicable, the Auditor must consider whether Qantas has:
- (a) maintained and invested in appropriate relevant systems to meet these obligations; and
  - (b) is acting consistently with industry best practice in relation to implementing and notifying flight cancellation decisions.
- 6.11 Qantas will provide a copy of an Audit Report to the ACCC upon its receipt from the Compliance Auditor.
- 6.12 Qantas must, within 14 days of the receipt of an Audit Report, provide a report to the ACCC on its response to it, including the steps it proposes to take to address any findings of non-compliance.
- 6.13 Qantas must report to the ACCC and to the Compliance Auditor any non-compliance with this Undertaking as soon as practicable after it becomes aware of that non-compliance.
- 6.14 Information and documents required under this Undertaking will be provided via the ACCC's Undertakings Portal whenever possible.

### **Compliance Program**

- 6.15 Qantas undertakes to, at its own expense:
- (a) review and amend its Competition and Consumer Law Compliance Program (**Compliance Program**) in accordance with requirements and timelines to be agreed between the parties (**Updated Compliance Program Requirements**), being amendments designed to minimise Qantas' risk of future breaches of the ACL, and to ensure its awareness of the responsibilities and obligations in relation to the requirements of the ACL; and
  - (b) maintain and continue to implement the Compliance Program for the Term of this Undertaking.

### **7. Variation of Undertaking**

- 7.1 The parties agree that this Undertaking will be varied, to include:
- (a) non-confidential versions of Confidential Schedule 1 and Confidential Schedule 2; and
  - (b) the Updated Compliance Program Requirements, which will be consistent with the ACCC's 'Level 4 Compliance Program Template',
- following the later of:
- (c) the dissemination of Registration Emails in accordance with Schedule 3, clause 3.3 of this Undertaking; and
  - (d) 21 days from the Commencement Date.

### **8. ACCC enquiries and recommendations**

- 8.1 For the purpose of monitoring compliance with this Undertaking, the ACCC may make reasonable enquiries of Qantas with respect to its compliance with this Undertaking and Qantas will respond to such enquiries within 14 days or as otherwise agreed with the ACCC.
- 8.2 If requested by the ACCC during the Term of this Undertaking, Qantas will, at its own expense, cause to be produced and provide to the ACCC contact details of all passengers on a Remediation Flight (as that term is defined in Schedule 3 of this Undertaking) who are yet to be remediated.
- 8.3 If requested by the ACCC during the Term of this Undertaking, Qantas will, at its own expense, cause to be produced and provide to the ACCC copies of such documents (excluding any legally privileged documents) in its power, possession or control relating to the obligations set out in this Undertaking.

8.4 Qantas will implement promptly and with due diligence any reasonable recommendations that the ACCC deems necessary to ensure that Qantas fulfils the requirements of this Undertaking.

## 9. Acknowledgements

9.1 Qantas 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 will, from time to time, make public reference to this Undertaking and Qantas' compliance with it including in news media statements and in ACCC publications;
- (c) this Undertaking in no way derogates from the rights and remedies available to any other person arising from the alleged conduct and any remediation paid does not operate as full release in respect of claims those persons may hold; and
- (d) nothing in this Undertaking is intended to restrict the right of the ACCC to take action under the ACL and the CCA for penalties or other remedies in the event Qantas does not fully implement and/or perform its obligations under this Undertaking or in relation to any other event.

### Executed as an Undertaking

Executed by Qantas Airways Limited (ACN 009 661 901) pursuant to s 127(1) of the *Corporations Act 2001* by:



\_\_\_\_\_  
Signature of director

Vanessa Hudson

\_\_\_\_\_  
Name of director (print)

5 May 2024

\_\_\_\_\_  
Date



\_\_\_\_\_  
Signature of director/company secretary

Andrew Finch

\_\_\_\_\_  
Name of ~~director~~ company secretary (print)

5 May 2024

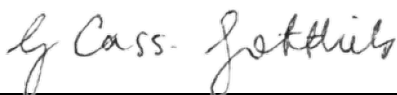
\_\_\_\_\_  
Date

Accepted by the Australian Competition and Consumer Commission pursuant to section 87B of the *Competition and Consumer Act 2010* (Cth) on:

5 May 2024

\_\_\_\_\_  
Date

and signed on behalf of the Commission:



\_\_\_\_\_  
Chair

5 May 2024

\_\_\_\_\_  
Date

**Confidential Schedule 1 – Flights impacted by the Continued Sale Conduct**

**Confidential Schedule 2 – Flights impacted by the Delayed Notification Conduct**

## Schedule 3 – Remediation Program

### 1. Scope and Commencement

- 1.1 The remediation program will commence on the Commencement Date set out in clause 5 of the Undertaking (**Commencement Date**).
- 1.2 The remediation program will provide remediation to passengers in respect of flights cancelled by Qantas that are the subject of the Proceedings (being flights scheduled to depart between 1 May 2022 and 10 May 2024), where that flight was left on sale for 2 or more days from the date on which Qantas decided to cancel that flight, which are the flights at Confidential Schedule 1 of the Undertaking (**Remediation Flights**).
- 1.3 The program is intended to provide remediation to Remediation Passengers as that term is defined below.

### 2. Definitions

- 2.1 Other terms in this schedule are defined as follows:
  - (a) **Cancellation Decision Date**: means the date on which Qantas made a decision to cancel a Remediation Flight.
  - (b) **Remediation Payment**: means the following remediation amounts for Remediation Passengers:
    - (i) for passengers on Australian Domestic and Trans-Tasman flights departing Australia, \$225; or
    - (ii) for passengers on international flights (excluding Trans-Tasman flights) departing Australia: \$450.
  - (c) **Remediation Passengers**: means any passenger with a confirmed flight booking on a Remediation Flight, where the booking was made (or the passenger was reaccommodated onto the flight) 2 or more days after the Cancellation Decision Date for that Remediation Flight.

### 3. Communication of Remediation Program

- 3.1 Qantas will, within 14 days of the Commencement Date, submit the proposed communications to be disseminated to Remediation Passengers under clause 3.3 below to the ACCC for approval. Once approved by the ACCC, the communications will comprise the form required to be sent for the purposes of clause 3.3.
- 3.2 Qantas will, within 40 days of the Commencement Date, at its own expense, establish a secure online portal (the **portal**), hosted by Deloitte Financial Advisory Pty Ltd (**Deloitte**), accessible via a Qantas hosted landing page and from <https://qantas.com/au/en>, to handle eligibility assessment and collection of payment information for payment of remediation.
- 3.3 Qantas will, within 65 days of the Commencement Date, contact Remediation Passengers using the following communication methods:
  - (a) an email from Qantas (**Initial Email**) and an email from Deloitte containing portal registration information (**Registration Email**) in the approved forms prescribed in clause 3.1, to be sent to the following email addresses:
    - (i) for passengers that booked the Remediation Flight directly with Qantas, the email address nominated as the Booking Contact at the time of booking the Remediation Flight;
    - (ii) for passengers that booked the Remediation Flight through a travel agent, the email address nominated as the Booking Contact at the time of booking the Remediation Flight;
    - (iii) for passengers that booked the Remediation Flight under a Corporate Airfares Agreement between Qantas and the passenger's employer (which may have been through a travel agent), the email address nominated as the Booking Contact at the time of booking the Remediation Flight; and



- (iv) in addition to sub-clause (i)-(iii) above, the email will also be sent to the email address registered on any passenger's Qantas Frequent Flyer Account where their Qantas Frequent Flyer Account Number was recorded on the booking at or following the time of booking the Remediation Flight; and
  - (b) an SMS text message in the form prescribed in clause 3.1, to the following mobile phone numbers:
    - (i) for passengers that booked the Remediation Flight directly with Qantas, any mobile phone number nominated as the Booking Contact the time of booking the Remediation Flight;
    - (ii) for passengers that booked the Remediation Flight through a travel agent, any mobile phone number nominated as the Booking Contact at the time of booking the Remediation Flight;
    - (iii) for passengers that booked the Remediation Flight under a Corporate Airfares Agreement between Qantas and the passenger's employer (which may have been through a travel agent), any mobile phone number nominated as the Booking Contact the time of booking the Remediation Flight; and
    - (iv) in addition to sub-clause (i)-(iii) above, an SMS text message will also be sent to any mobile phone number registered on any passenger's Qantas Frequent Flyer Account where their Qantas Frequent Flyer Account Number was recorded on the booking at or following the time of booking the Remediation Flight.
  - 3.4 Any Remediation Passengers, including those who did not receive a notification in accordance with clause 3.3 will be able register their details on the portal, which will enable them to submit a claim for remediation.
  - 3.5 Passenger registrations are required to be completed by the passenger (or on their behalf with that passenger's authorisation) and accepted as eligible for remediation (by reason of being a Remediation Passenger) prior to being invited to complete the Web Form.
  - 3.6 Deloitte will also make available a process for registration over the phone.
- #### 4. Remediation Program Web Form and Phone Option
- 4.1 Qantas will, within 14 days of the Commencement Date, submit the proposed Web Form under clause 4.2 below to the ACCC for approval. Once approved by the ACCC, the Web Form will comprise the form for the purposes of clause 4.2.
  - 4.2 Passengers who receive a form of communication outlined at clause 3.3, or otherwise registered on the portal and are confirmed as eligible for remediation (by reason of being a Remediation Passenger), will be presented with a web form (the **Web Form**). The Web Form will:
    - (a) list the bookings and Remediation Flights eligible for a remediation payment for the passenger to review, with the corresponding remediation payment amounts specified; and
    - (b) allow the passenger to provide payment details and confirm or update their contact information.
  - 4.3 Deloitte will also make available a process to allow for the steps specified in the Web Form at clause 4.2 to be completed over the phone (**Phone Option**).
  - 4.4 Passengers may complete the Web Form or Phone Option and receive payment for and on behalf of other passengers on their booking (with that passenger's authorisation), whether or not they received a notification under clause 3.3 and are confirmed as eligible for remediation (by reason of being Remediation Passenger).
  - 4.5 Qantas must continue to operate the Web Form on the portal and Phone Option for a minimum period of 12 months from the Commencement Date

#### 5. First Round Reminder, Second Round Reminder and Third Round Reminder

- 5.1 Qantas will, within 14 days of the Commencement Date, submit the proposed communications to be disseminated to Remediation Passengers under clauses 5.2, 5.3 and 5.4 below to the ACCC for approval. Once approved by the ACCC, each communication will comprise the form required

to be sent for the purposes of clauses 5.2, 5.3 and 5.4 respectively.

- 5.2 Qantas must send a reminder email and a SMS text message (**First Round Reminders**), in the forms prescribed in clause 5.1 to passengers sent a communication under clause 3.3 who have not completed (or had completed on their behalf) the Web Form or Phone Option, 60 days after sending the communication in clause 3.3.
- 5.3 Qantas must send a reminder email and a SMS text message (**Second Round Reminders**), in the forms prescribed in clause 5.1 to passengers sent a communication under clause 3.3 who have not completed (or had completed on their behalf) the Web Form or Phone Option, 120 days after sending the initial communication in clause 3.3.
- 5.4 Qantas must send a reminder email and a SMS text message (**Third Round Reminders**), in the forms prescribed in clause 5.1 to passengers sent a communication under clause 3.3 who have not completed (or had completed on their behalf) the Web Form or Phone Option, 180 days after sending the initial communication in clause 3.3.

## **6. Remediation Payments**

- 6.1 Qantas will pay the quantum of remediation, consisting of the Remediation Payment.
- 6.2 Payments to Remediation Passengers will be made within 60 days of that Passenger, or a person on their behalf, completing the Web Form or Phone Option and acceptance of the completed form by Deloitte.
- 6.3 Qantas may comply with its obligations in clause 6.2 by causing Deloitte to make the payments referred to in those clauses.

## **7. Residual Amount**

- 7.1 The **Residual Amount** is the amount, to be ascertained 12 months after the Commencement Date, which is the difference between the sum of the Remediation Payments made to Remediation Passengers under clause 6.2 and \$20 million.
- 7.2 Within 13 months of the Commencement Date, Qantas must make a charitable donation in the Residual Amount to a registered charity nominated by Qantas and agreed to by the ACCC.