



# Travel Agents Act Options Paper

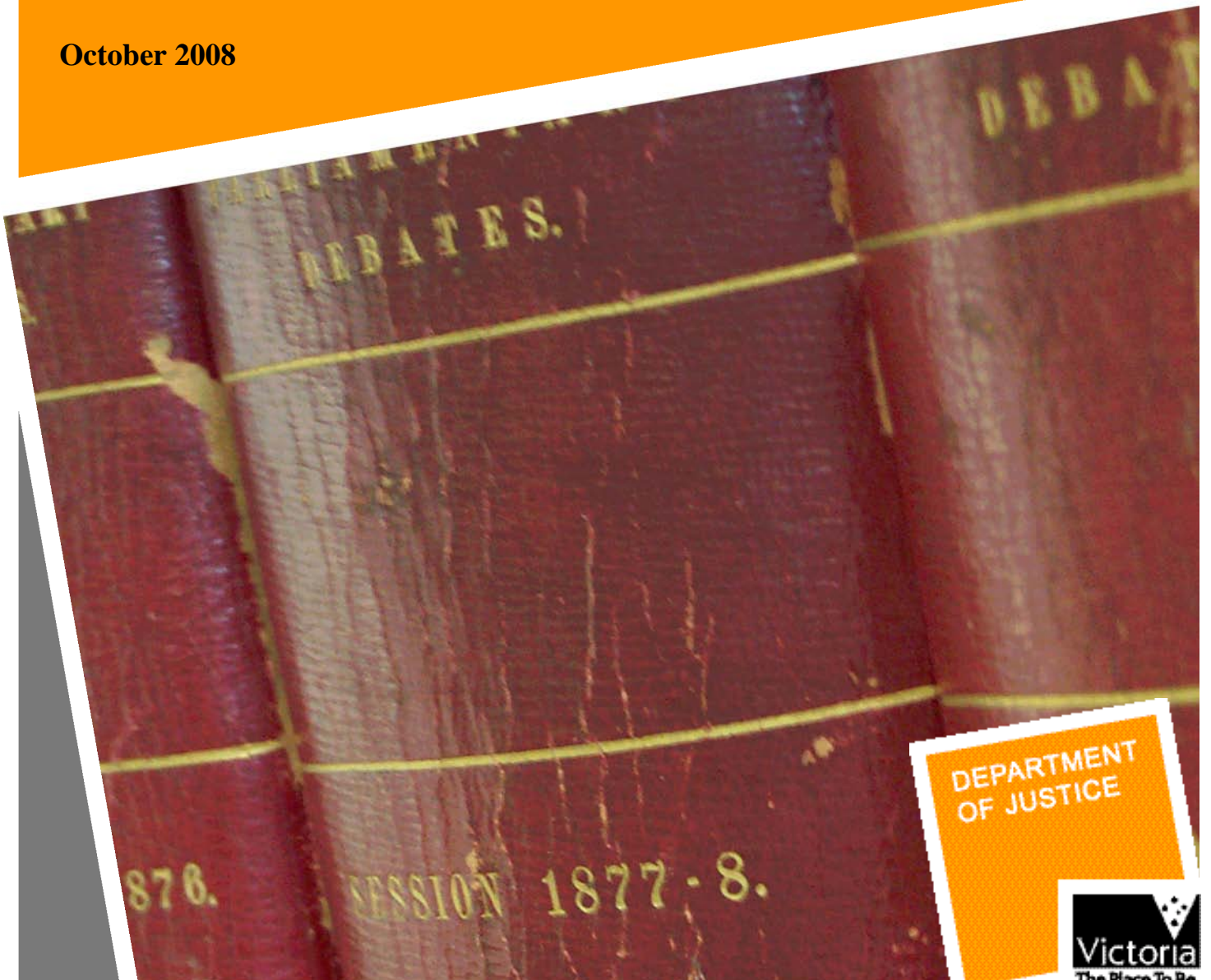


Consumer Affairs  
Victoria



**Modernising Victoria's  
Consumer Policy Framework**

October 2008



DEPARTMENT  
OF JUSTICE



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## STATEMENT FROM THE MINISTER FOR CONSUMER AFFAIRS



Consumer Affairs Victoria administers 49 Acts and 50 supporting Regulations. This number has grown over time in response to a range of consumer and business needs.

I have initiated a project to modernise Victoria's consumer protection legislation. Among other things, this project will review and, where appropriate, make recommendations to repeal or update potentially redundant or outdated legislation. The project will also seek to remove any regulatory duplication or requirements that impose an unnecessary administrative or compliance burden or make it difficult for consumers and businesses to understand their obligations.

As part of this project, I have asked Consumer Affairs Victoria to review the *Travel Agents Act 1986* to determine whether the Act may be redundant or could be updated.

This helps meet the Victorian Government's commitments to:

- complete the process of modernising all of Victoria's legislation so that by 2010 all laws will have been reviewed and modernised within the past ten years
- repeal all old and redundant legislation to reduce the number of laws by 20 per cent compared to 1999
- ensure all laws are written in plain English and are easy to understand.

In order to assist in determining the current status of the *Travel Agents Act*, Consumer Affairs Victoria has prepared the attached Options Paper, which discusses the Act and its current operation, and presents options for reform.

I encourage all stakeholders with an interest in this area to make a submission to help inform future policy development.

A handwritten signature in black ink, consisting of a stylized name followed by a long horizontal line.

**HON TONY ROBINSON MP**  
**MINISTER FOR CONSUMER AFFAIRS**

# TABLE OF CONTENTS

<b>1.</b>	<b>EXECUTIVE SUMMARY .....</b>	<b>3</b>
<b>2.</b>	<b>BACKGROUND.....</b>	<b>4</b>
<b>3.</b>	<b>THE TRAVEL AGENTS ACT 1986.....</b>	<b>5</b>
3.1	CURRENT VICTORIAN LICENSING SCHEME .....	5
3.2	TRAVEL COMPENSATION FUND.....	7
3.3	CONDUCT REQUIREMENTS.....	8
<b>4.</b>	<b>CURRENT STATE OF THE TRAVEL AGENT INDUSTRY .....</b>	<b>10</b>
<b>5.</b>	<b>MODELS FOR REFORM.....</b>	<b>11</b>
	MODEL 1 – NEGATIVE LICENSING SCHEME AND MANDATORY PARTICIPATION IN TRAVEL COMPENSATION FUND.....	12
	MODEL 2 – NEGATIVE LICENSING SCHEME, MANDATORY PARTICIPATION IN THE TCF AND INTRODUCING STATUTORY BARS TO PREVENT CERTAIN CLASSES OF PEOPLE FROM TRADING .....	13
	MODEL 3 – NO CHANGE (POSITIVE LICENSING SCHEME AND MANDATORY PARTICIPATION IN TRAVEL COMPENSATION FUND) .....	14
<b>6.</b>	<b>PRELIMINARY RECOMMENDATION.....</b>	<b>15</b>
<b>7.</b>	<b>HOW TO MAKE A SUBMISSION .....</b>	<b>18</b>
<b>8.</b>	<b>REFERENCES .....</b>	<b>19</b>

# 1. Executive Summary

Currently, before a person can trade as a travel agent in Victoria, they have to both be licensed by the Victorian Business Licensing Authority (BLA) and participate in a national compensation fund, the Travel Compensation Fund (TCF).

This options paper seeks comments from industry and consumer groups and other stakeholders on the specific issue of whether Victoria should retain this dual regulatory system under the *Travel Agents Act 1986* (the Act) or move from a positive to a negative licensing scheme for travel agents while retaining the current consumer protection requirement that all travel agents participate in the TCF.

The paper sets out the features of three possible models for application to travel agents in Victoria:

- *model 1* – a negative licensing scheme under which mandatory participation in the TCF would, in effect, authorise a person to trade
- *model 2* – which would:
  - (like model 1) have a negative licensing scheme with mandatory participation in the TCF
  - have the Act amended to provide that a person who is not a participant in the TCF must not operate as a travel agent
  - have the Act amended to provide that a person who falls into one or more of certain categories of people must not operate as a travel agent
- *model 3* - the status quo.

The paper proposes that model 2 is likely to be the most effective way to regulate travel agents.

## 2. Background

The Consumer Affairs portfolio encompasses a large suite of consumer protection and business licensing legislation — 49 Acts and 50 regulations. This body of legislation has grown over time in response to specific consumer protection issues and the development of key industry sectors.

The Victorian Government has committed to modernising Victoria's legislation so that by 2010 all laws will have been reviewed and modernised within the past 10 years, the statute book will be reduced by 20 per cent compared to 1999 and the regulatory burden on business will be reduced.

To help meet these commitments, the Minister for Consumer Affairs, Mr Tony Robinson MP, has initiated a project to modernise the consumer affairs legislation. This project aims to:

- rationalise the statutes and regulation for which Consumer Affairs Victoria is responsible
- provide a simpler framework for ensuring consumer protection
- review the language used in this legislation to be both more user friendly and consistent with reforms in other jurisdictions.

Part of this project is identifying legislation that may be redundant or dated and, through community consultation, resolve its status and propose appropriate actions. Maintaining this legislation causes confusion and unnecessary compliance costs for business and consumers as well as increasing the monitoring costs of enforcement agencies. Removing or reforming redundant or dated legislation, along with providing 'plain English' consumer protection legislation, will provide a more informed market.

In reviewing the Consumer Affairs statute book, the Act has been identified as either potentially redundant or in need of reform. The Government is prepared to consider removing legislation where it is clear that such legislation no longer assists consumers and business in better trade and commerce. However, it does so recognising that the Act may serve other purposes.

In order to assist in reviewing the Act, this options paper has been prepared which discusses the Act and seeks stakeholder feedback.

### **3. The Travel Agents Act 1986**

The Act and related Regulations protect consumers who purchase travel services and accommodation in Victoria by requiring that travel agents be licensed, by imposing standards for how travel agents conduct their business, by allowing inspectors to investigate suspected breaches of the legislation and by allowing disciplinary action to be taken against travel agents.

#### **3.1 Current Victorian licensing scheme**

In Victoria a positive licensing scheme applies to travel agents. Under section 6 of the Act a natural person or corporation must not carry on business as a travel agent without a licence from the Business Licensing Authority (BLA). The penalty for not complying with this requirement is 500 penalty units, currently \$56,710, or imprisonment for 12 months or both. In addition, an unlicensed person (other than an exempted person) cannot recover a fee for carrying on business as a travel agent.

Under section 4 of the Act, a person carries on business as a travel agent if they sell or arrange travel (or travel and accommodation), or hold themselves out or advertise themselves as doing so. A licence may not be required if a person:

- owns transport or accommodation for which users must buy a ticket
- operates camping tours and owns the camping equipment and transport
- books accommodation only (without the accompanying travel arrangements)
- undertakes any of the activities of a travel agent in the course of their employment
- sells less than \$50,000 worth of tickets per financial year for travel within Australia only
- arranges a journey that leaves and returns within the same day (see section 4 of the Act).

The main eligibility requirements for being granted a Victorian travel agent's licence are that the person:

- (for a natural person) is an adult
- is a fit and proper person
- has not been disqualified from acting as a travel agent or being involved in a travel agency business
- passes a test (at interview) on their knowledge of the relevant legislation
- (if international travel services will be provided) has completed a set training course or has equivalent experience.

When processing the application, the BLA may have regard to the fact that an applicant has, at any time, been convicted of an offence against a Victorian consumer

protection Act or (in the previous 10 years) has been charged with an offence in Victoria or elsewhere allegedly involving fraud or dishonesty (section 10(3) of the Act).

The Act provides that grant of a licence must be refused if, in the case of a natural person applicant:

- a person proposed to be employed to manage premises is not of good reputation or character or would not be a fit and proper person to be a licensee if they applied for a licence personally
- a natural person applicant or a body corporate applicant is not a person likely to carry on business honestly and fairly (sections 10(2)(e) and 10(2)(h))
- a natural person applicant or is not a fit and proper person to be a licensee (section 10(4)(e)).

Similarly, the Act provides that grant of a licence must be refused if, in the case of a body corporate applicant:

- a person concerned in the management of the body corporate applicant is a minor (section 10(4)(a))
- a body corporate applicant has been disqualified from holding a travel agent's licence (section 10(4)(b))
- a body corporate applicant (or its officer) has been disqualified from being involved in the direction, management or control of a travel agent business (sections 10(4)(c) and 10(4)(g))
- the reputation of a body corporate applicant is such that it would not be a fit and proper person to be a licensee (section 10(4)(f))
- a director of (or a person concerned in) the management of a body corporate applicant would not be a fit and proper person if they applied for a licence personally (section 10(4)(h))
- any person (other than an officer of the body corporate) who (in the BLA's opinion) appears to have control (or substantial control) of the body corporate is not likely to exercise that control honestly and fairly (section 10(4)(i))
- a director of (or person concerned in) the management of the body corporate applicant is not of good reputation of character (section 10(4)(h)).

The BLA may have regard to the fact that applicant (or a person in a body corporate applicant) has been the subject of action (under interstate travel agents' legislation) that corresponds to a VCAT reprimand, fine, requirement, licence cancellation or disqualification (sections 190(3)(f) and 10(5)).

An applicant must:

- complete an application form
- supply personal and business details (including details of any previous licence(s) and disciplinary matters and details of any proposed managers of premises)

- pay an application fee (currently \$731.30) and, if successful, an annual licence fee (currently \$540.40 plus an additional \$249.40 for each additional premises)
- gain the knowledge required for the interview and attend the interview.

Preliminary estimates of the cost to applicants and licensees of providing information to the regulator are:

<b>Cost to</b>	<b>Item</b>	<b>Cost per annum</b>
<b>Applicants</b>	Total of the following for 67 applicants (in 2007-08): <ul style="list-style-type: none"> <li>• Completing the application form.</li> <li>• Completing the accompanying questionnaire.</li> <li>• Responding to any investigation regarding the application.</li> </ul>	<b>\$18,438</b>
<b>Licensees</b>	Total of the following for 930 licensees (in 2007-08): <ul style="list-style-type: none"> <li>• Completing the annual statement form.</li> <li>• Responding to any investigation regarding the annual statement.</li> </ul>	<b>\$46,194</b>
<b>Licensees</b>	Total of the following (in 2007-08): <ul style="list-style-type: none"> <li>• Completing the form for updating records (est. 20 licensees).</li> <li>• Responding to any investigation regarding the form (est. two licensees).</li> </ul>	<b>\$1,236</b>
<b>TOTAL</b>		<b>\$65,868</b>

### **3.2 Travel Compensation Fund**

Under section 46(1) of the Act, the Minister may declare a compensation scheme (within or outside Victoria) for the travel agent industry. An intergovernmental agreement has established a cooperative scheme for the uniform regulation of travel agents in all jurisdictions except in the Northern Territory. Under this agreement all licensed travel agents in the jurisdictions concerned are required to participate in the TCF (which operates under a Deed of Trust in conjunction with the relevant legislation in each jurisdiction).

In Victoria participation in the TCF is a condition of every travel agent's licence. If a travel agent ceases to participate in the TCF, their licence is suspended until they participate. To be eligible to participate in the TCF, a person must have sufficient financial resources to allow them to carry on business as a travel agent.

A person normally applies at the same time to the BLA for a travel agent's licence (supplying basic details and information for probity checks such as whether an applicant has a criminal record or is insolvent) and to the TCF for approval to participate in the TCF (supplying basic details and financial information). The TCF

advises the BLA on the TCF's assessment of the applicant, monitors the financial viability of travel agents who participate in the TCF and can request financial information from travel agents at any time. A travel agent must renew their participation in the TCF each year sending the TCF an audited financial statement and a certified Annual Financial Review return to confirm that the agent has sufficient financial resources.

A Victorian person who is not allowed to start or continue participation in the TCF can appeal to the Victorian Civil and Administrative Tribunal (VCAT) (TCF 2006, pp. 27-28).

The application fee for the TCF is \$8,959.50 for the principal or solo location (made up of an administration fee of \$786.50 and a contribution to the TCF of \$8173) plus an additional \$5,986.20 (made up of an administration fee of \$486.20 and a contribution to the TCF of \$5500) for each additional location. In each case, the "contribution" is returned if the application is withdrawn or refused. The annual renewal fee is \$402 for the principal or sole location plus \$300.30 for each additional location.

The TCF uses money drawn from these fees, money forfeited by unlicensed travel agents and the TCF's investment income to compensate people who do not receive travel services that they have purchased from a licensed agent or who have deposited with a travel agent money which the agent cannot account for. Claims against the TCF are reviewed by an independent Board of Trustees appointed by the Ministerial Council on Consumer Affairs (MCCA).

### **3.3 Conduct requirements**

The Act imposes several conduct requirements on travel agents.

Under section 28 of the Act, VCAT can order a travel agent to refrain from engaging in 'unjust' conduct. Section 25 of the Act states that this is conduct that is 'dishonest or unfair' or otherwise is in breach of contract, contravenes the legislation or fails to comply with a relevant licence condition or restriction, or a VCAT order.

The Act also has specific provisions covering:

- a travel agent's obligations regarding signage, advertisements using the licensee's name in documents and record-keeping (sections 30-32 and 39)
- a requirement that the manager of each premises be qualified (section 33)
- a ban on employing a person who has been disqualified from working in this industry (section 34)
- court compensation orders against a travel agent who has been convicted of an offence under the Act (section 35)
- inspectors' powers and related obligations of travel agents (part 3A)
- other matters.

The Act also provides for offences and for VCAT to inquire into a travel agent's conduct and impose a range of sanctions (including suspending or cancelling their licence).

The *Fair Trading Act 1999* (FTA) regulates fair trading matters (for example, unfair practices and some contract terms) generally across businesses including the travel agent industry. This Act includes provisions regarding unconscionable conduct, misleading or deceptive conduct, false representations, unfair terms in consumer contracts and the relevant powers of the Director, Consumer Affairs, inspectors and VCAT.

Under section 106D of the FTA, the Director of Consumer Affairs can suspend a travel agent's licence if the Director has reasonable grounds to believe that:

- the licensee has engaged in conduct that, under the Travel Agents Act, would constitute grounds for disciplinary action or criminal proceedings
- the licensee is likely to continue to engage in this conduct
- that there is a danger that a person may suffer substantial harm, loss or damage from that conduct unless urgent action is taken.

## 4. Current state of the travel agent industry

As at 31 January 2008, the TCF covered 822 head offices and 383 branches in Victoria. This level of participation has been relatively stable for five years. In 2007, there were 68 new Victorian participants in the TCF and 2,060 Victorian claims on the TCF (leading to payments of \$1.5 million); the number of claims varies significantly by year (TCF 2007 pp. 8, 12-13 and 16).

The travel agent scheme is one of the smallest licensing schemes run by Consumer Affairs Victoria (CAV) and the BLA. In 2006-07 the BLA processed 66 licence applications. As at 1 August 2008, CAV had 932 travel agents on its register. The Flight Centre travel agent company, the travel agency with the most registrations, has about 150 branches in Victoria.

Characteristics of travel agent services in Australia in recent years have been:

- competition that is mainly based on price
- that “New technology such as on-line ticket prices and booking services is increasing consumer information on travel prices and introducing more price-based competition (especially for holiday travellers)”
- that “External competition is increasing from on-line information, reservation and payment services from airlines, accommodation operators and others...Airlines are actively encouraging customers to book tickets directly on their internet sites, thereby bypassing travel agents...” (PWC 2007, pp. 11-12)

The ability to book trips and accommodation through the internet directly from the provider (who normally would not be required to be licensed as a travel agent) increases choice for consumers while also lessening their need to rely on advice and services from travel agents. In 2006-07, 20 per cent of international visitors to Australia used the internet to book air travel within Australia and 49 per cent to book accommodation in Australia (Tourism Research Australia 2007).

On the other hand, a consumer who deals directly with an airline or hotel which is not a licensed travel agent may not be eligible for compensation from the TCF. For example, airlines may only register if they provide package holidays.

While certain practices of a travel agent can have adverse effects on a consumer, the financial risks involved arguably have become less significant than when the licensing scheme was introduced. This is because many bookings are made through the internet and, as noted in a 2000 study, travel agents now hold less in consumers' funds (as agents' settlements with airlines are more frequent, some consumers pay the airline directly by credit card and some business trips are paid for after they are taken (CIE 2000, p. xii).

## 5. Models for reform

There are five broad options (in descending order of administrative burden) when deciding whether to regulate an occupational group:

- a positive licensing scheme (as currently applies to travel agents)
- an accreditation or certification scheme (for example, where an industry peak body certifies which traders have met its standards for training and/or practice)
- a registration scheme where the trader has to provide certain information to the regulating authority and may be subject to entry and conduct requirements (in Victoria managers of owners corporations and introduction agents are covered by registration schemes)
- a negative licensing scheme where, while there is no requirement to obtain a licence before trading, certain persons may be prohibited from being able to trade
- no formal regulation with traders controlled only by State and Commonwealth general fair trading legislation and the market.

In 1998, MCCA engaged the Centre for International Economics (CIE) to review the licensing of travel agents across Australia in line with the National Competition Policy (NCP). In 2002, a MCCA Working Party considered the CIE's 2000 NCP report. The main recommendations of the CIE's report and the Working Party's response were:

CIE	Working Party
Allowing private insurance providers to compete with the TCF.	Reviewing: <ul style="list-style-type: none"> <li>• the structure of the TCF's contribution arrangements (with a view to establishing a risk-based structure); and</li> <li>• its prudential and reporting requirements (to make these more equitable).</li> </ul>
Not having mandatory qualification and experience requirements for the grant of a licence.	Retaining and reviewing the mandatory qualification requirements.
Having a positive and not a negative licensing system. Restricting this system to: <ul style="list-style-type: none"> <li>• a fit and proper person test; and</li> <li>• a check that the insurance requirements have been satisfied.</li> </ul>	Retaining the positive licensing framework without modification.

Three models are proposed for consideration below. As there is a continuing need to provide adequate compensation arrangements for consumers, all these models provide for mandatory participation in the TCF. Other possibilities (for example, requiring only registration, having no regulatory control at all or including alternatives to TCF compensation) are not proposed as this matter and the nature and quantum of the fees charged by the TCF are beyond the scope of the present options paper.

One negative licensing scheme that is currently administered by CAV and the BLA applies to finance brokers. Under this scheme, a person is prohibited from engaging in finance or mortgage broking if they are:

- a minor;
- insolvent under administration
- an externally administered corporation
- a represented person under the *Guardianship and Administration Act 1986*
- disqualified from engaging in finance or mortgage broking without being given permission to do so by the BLA, or
- a corporation managed or controlled by a prohibited or disqualified person.

An individual or corporation is disqualified if they have:

- been found guilty in the last ten years of an offence:
  - involving fraud, dishonesty, drug trafficking or violence
  - under Victorian or interstate credit legislation, or
  - against the *Finance Brokers Act 1969* (or a similar Act interstate)
- had their application for a licence or licence renewal under the Finance Brokers Act (or a similar Act interstate) refused in the previous two years, or
- had their licence, registration or permission to run a regulated business suspended, cancelled or subject to disqualification.

If a person breaches this section, a penalty of a fine (currently \$27,221) or two years' imprisonment applies.

In general any other person can act as a finance broker. The BLA can grant permission for a disqualified person to act as a finance broker (after considering the public interest and the nature and circumstances of the offence or disqualification).

VCAT can conduct a disciplinary inquiry into a finance broker. A consumer can apply to VCAT for repayment of money that a finance broker was not entitled to receive. CAV can prosecute a finance broker for an offence under the *Consumer Credit (Victoria) Act 1995* or the FTA.

## **Model 1 – Negative licensing scheme and mandatory participation in Travel Compensation Fund**

Model 1 is a negative licensing scheme under which mandatory participation in the TCF would, in effect, authorise a person to trade.

Under this model:

- the TCF would check the applicant against agreed criteria (for example, the applicant's financial status) to determine who should be excluded from the TCF scheme
- an applicant who failed to satisfy the criteria would be excluded from the TCF scheme
- any other applicant would be able to trade and would be required to participate in the TCF scheme (as would all current travel agents)
- CAV could request that VCAT prohibit a person from operating as a travel agent because of the person's conduct as a travel agent.

The main advantages of model 1 are that it would:

- provide the greatest reduction in the regulatory burden on business (with this burden currently estimated at \$65,868 a year)
- avoid the current need to apply to both the BLA and the TCF and so reduce the duplication of processing tasks by these bodies
- avoid delays (in the exchange of information between a licensing authority and the TCF) which have occurred under the current system
- include arrangements for discipline and compensation (by the TCF) and so would continue to protect consumers
- allow a person whose conduct has clearly been inappropriate to be excluded from operating as a travel agent.

On the other hand, this model has the following disadvantages:

- as the TCF does not currently check whether an applicant has a criminal record, this model would not prevent the risks resulting from such a person entering the industry – any exclusion of the person would be possible only after they misbehaved as a travel agent
- there would be no revenue from licence fees and as such, funding for regulation of the industry would need to be drawn from alternative sources
- the change would require amending the Act, the TCF intergovernmental agreement and the TCF Trust Deed.

## **Model 2 – Negative licensing scheme, mandatory participation in the TCF and introducing statutory bars to prevent certain classes of people from trading**

Model 2 would:

- have the TCF and VCAT provisions of model 1
- include prohibition, disqualification and VCAT provisions based on those set out above for finance brokers
- have the Act amended to provide that a person who falls into one or more of certain categories of people is disqualified and so must not operate as a travel agent

- allow a disqualified person to seek permission to operate as a travel agent
- have the Act amended to provide that a person who is not a participant in the TCF must not operate as a travel agent.

The proposed specified categories for disqualification are:

- a minor
- a person who is insolvent or a company that is under administration
- a person who has been disqualified from working in this industry
- a natural person applicant (or a partner, director or person concerned in the management of the partnership or body corporate applicant) who is a represented person (under the *Guardianship and Administration Act 1986*)
- a person who has (in the previous 10 years) been convicted of (or been imprisoned for) an offence in Victoria or elsewhere involving fraud or dishonesty
- a person who has at any time been convicted of an offence against the Act or any other enactment administered by the Minister for Consumer Affairs.

These exclusions are based on matters of fact and not on discretionary judgements (as, for example, apply to a “fit and proper person”, reputation and good character, likely to carry on business honestly and fairly tests).

In each case, the person would be able to seek permission from the BLA to be able to operate as a travel agent (with a right of appeal to VCAT against the BLA’s decision).

The advantages of model 2 are as for model 1 except that:

- there would be some cases of persons applying to the BLA for permission with a consequent regulatory burden on business – these cases, however, are unlikely to be common
- there would be less standardisation of provisions and procedures across jurisdictions given that other jurisdictions might not impose similar ban provisions.

Model 2 has the further advantage that it would exclude from entering the industry persons who were unsuitable given their conviction, legal incapacity or previous disqualification.

The disadvantages of model 2 are similar to model 1 and, in addition, that introducing model 2 would increase the difference between regulatory schemes for travel agents across Australian jurisdictions.

### **Model 3 – No change (positive licensing scheme and mandatory participation in Travel Compensation Fund)**

Retaining the status quo would mean that a person wishing to become a travel agent would have to apply to both the BLA and the TCF.

## 6. Preliminary recommendation

After consideration of these options, it is proposed that model 2 is likely to be the most effective way to regulate travel agents.

The following table shows the risks which the current regulatory system for travel agents seeks to avoid, the relevant mechanisms under the Act and how these risks would be controlled under model 2:

Risk	Current mechanisms	Under model 2
Unsuitable person entering the occupation	<p>The BLA will refuse a licence application if the applicant is:</p> <ul style="list-style-type: none"> <li>• disqualified from holding a travel agent licence</li> <li>• not a fit and proper person, or</li> <li>• not likely to carry on such a business honestly and fairly (s. 10).</li> </ul> <p>A person must have sufficient financial resources to be eligible to join the TCF.</p>	<p>The Act would exclude from the industry persons who had a conviction or previous disqualification or who were legally incapable.</p> <p>The grounds for exclusion would be narrower as they would be based on questions of fact and not allow a consideration discretionary assessment of the applicant.</p> <p>To remain.</p>
Unsuitable conduct by licensed trader	<p>Provisions re:</p> <ul style="list-style-type: none"> <li>• conduct of business (ss. 30-39)</li> <li>• VCAT order restraining unfair conduct (s. 28)</li> <li>• inspectorate function (part 3A), and</li> <li>• disciplinary function (per VCAT) (ss. 20-21 &amp; 39ZB-39ZD).</li> </ul> <p>Generic fair trading provisions apply.</p>	<p>Licensed trader who misbehaves could be disqualified (by BLA) from trading.</p> <p>Compliance and disciplinary provisions (other than the sanctions of licence suspension or cancellation) would remain either under the Act or under a future Licensing Act.</p> <p>To remain.</p>
Change in the status of a licensed trader	<p>The licence will be cancelled if the licensee is insolvent (s. 16A) or suspended or terminated from the TCF.</p> <p>VCAT can inquire into whether a</p>	<p>To remain.</p> <p>To remain.</p>

<b>Risk</b>	<b>Current mechanisms</b>	<b>Under model 2</b>
	travel agent is a fit and proper person, has sufficient financial resources and other matters (s. 20).	
Travel agent's failure to provide travel services or account for money deposited with the agent	Mandatory membership of TCF (s. 45A(1) and a Ministerial instrument).	To remain.

From a consumer point of view, the main issues with the proposed change would be whether:

- consumers would continue to be able to seek compensation when a travel agent failed or was otherwise unable to provide services a consumer had paid for. Under model 4 there would be no change from the current TCF system for this
- removing the current fit and proper person, and knowledge and experience requirements for licensing would, by narrowing the range of persons excluded from entering the occupation, increase the risk of a consumer suffering loss through the entry of unsuitable or incompetent traders.

The interview test requirement is the main difference between Victoria and other jurisdictions in regulating travel agents. A recent TCF study found that, over the last 10 years, Victoria did not perform significantly better than other Australian jurisdictions in terms of the number of travel agency failures – during this period Victoria had 25 per cent of all TCF participants, 21 per cent of all failures and 30 per cent of all claimants on the TCF (TCF 2008).

Both the CIE's report and the MCCA Working Party's report supported retaining the fit and proper person test in a revised form to keep high-risk or fraudulent traders out of the industry. The MCCA Working Party's report stated that it was likely that frauds on consumers would be more common if the criminal record and other probity checks were removed (CIE 2000, pp. 115-116; MCAA 2002, pp. 14-15). Model 2 retains the factual checks but not the ones that require the exercise of discretion.

Currently, when determining whether a person is eligible to be a participant in the TCF, the Board of Trustees may take into account whether the person (or their employee or an officer of a body corporate applicant) has experience in managing a business, has been involved in managing a failed travel agency or has had a claim to the TCF made against them (TCF 2006, p. 20). Retaining this provision (which is essentially based on factual and not discretionary judgements) in model 2 would assist in preventing the entry of unsuitable traders.

The CIE review preferred a positive to a negative licensing scheme as, under the latter scheme, the consumer would have to check whether an agent had been banned from trading (CIE pp. 115-116). However, now information on whether a travel agent is a member of the TCF is easily available through an online TCF register on the TCF's website. The TCF also encourages travel agents to display their TCF Certificate.

If model 2 were to be adopted, further consideration would have to be given to the following matters:

- the extent of the initial legislative change required for implementation
- the extent of the compliance, disciplinary and unjust conduct provisions to apply
- a publicity campaign to make consumers aware of the need to check that a travel agent is a participant in the TCF.

## 7. How to make a submission

There is no specified format for a submission. Submissions may range from a letter addressing one issue to a systematic analysis of the impact of the reform of regulation of travel agents. Submissions will be accepted in electronic or hard copy form.

Submissions will be regarded as a public document and will be posted on Consumer Affairs Victoria's website unless your submission is marked 'CONFIDENTIAL'. Notwithstanding any such marking, documents held by government may be the subject of a request for access under the *Freedom of Information Act 1982*. Documents are assessed under the Act and not all information is automatically made available.

The suggested topics in the Options Paper are presented only as a guide. Participants should not feel the need to address all of the topics or be restricted to only the issues raised under each topic.

Participants are encouraged to provide data, examples, case studies or other evidence to support the arguments presented in their submissions. Please indicate in what capacity you are making your submission. If your submission is on behalf of a representative group, please give a summary of the people and organisations that you represent.

Submissions are due by Friday 28 November 2008 and can be sent to:

**Travel Agents Legislation Consultation  
Consumer Affairs Legislation Modernisation Project  
Consumer Affairs Victoria  
GPO Box 123  
MELBOURNE 3001**

Or by email to: [calm@justice.vic.gov.au](mailto:calm@justice.vic.gov.au)

For any enquiries regarding this paper, please call Sam Owens on (03) 8684 6497.

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Regional offices are located in Ballarat,

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Wangaratta and Warnambool.

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