

2 December 2008

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

By Email: calm@justice.vic.gov.au

Dear Mr Maloney

Travel Agents Act 1986

I refer to your letter received on 5 November 2008. The Australian Federation of Federal Agents (AFTA) makes the following submissions in response to the option paper prepared in relation to proposed reforms to the Travel Agents Act 1986 ('the Act').

Australian Federation of Travel Agents

AFTA is the national representative body for all travel agents. Whilst membership is not compulsory, AFTA represents over 60% of all licensed Australian travel agents which are responsible for over 90% of the industry turnover in dollar terms.

AFTA's policies are established by a national board of directors in conjunction with a chief executive. AFTA is a member of the World Travel Agents Association Alliance. AFTA provides financial, legal and marketing benefits, education and training and develops policies and strategies critical to the retail travel sector.

Summary of AFTA's position

Whilst in principal AFTA supports reforms which will reduce compliance costs on its members, AFTA does not believe the three possible models are appropriate and in particular rejects the recommended model 2.

In AFTA's opinion the proposed reforms are premature: the TCF, as currently constituted, is not the appropriate body to exercise overall licensing authority. Before this can occur the TCF would need to undergo significant restructuring.

AFTA also has concerns about Victoria unilaterally implementing licensing changes independent of any national agreement to do so.

Current Licensing Regime

Travel agents in Australia are subject to a national scheme of regulation in all states and territories through the National Cooperative Scheme for the Regulation of Travel Agents (known as the National Scheme). The form of regulation is primarily for the purposes of consumer protection.

Each state and territory has enacted a *Travel Agents Act*. Whilst the Acts have many common features, they are not uniform (and in some instances there are significant differences)¹

The Act has two objectives:

- (a) to regulate the business of travel agents by providing for a licensing process and the setting of standards for qualifications;
- (b) the establishment of a compulsory compensation scheme for the purposes of protecting consumers from financial loss in the event of a travel agent's default and for the establishment of a Travel Compensation Fund ("TCF").

In order to hold a travel agent's licence, an applicant must be accepted as a member of the TCF.

The National Competition Policy Review of the National Scheme published in March 2000 found that the current system of regulation governing travel agents is *strong* regulation². The

¹ Whilst it is beyond the scope of the Option Paper AFTA members, especially those who operate nationally, are frustrated by significant inconsistencies between the state and territory Acts and how those Acts are interpreted by the relevant supervising authority. Further, the Act is in urgent need of amendment as it predates the introduction of significant changes in technology and the resulting changes in business practices within the industry.

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review also found that regulation restricts competition by imposing market entry, exit and participation requirements³.

Licensing has now been in place for a considerable period of time. It was first introduced in New South Wales in 1974 and in Victoria in 1986. The Northern Territory was the last state/territory to introduce licensing in 2005.

Each state and territory is a signatory to a Participation Agreement. The Act is administered in each state or territory by the relevant consumer affairs/fair trading department. Principal responsibilities for the national scheme is exercised by the Ministerial Council on Consumer Affairs (MCCA) with advice from the Standing Committee of Officials of Consumer Affairs (SCOCA). It can therefore be seen that whilst the responsibility for licensing is state or territory-based, licensing operates on a national basis and relies on the cooperation and coordination of each state and territory government. AFTA therefore cautions against any unilateral move by one state or territory to change elements of the National Scheme.

AFTA has for some time highlighted the fact that the National Scheme whilst strongly regulating travel agents, fails to apply to all suppliers of travel or travel related services and therefore fails to provide complete consumer protection, being one of the primary objectives of the Act. For example, there have been many instances of consumer loss as a result of failure by airlines and operators of travel related services. In recent years, there has been a growth in the number of online portals enabling consumers to book travel via the internet. Unless these online travel agents are domiciled in Australia (or choose to become licensed) they avoid regulation under the Act. Consumers are not protected in the event of a failure to account and must rely on the TCF to exercise its discretion in seeking compensation.⁴

The Travel Compensation Fund

In all states and territories, except the Northern Territory, a condition of holding a travel agents' licence is that an applicant be accepted as a member of the TCF.

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⁴ The Board of the TCF has discretion whether to pay compensation where a person has suffered a pecuniary loss arising from a failure to account by a person who is not a participant in the TCF – s.15.2 of the Trust Deed. In other words the TCF must determine whether to pay compensation to consumers who have dealt with an unlicensed travel agent.

The TCF is a trust established by deed. One of the objects of the trust is to establish a fund to compensate the public where a travel agent has failed to account for money entrusted to it for travel or travel related arrangements.

The purposes of the trust are:

- (a) to provide compensation to the public who deal with travel agents;
- (b) to provide for the operation of the fund; and
- (c) to ensure that only persons who have sufficient financial resources to enable them to carry on business as a travel agent are participants in the fund.

The TCF is administered by a board whose general powers and duties are set out in Clause 4A of the Trust Deed.

In order to be admitted and to remain a member of the TCF, a travel agent must meet financial criteria establishing that it has the financial resources to allow it to carry on business as a travel agent.

The financial costs of TCF membership are significant and include:

- initial application fees and contributions;
- renewal fees;
- audit costs;
- bank guarantees;
- general costs of compliance.

In addition the TCF has previously imposed special levies. Citing the TCF the Policy Review notes that TCF compliance costs range between 2 and 6 per cent of business income⁵.

Need for reform

AFTA is supportive of a review of the licensing regime which will reduce the costs to its members of such regulation. However, AFTA believe that the Options Paper (and in particular, the proposed models 1 and 2) is flawed in that:

⁵ page 50.

- (a) it proposes a transfer of responsibilities to the TCF but does not address the need to reform the TCF;
- (b) it removes from the BLA responsibility for overview and supervision of the licensing procedure;
- (c) it fails to take into consideration the proper resourcing and financing of the TCF;
- (d) it is unilateral and therefore, inconsistent with the aims and purpose of the National Scheme and the national role of the TCF;
- (e) it would likely lead to further divergence of state and territory licensing provisions;
- (f) it fails to address the problem that the current National Scheme does not require all providers of travel and travel related arrangements to be licensed.

AFTA has previously published a paper *Better Regulating Travel-Related Services* in which it has put forward proposals to reform the TCF. However, until this occurs, it is AFTA's view that the proposed models and in particular, the recommended model 2 would be unworkable. As it is currently constituted, the TCF could not take over the role of a regulatory authority. As the option paper acknowledges, the proposed changes would require amending the Act, the TCF Inter Governmental Agreement and the TCF Trust Deed. Whilst amendment of the *Victorian Act* would be a matter for the Victorian Parliament, AFTA believes that amendments to the TCF Trust Deed will only be possible if all participating states and territories are in agreement with the proposed reforms and would be prepared to bring each state or territory Act into conformity.

AFTA suspects that the proposed reforms to the *Victorian Act* have not been discussed with the MCCA or SCOCA. AFTA has concerns with a 'piece meal' approach to reform of what is, in essence, a federal licensing regime.

The proposed 'negative licensing scheme' fails to address the fact that the Act also mandates important matters such as prescribing qualifications and experience of managers of travel agencies. It is unclear from the Options Paper if these provisions will continue to be administered by the BLA or be transferred to the TCF.

AFTA suggests that as a first step in reforming the Act (and thereby reducing the costs of compliance on its members whilst still maintaining the object of consumer protection),

consideration be given to amending the Act so that travel agents with a common ownership require only a single licence. The Act currently imposes significant compliance obligations for larger agencies. For example:

- each location must be licensed separately;
- each location must have its manager's details lodged with the BLA;
- the BLA must be informed whenever a manager moves locations;
- each manager must have police clearance certificates;
- each agent must hold and display an individual travel agent's registration number.

It is submitted that none of the above requirements provides consumers with any greater protection than if the owner of multiple locations complies with the provisions of the Act.

It should be noted that the current provisions of the TCF require each separately licensed travel agent to be an individual member of the TCF and until such time as the TCF is also reformed, there would be absolutely no cost benefit to travel agents to justify model 2.

AFTA would welcome reforms which would provide for a national licensing scheme which would eliminate many of the current regulatory and compliance costs which are imposed on multi outlet members such as:

- (a) the requirement to separately register every outlet;
- (b) provide police clearance certificates for each manager;
- (c) display licence and travel agent's number in all advertising;
- (d) display licences in each outlet.

These requirements provide consumers with no additional security and only act to impose additional operating costs on AFTA's members. The Option Paper does not address whether the proposed model 2 would eliminate these burdensome requirements.

The Options Paper underestimates the barriers and consequential steps needed to be taken in order to amend the TCF Trust Deed. It remains AFTA's belief that policy coordination and regulatory consistency is compromised by the existing regulatory structure⁶. AFTA acknowledges that the existing scheme has delivered benefits to consumers and to industry

but it is in need of reform primarily to reduce the costs of compliance. The co-regulatory scheme is compromised by its structure which, AFTA submits, is inevitable: regulation is shared between the state and territory governments on the one hand and the TCF on the other. Whilst AFTA encourages steps which will remove this tension any approach must be at a national level rather than state based and unilateral.

AFTA's preferred approach

AFTA remains of the view that it is imperative to have in place a regulatory framework that can readily address competition and consumer protection issues associated with the supply of all travel and travel related services originating in Australia. Whilst AFTA acknowledges the Options Paper is a step in this process, AFTA submits that the proposed model 2 would not achieve the intended results. AFTA envisages some key elements for any future regulation will include:

- (a) reforming the existing licensing and TCF functions into a national and single regulator constituted under an appropriate trust or statutory corporate model with input from state and territory governments with increased industry participation in addition to travel agents;
- (b) making the new regulator solely responsible for managing the probity and prudential requirements of participants through the licensing arrangements;
- (c) leave quality assurance to market forces but with a capacity to address unsatisfactory performance through licensing conditions;
- (d) extending licensing requirements to all providers of travel and travel related services including airlines and owners of conveyances;
- (e) extending the compensation fund to cover suppliers and other intermediaries who suffer loss arising from their indemnity of consumer loss;

⁶ See page 44 'Better regulating travel-related services'

AFTA accepts that some of these recommendations fall outside the scope of the current review of the legislation. However, given the unique nature of the National scheme, AFTA submits that the review should be widened and raised at the MCCA or SCOCA so that a national approach can be taken to reform.

Yours faithfully

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Chief Executive Officer