



Submission to the Better Business Reforms – Implementation Options Paper

DECEMBER 2018



ATAS
travel accredited

afta
AUSTRALIAN FEDERATION
OF TRAVEL AGENTS

afta
CHARGEBACK SCHEME
ACS

Foreword



When shopping for a pair of shoes in a retail store, the retailer is likely to ask a number of questions about your needs and preferences – Sports, casual or dress shoes? If sports, what type of sport? Leather or synthetic? What size, and at what budget?

Based on your answer the retailer will apply their experience and expertise to make recommendations based on the available stock, and will offer a number of pairs for you to try-on and, at your discretion, purchase at the displayed price.

This price incorporates not only the cost of goods and taxes, but also a margin taking into account the cost of staff (providing the service and advice to the consumer), rent, marketing, other expenses, and finally a share of profit.

There is no question as to the legitimacy of this margin. Competition in the market promotes efficiency, and prevents price gouging. Consumers acknowledge the services provided by the retailer and their need to cover costs and make an income.

No duty to disclose this margin applies to the shoe retailer, or to most providers of goods and services to the consumer, including electrical and whitegoods retailers, supermarkets, department stores, cleaners, tradespersons or accountants.

However, without clarifying regulation, the amendment in the *Fair Trading Legislation Amendment (Reform) Act 2018*, will impose this duty on travel agents and other travel intermediaries. This is despite the commissions in this sector, acting in almost exactly the same way as margins operate for other sectors.

Requiring the disclosure of commissions calls into question the legitimacy of these hard working travel businesses, many of which are SMEs. It also imposes another level of red tape upon a sector that has already implemented a robust self-regulatory regime through the AFTA Travel Accreditation Scheme (ATAS).

The recommendations of this submission will ensure that unnecessary cost and complexity is not imposed on travel agents, without reducing consumer protections. I commend them to you.



Jayson Westbury
Chief Executive

Executive Summary

The travel industry fills a unique space in the NSW retail market. In NSW, travel agencies employ some 9,000 full time people directly and there is a travel agency in every regional city and most regional towns in the state. The travel agency forms an important link to the world for many people living both in NSW cities but also in country towns. There are more travel agencies in NSW than Australia Post post offices.

The NSW Visitor Economy is a key driver to the success of NSW, and travel agents, both in NSW and across the country, play an integral role in guiding people to holiday in Australia and supporting them on one of their biggest purchases, an overseas family holiday. This experience and expertise should not be underestimated and a recent consumer survey undertaken by the Australian Federation of Travel Agents (AFTA) resulted in over 85% of consumers seeking out an ATAS-accredited travel agent when looking to book an overseas holiday.

Travel is sold in many different ways across a geographically diverse, commercially different and, in some ways, complicated travel value chain. Travel agencies form an important part of this travel ecosystem and this submission will outline much of this diversity. It will also explain how travel agents are remunerated as a business.

In October 2018, an amendment was passed to the *Fair Trading Act 1987* (NSW), which would require suppliers of goods and services, and their intermediaries, to disclose to consumers the existence of commissions and referral fees. It is AFTA's understanding that, as these reforms stand, they apply to the travel industry – both traditional travel shop-fronts and travel comparator websites alike.

This submission concerns Question 4 of the NSW Fair Trading *Better Business Reforms - Implementation Options Consultation Paper*.

Recommendation 1

AFTA strongly advocates for the exclusion of travel intermediaries from the operation of the amendments to the Fair Trading Act 1987. It is recommended this exclusion is contained in the Regulations.

This is due to the unique nature of the travel industry in both its operation and the existing rules by which the industry is governed. As such, the reforms are both economically burdensome on the travel industry and unnecessary. Given the crucial role the tourism industry plays in the NSW economy, it is imperative the NSW Government heeds these concerns.

Table of Contents

Forward	1
Executive Summary	2
Table of Contents	3
Glossary	3
Disclosure of commissions and referral fees.....	4
1. Background	4
2. Features of the travel sector	6
3. Nature of commissions in the travel sector	8
4. Regulation and consumer protection	12
5. Exclusion of travel intermediaries through regulation	16
Conclusion	17

Glossary

ACL	Australian Consumer Law
AFTA	Australian Federation of Travel Agents
ATAS	AFTA Travel Accreditation Scheme
ACAC	ATAS Complaints Appeal Committee
ACCC	Australian Competition and Consumer Commission
ASIC	Australian Securities and Investments Commission
COGs	Cost of Goods
SMEs	Small-to-medium enterprises
The Act	<i>Fair Trading Legislation Amendment (Reform) Act 2018</i>

Disclosure of commissions and referral fees

1. Background

In the past year, greater scrutiny has been applied to conflicts between payments to business, particularly in the banking and insurance sectors, and consumer outcomes. AFTA recognises that there are circumstances where information asymmetry between the intermediary and consumer exists. Financial incentives to sell, or refer consumers to, products and services can bias, or at least appear to bias, the advice, information or recommendations provided to consumers.

The *Easy and Transparent Trading - Empowering Consumers and Small Business Consultation Paper*¹ refers to an Australian Securities and Investments Commission (ASIC) finding that in 75% of cases that it reviewed, financial advisers provided advice that did not comply with the duty to act in the best interests of their clients. Of particular concern are trailing commissions.

Further evidence of misconduct has been uncovered, both in the interim report of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry (the Hayne Royal Commission) and the Productivity Commission review of Competition in the Australian Financial System.

On 8 October 2018, a series of proposed reforms to consumer law were announced by the Minister for Innovation and Better Regulation Matt Kean MLA. On the 17 October, these reforms were introduced into the NSW Parliament as the *Fair Trading Legislation Amendment (Reform) Bill 2018*.

The Bill amends the *Fair Trading Act 1987*, for purposes including “to require suppliers to notify consumers about substantially prejudicial terms relating to the supply of goods or services and to **disclose the existence of commissions and referral fees.**”²

The Bill was passed unamended on 24 October.

The Act created a new Division 2A in the *Fair Trading Act 1987*. This submission concerns section 47B *Disclosure of referral fees, commissions*.

Under s 47B(1):

“An **intermediary** must, before acting under an arrangement that provides for the intermediary to receive a **financial incentive**, **take reasonable steps** to ensure the **consumer** who will be supplied with the goods or services to which the financial incentive relates is aware of the **existence of the arrangement.**”
(Our emphasis in **bold**)

¹ NSW Government, *Easy and Transparent Trading - Empowering Consumers and Small Business Consultation Paper*, July 2018, p. 35.

² Explanatory Note, *Fair Trading Legislation Amendment (Reform) Bill 2018*.

Paragraph 47B(2)(a) defines financial incentive as meaning: (a) a commission or referral fee, or (b) another kind of payment prescribed by the regulations.

Without any contrary indications, and preceding the publication of the relevant regulations, **it should be assumed that the commissions and referral fees currently utilised in the travel industry will fall within the purview of the s47B disclosure requirements.**

AFTA accepts that further regulation may be required to address concerns relating to commissions and referral fees in certain sectors. However, as this submission demonstrates, the travel industry is materially different in nature to the banking and insurance sectors. Existing industry regulation and obligations under the Australian Consumer Law (ACL) already provide a robust framework to prevent misleading and deceptive conduct in the travel industry, without the unintended consequences that may result from the additional regulatory burdens imposed under s47B.

2. Features of the travel sector

The *Easy and Transparent Trading - Empowering Consumers and Small Business* Consultation Paper lists a range of intermediaries potentially subject to the Regulations: accountants, real estate agents, brokers, aggregation websites (referred to henceforth as comparator websites), and travel agents.³ Some comparator websites fall within the scope of the travel industry.

The travel industry is starkly different to other intermediaries listed in the Consultation Paper, and fills a unique space in the retail sector. Fundamentally, the travel sector differs from the other listed intermediaries in both its operations and governance.

2.1 Traditional travel agencies

Without further limitations imposed by regulations, the legislation as it stands would equally apply to the hundreds of traditional travel agency businesses across NSW. **This is despite the unique service offered by travel agencies in taking the time to understand a customer's travel requirements and tailoring packages that deliver the best travel experience for that specific customer.**

AFTA recognises the need for greater regulation where a business with an existing relationship with the consumer, and acting as an unbiased and trusted advisor, might leverage that goodwill to refer additional products or services. This commonly occurs in the finance and insurance industries. As with the same comparator sites, the products and services offered are most often intangible and may be contingent on certain circumstances, require on-going periodic payments, and rely on trailing commissions. **The operation of travel agents is distinctly different from these intermediaries.**

Consumers recognise the value that is provided by travel agents' experience and expertise to achieve for them the best possible travel outcomes. It is well understood in the community that travel agents work on a commission basis that, in operation, reflects the traditional business margin applied across the retail sector.

2.2 Travel comparator websites

The Consultation Paper identified product aggregation websites as an emerging risk area. Here the potential information asymmetry may arise as inputs into the algorithm used to rank products and services, and interactions with commissions and referral fees, may not be well understood by the consumer.

On the one hand, the offer of financial products, insurance and utilities contracts is generally far more geographically limited than travel products. For example, retail electricity sales are state-based. NSW residents needn't compare products offered to

³ NSW Government, *Easy and Transparent Trading - Empowering Consumers and Small Business Consultation Paper*, July 2018. p. 35.

residents of other states or territories, and vice-versa. Similarly, insurance products are generally limited to Australian residents, due to eligibility and coverage requirements.

Conversely, the majority of travel comparator websites offer products from across the globe to an international audience. NSW residents may use these sites to book flights or accommodation in NSW, in Australia, or overseas. Both domestic and international visitors may use these sites to book travel to, or accommodation, in NSW. However, these sales are only a small proportion of total sales made through these sites.

Travel comparator websites would need to balance the benefits of this small proportion of their business against the costs of implementing the requirements of unnecessary regulatory burdens. In this case, there is a significant risk of NSW consumers being geo-blocked, decreasing consumer choice and reducing competition. **Worse still, NSW products and services could be removed, resulting in lost bookings and expenditure in our state economy.**

2.3 The travel sector is not a risk area

Due to the unique nature of the travel business, AFTA believes that the concerns that apply to other industries are misplaced when considering the travel industry. In conjunction with an already regulated and highly comprehensive scheme in place to protect travel consumers (see Chapter 4 of this paper), it is clear that the reforms are unnecessary and excessive when applied to this unique retail sector.

In both the UK⁴ and Canada⁵, legislative disclosure obligations for commissions focus on the financial services industry alone. AFTA is not aware of any jurisdiction that has imposed similar laws obliging travel agents to disclose commissions or referral fees. **Implementation of a requirement for travel intermediaries in NSW to disclose commissions would be out of step from both Australian and international consumer protection regimes.**

AFTA strongly advocates for the exclusion of the travel industry (including comparator websites and travel shopfronts) from the operation of the reforms. It is recommended that the exclusion of the travel industry is communicated clearly in the Regulations.

⁴ *Financial Services and Markets Act 2000 (UK) s 137A, s138G; Financial Conduct Authority, Insurance Conduct of Business Sourcebook section 4.4; Financial Conduct Authority Conduct of Business Sourcebook section 6.4.3, Financial Conduct Authority Mortgage Conduct of Business Source Book section 4.11.1*

⁵ *Mortgage Brokers Act 1996 (British Columbia) s 17.3, Financial Institutions Commission Mortgage Broker Conflict of Interest Disclosure Guidelines November 2016 p. 3,6. Mortgage Brokers Act 2014 (New Brunswick) s 28; Rule MB-001 Mortgage Broker Licensing and Ongoing Obligations s18; Financial and Consumer Services Commission Mortgage Broker Disclosure Requirements, <http://www.fcnb.ca/mortgage-brokers-disclosure-requirements.html>, accessed on 12 December 2018.*

3. Nature of commissions in the travel sector

In order to remain in business, providers of goods and services must incorporate into their prices a margins which at least cover the cost of goods (COGs), as well as other expenses of the business such as staff, rent, marketing etc. A profit margin will accrue when sales revenue exceeds the costs and expenses.

The same principles apply to the travel sector and travel intermediaries.

3.1 Travel intermediary supply chain

After seeking sufficient information from the consumer on their travel needs and preferences, the travel intermediary advises the consumer of any relevant options and alternatives to satisfy their travel requirements. Once an option is selected by the consumer, generally the intermediary will collect the amount payable for the transportation, accommodation or other service as an agent of the service providers.

Consumers' funds are transferred to the supplier in a variety of ways via the travel payment ecosystem. There are a multitude of methods, payment processes, timelines and protocols that are in place to move funds within the industry. At the time required, travel agents ensure that the funds needed to be provided to the supplier are in place, to ensure that the consumer receives the final service requested.

Any commission that may be payable to the agent can also come in many different forms and at different stages of the booking process. This can occur at the time of booking, at the time of travel or, in some cases, post-travel. The travel agent must manage their business and the cash flow requirements to ensure that they can pay their bills and meet their financial obligations.

Any commission that may apply is the equivalent of the margin collected by other businesses on the sale of goods and services. In fact, the High Court in 2016 noted the price charged for the supply of, in this case, international airline tickets formed part of the retail margin on the sale. Judges Kiefel and Gageler described a travel commission as a part of the margin, finding:

*"... if Flight Centre sold an airline ticket at a price above the published fare, Flight Centre received a margin greater than the at-source commission included in the published fare; if it sold an airline ticket at a price below the published fare, it received a margin less than the at-source commission; and, if it sold an airline ticket at a price below the nett fare, it made a loss on the sale. Flight Centre was, however, also free to set and impose additional service fees."*⁶ and;

⁶ Australian Competition and Consumer Commission v Flight Centre Travel Group Limited [2016] HCA 49, 14 December 2016, B15/2016. Para 104, p. 30.

“The higher the price at which the Agent sold a ticket to a customer relative to the nett amount which the Agent was obliged to pay to the Carrier, the greater the Agent's retail margin on the sale.”⁷

As the commission received by travel intermediaries is the equivalent of the margin applied across most retail providers, no additional regulation should be applied to this sector, unless the requirement is supported by evidence.

⁷ Australian Competition and Consumer Commission v Flight Centre Travel Group Limited [2016] HCA 49, 14 December 2016, B15/2016. Para 34, p. 12.

3.2 Single vs. on-going, periodic payment

The nature of the goods and services sold and the structure of payments differentiates travel intermediaries from other sectors that would benefit from greater disclosure requirements.

Outside of the travel sector, existing comparator websites predominantly compare products and services that require on-going periodic payments. These payments correlate to the continuing provision of the good or service, such as electricity or gas supply in the case of utilities, or continuing provision of coverage, in the case of insurance products.

The products offered by travel intermediaries, whether they be online comparator websites or brick and mortar shopfronts, are significantly different in nature. Generally, for accommodation, travel, or tour bookings, a single payment is paid at the time of booking (or alternatively, at the time of use). **Consumers are never left with ongoing payments, for products they no longer want or need.** Consequently, trailing commissions do not exist, and referrals/rankings are not influenced to recommend products on this basis.

Furthermore, given the time-limited nature of the products offered, it is in the travel agent's best interest to maximise the value to the customer, to encourage additional business.

3.2 Regulation of retail margins

There is no question as to the legitimacy of the retail margins in the broader retail industry. Competition in the market imposes the need for business discipline to keep their costs under control, to seek to minimise wastage of scarce resources and to refrain from exploiting the consumer by setting high prices and enjoying high profit margins.

Amendments in the *Fair Trading Legislation Amendment (Reform) Act 2018* will, quite rightly, not require the general disclosure of a retailer's margin. But despite the commission received by travel intermediaries being the equivalent of the margin applied across most retail providers, the amendments will require the disclosure of this information by travel intermediaries.

All parties acknowledge the services provided by the retailer and their need to cover costs and make an profit. It is well understood in the community that travel agents have a blended approach to how they are remunerated. This can come in the form of a commission, service fee, net pricing, or other forms, in order for the full margin achieved by the travel agent to be realised. How else could a business, with staff salaries, rental overheads and many other expenses, be able to operate? This is in fact no different to any business which makes its margin and potential profit by managing costs against sales.

Consumers recognise the value that is provided by the travel agents' experience and expertise to achieve for them the best possible travel outcomes. Requiring the disclosure of commissions calls into question the legitimacy of these hard-working travel businesses, many of which are SMEs. It also imposes another level of red tape to a sector that has already implemented a robust self-regulatory regime through the AFTA Travel Accreditation Scheme (ATAS).

3.3 Retail commissions of travel intermediaries should be excluded

Without clarifying regulation, the amendment in the *Fair Trading Legislation Amendment (Reform) Act 2018*, will impose a duty to disclose commissions on travel agents and other travel intermediaries. This is despite the commissions in this sector, acting in almost exactly the same way as margins operate for other retail sectors which will not be subject to this duty to disclose.

Therefore, the travel sector should be excluded, through the Regulations, from the operation of the s47B disclosure requirements.

4. Regulation and consumer protection

The two main regulators of the travel intermediary industry are the AFTA Travel Accreditation Scheme (ATAS) and the Australian Consumer Law (ACL). Together, these bodies/legal frameworks comprehensively regulate the travel industry. Further regulations such as those introduced in the reforms duplicate the existing regulation provided by ATAS and the ACL, and are an unnecessarily burdensome addition to the existing frameworks.

4.1 ATAS

The AFTA Code of Ethics explicitly disallows “any dealings or negotiations on behalf of their client to be overly influenced by any preferred relationship with a supplier”.⁸ Travel businesses pay an annual membership fee to AFTA, which is taken as an affirmation of commitment to follow this Code of Ethics. AFTA members pledge themselves to “conduct their business activities in a manner that promotes the ideal of integrity in travel”.⁹

In addition, AFTA also administers ATAS, a nationally-recognised accreditation scheme for travel intermediaries. ATAS accreditation is a mark of industry quality. ATAS has high reputational standards and, as such, accredited businesses are respected by consumers, industry professionals and stakeholders.

ATAS prescribes a significant range of obligations on accredited businesses. These obligations are outlined in the ATAS [Code of Conduct](#) and [Charter](#). These are obligations that arise outside, and in addition to Australian law. A breach of these obligations may result in the revocation of ATAS accreditation.¹⁰

AFTA believes that to impose an additional set of obligations on the travel industry would undermine the reputation of ATAS accreditation as the leading, trusted indicator of business quality.

Furthermore, the reforms are not well-tailored to the unique retail business nature of the travel industry in Australia. As such, AFTA submits that enforcing the reforms on travel businesses would unnecessarily burden the industry, and create excessive administrative requirements, legal processes and costs.

The reforms aim to ensure that consumers are protected from the adverse effects of critical information asymmetries, while also considering the trader's economic freedom.¹¹ **The existing ATAS framework protects consumers while also taking into**

⁸ AFTA, *Code of Ethics*, Revision 1, 22 May 2014. p. 3.

⁹ *Ibid.* p. 2.

¹⁰ AFTA, *AFTA Travel Accreditation Scheme Charter*, Section 3.1, p. 13.

¹¹ NSW Government, *Easy and Transparent Trading - Empowering Consumers and Small Business Consultation Paper*, July 2018. p. 36.

account the specific needs of the industry. That is, the existing ATAS framework already fills the space the reforms purport to address.

For example, the ATAS obliges accredited businesses to advise consumers of 'any relevant options and alternatives' for a customer's travel requirements, considering both the customer's interests and as well as a business' arrangements with its travel suppliers.¹²

ATAS requires travel businesses to act with due care and skill,¹³ act fairly and in a reasonable and ethical manner,¹⁴ and treat customers with respect, consideration and courtesy.¹⁵ These obligations, however, are considered with specific reference to the travel industry, so as to refrain from being unnecessarily burdensome on businesses.

These obligations imposed by ATAS are not mere tokens. ATAS travel agents have met strict standards and criteria in order to become nationally accredited, and AFTA will investigate any suspected breach of obligations imposed by the scheme.

In 2017, 5 accreditations were cancelled by AFTA for failing to meet Eligibility Criteria of the ATAS Charter, and 29 applications to become accredited failed.¹⁶ Furthermore, 24 Notices to Cease and Desist were issued to travel intermediaries using the AFTA or ATAS logo without the appropriate accreditations to do so.¹⁷

As an important construct of the self-regulated industry-led scheme, ATAS has an inbuilt independent consumer complaints handling protocol in the form of the ATAS Complaints Appeal Committee (ACAC). This [ACAC](#)¹⁸ acts as an independent review committee to assist consumers with complaints that may be lodged with ATAS and provides a free mediation service for consumers to resolve any matters that may arise.

The current ACAC Chair, Mr. Graham MacDonald, among other appointments, has served as:

- the inaugural Australian Banking Ombudsman;
- Chairman of the Superannuation Complaints Tribunal;
- an independent director of auDA Ltd (the regulator of Australia's domain name industry); and
- a member of an international expert panel advising the Californian-based Internet Corporation for Assigned Names and Numbers on dispute resolution.

¹² AFTA, *AFTA Travel Accreditation Scheme Code of Conduct*, Section 3.2.a.i, p. 4.

¹³ *Ibid.*, Section 3.2.a.vii.

¹⁴ *Ibid.*, Section 3.2.a.ix,

¹⁵ *Ibid.*, Section 3.2.a.x,

¹⁶ AFTA, *Overview of ATAS Charter Activity in 2017*,

<http://www.afta.com.au/uploads/582/atas-charter-activity.pdf>, accessed on 12 December 2018.

¹⁷ *Ibid.*

¹⁸ AFTA, *ATAS Complaint Appeal Committee (ACAC)*, <http://www.afta.com.au/atas-complaint-appeal-committee-acac>, accessed on 12 December 2018.

4.2 Australian Consumer Law (ACL)

All businesses, including traditional travel agents and operators and suppliers in the comparator website industry, have a legal obligation under the Australian Consumer Law (ACL) not to engage in conduct that is misleading or deceptive or is likely to mislead or deceive.

Subsequently, it is illegal for a business to make statements that are incorrect or likely to create a false impression. This includes advertisements or statements in any media, including social media and online.

AFTA believes that the ACL establishes a clear obligation to disclose conflicts of interest arising from referral fees and commissions.

The Australian Competition and Consumer Commission (ACCC) has supported the ACL by taking successful legal action against a number of comparator sites that have breached the law. The ACCC has also, published a guide (the 'ACCC Guidelines') to assist operators and suppliers when making decisions about all aspects of comparator services, including in advertising and marketing.

The ACCC Guidelines recommend that some commercial relationships that could mislead or deceive consumers should be prominently disclosed. These are:

- “ ... operators promoting or giving preference to the products of particular suppliers by displaying results on the basis of commercial relationships rather than the consumer’s stated preferences”; and
- “ ... sales quotas affecting the promotion, recommendation and ranking of products, particularly in circumstances where the operator agrees to sell a specified number of a particular supplier’s products in a certain period.”

Websites must also clearly and accurately disclose the nature and extent of comparison services, including market and product coverage.

Much like ATAS, the ACCC is an active enforcer of its regulatory scheme. For example, in August 2018, the ACCC instituted proceedings against the travel website Trivago. Trivago advertised itself as an “impartial and objective price comparison service”. However, ACCC contends that the website actually prioritised advertisers paying the most to the travel intermediary.¹⁹ While the case remains before the Federal Court, if found in breach of the ACL, Trivago could be liable for up to \$10m in fines for each offence²⁰ – significantly higher than the \$550 payable per offence under the NSW legislation.

¹⁹ ACCC, *ACCC takes action against Trivago over hotel price advertisements*, <https://www.accc.gov.au/media-release/accc-takes-action-against-trivago-over-hotel-price-advertisements>, accessed on 12 December 2018.

²⁰ Mumbrella, *Trivago faces millions in ACCC fines after admitting misleading conduct*, <https://mumbrella.com.au/trivago-faces-millions-in-accc-fines-after-admitting-misleading-conduct-555240>, accessed on 12 December 2018.

4.3 Existing framework for consumer protection for the travel industry

AFTA believes the existing obligations under the ACL already provide a robust legal framework to prevent misleading and deceptive conduct in the travel industry, without the unintended consequences that may result from the additional regulatory burdens imposed under s47B. This, alongside the self-regulation of the industry under the ATAS, ensure comprehensive consumer protection without the need for further regulation.

5. Exclusion of travel intermediaries through regulation

Under the new subsection 47(3) in the Act, a person, or class of persons, may be excluded from the definition of intermediary by the regulations.

Recommendation

AFTA strongly advocates for the exclusion of travel intermediaries from the operation of the amendments to the *Fair Trading Act 1987*. It is recommended this exclusion is contained in the Regulations. This is due to the unique nature of the travel industry in both its operation and the existing legal frameworks by which the industry is governed. As such, the reforms are both economically and unnecessarily burdensome on the travel industry. Given the crucial role the tourism industry plays in the NSW economy, it is imperative the NSW Government heeds these concerns.

Conclusion

The travel industry fills a unique space in the retail sector. **The ‘one-size-fits-all’ approach taken by the reforms to the disclosure of commissions and referral fees is highly burdensome and prejudicial to the travel industry, especially as the industry is already well regulated.** This is even more so when considering the lack of such obligations placed on other retail sectors to disclose margins from sales.

As Minister Kean said himself: “We’re looking at ways to cut down on red tape so businesses have every opportunity to thrive in NSW”.²¹ It is clear these reforms will not allow tourism businesses to thrive.

Excluding the travel industry from the purview of s 47B is prioritising small business, hundreds of thousands of employees, the NSW tourism industry, and the broader NSW economy. This is not to the detriment of consumers, who are aware of the existence of margins and business profitability in the retail sector, and are not cheated by such margins as they may be in the case of intangible products, fees and ongoing payments.

19 December 2018

²¹ Matt Kean MP, Minister for Innovation and Better Regulation, *Government consulting on reforms to empower consumers and small business*, 7 August 2018.