



Submission to
Regulatory Burdens – Business and Consumer Services
Productivity Commission

by

The Australian Federation of Travel Agents

24 February, 2010

There is nothing in this submission that is confidential



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Regulatory Burden on Business
Business and Consumer Services
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Dear Sir/Madam

Regulatory Burdens on Business, Business and Consumer Services submission to the Productivity Commission by the Australian Federation of Travel Agents

The Australian Federation of Travel Agents ('AFTA') welcomes the opportunity to make submission to this review being conducted by the Australian Federal Government.

In response to the call for submissions, AFTA provides the following comments on the burden on business in the business and consumer services area; namely Travel Agents.

Australian Federation of Travel Agents

AFTA is the national representative body for all travel agents in Australia. Whilst membership is not compulsory, AFTA represents over 70% 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. AFTA has a seat on the National Tourism and Aviation Advisory Committee, the Department of Foreign Affairs Smartraveller Consultative Group, is involved directly with the Federal Governments National Long Term Tourism Strategy and is a member of the National Tourism Alliance (NTA).

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Summary

AFTA's comments are directed in the context also of the review that is current being conducted under the Ministerial Council on Consumer Affairs (MCCA), by PricewaterhouseCoopers into Consumer Protection in the travel and travel related services industry. This review is current being done and AFTA is making a separate submission to this review. We draw the Productivity Commissions attention to this review as there is a fundamental aspect of regulatory burden that is systemic in the travel industry. We will outline this and expand within this submission.

AFTA notes that to ensure a balanced approach minimising unnecessary regulation while promoting consumer fairness, the government proposes to, with its state and territory counterparts, continue to monitor and evaluate the adequacy of the consumer protection framework to ensure consumers' rights are protected. Within that framework, AFTA submits that the Commonwealth should implement:

- (a) a national accreditation system to replace the current state-based licensing regime;
- (b) the national accreditation system should cover all principals and intermediaries involved in the selling of travel including airlines.

The current regulatory regime of travel agents, implemented in part to provide overall consumer protection, needs to be restructured so as to provide for consumer protection in the event of a principal's failure.

The current regime for consumer protection which is effectively funded by travel agents by way of a subscribed fund is not satisfactory. The current compensation fund does not cover pure supply activity and leads to an anomalous situation for consumers where a failure to account for services by an airline or other travel principal is non-compensable. Travel agents seek a 'level playing field' and strongly asset that the current environment also creates a confusing situation for consumers and indeed an imbalance purchasing environment for the consumer.

The Distribution System

The travel distribution system is the backbone of the travel industry in Australia. Travel agents are a major component of the distribution of airline and other travel related services. AFTA's research indicates that travel agents account for in excess of 80% of all sales of international air tickets in Australia. Whilst the figure is lower for the sale of domestic air travel, travel agents specialising in corporate travel services account for a significant proportion of all corporate domestic travel.

Statistics published by the Travel Compensation Fund ('TCF') shows that for the year 2007 there was 4,746 participating travel agents. AFTA has calculated that the industry currently employs approximately 27,000 people across Australia.

Travel related services are supplied through a complex distribution system comprising entities that may undertake one or more of the roles of supplier and intermediary both in Australia and overseas. The term 'travel related services' draws on the World Tourism Organization's definition of tourism. This is defined as "*the activities of persons travelling to and staying in places outside the usual environment not more than one consecutive year for leisure, business or other purposes*".

Services are supplied direct to consumers by entities which are principals or through intermediaries. For example, an airline may sell directly to a consumer or may act as an intermediary packaging up an airfare with hotel accommodation or other land arrangements. An airline could then sell those services either directly through consumers or through a travel agent.

Travel agents, by reason of the nature of their business, act as an intermediary in the sale of travel related services. The Australian Competition & Consumer Commission ('ACCC'), in the context of authorising the International Air Transport Association Passage Agency Program in Australia, noted:

*"[it] is apparent that the presence of a healthy and vigorous travel agent industry in Australia is essential to achieving effective competition between airlines for business involving Australian consumers."*¹

¹ IATA authorisation A90791, 13 November 2002 at paragraph 7.35.

The ACCC also found that travel agents and airlines compete directly with each other on the sale of international passage air travel.²

The main activity and source of income for travel intermediaries and, in particular, travel agents is the procuring of international travel arrangements. AFTA's research has shown that such intermediaries are predominantly small businesses. 60% of them have an annual turnover of less than \$5 million and their pre-tax profit is no more than 1.5%.³

Travel agents are governed by the National Cooperative Scheme for the Regulation of Travel Agents (**'the National Scheme'**). The National Scheme is enacted in various *Travel Agents Acts* in each state and the *Agents Act 1968* in the ACT. Businesses which fall within the definition of 'travel agents' are required to be licensed in each jurisdiction in which they operate. A business is engaged as a travel agent to the extent that it sells, or arranges to sell, right to travel or travel and accommodation or purchasers' rights to travel for resale⁴. Related activities are also covered. However, businesses owning the services supplied, for example, air or accommodation services, are excluded.

The regulatory regime has three purposes:

- (i) a licensing process directed at service and quality standards;
- (ii) the setting of continuing financial requirement for travel agents in conducting their business;
- (iii) protecting consumers from financial loss in the event of a travel agent default administered by the TCF.

To be eligible for a travel agent's licence, an agent must be accepted as a member of the TCF.

The National Competition Policy (**'NCP'**) Review of the National Scheme for the Regulation of Travel Agents prepared for the Ministerial Council on Consumer Affairs (March 2000) found that the current system of regulation governing travel agents is

² *ibid* paragraph 7.40

³ Better Regulating Travel Related Services, AFTA, July 2005, page 10.

⁴ See for example Section 4, Travel Agents Act 1986 (NSW). Similar provisions are in the State and ACT Acts.

strong regulation. It further found that the regulation restricts competition by importing market entry, exit and participation requirements.

The consumer protection afforded by the National Scheme does not cover pure supply activity. This results in an anomalous situation for consumers where a failure to account for airline services by an airline falls outside the compensation scheme. However, if the airline sold its air service as part of a holiday package, then it would be compensable. This anomaly was highlighted as a result of the collapse of Ansett Airlines. Consumers were compensated for air services that were part of a holiday package but not for payments to the same entity for point to point travel. Australia has not been immune from airline collapses. Apart from Ansett, there has also been the collapse of Compass Mark I and II. As noted in the Federal Governments Aviation White Paper, there are massive changes occurring in the Global Aviation Industry and in 2008, world wide there has been at least 30 airlines collapses. The current consumer protection enhanced in the National Scheme does not afford consumers protection in the case of airline (or other principal) failure.

As noted above, the existing National Scheme is restricted to intermediary activity. When it was introduced in 1986, the distribution system differed markedly to that found today. In 23 years, the introduction of the internet, sophisticated computerised distribution systems and consolidation of the travel agency industry has meant that whilst the National Scheme may have fulfilled an important void in imposing a national regulatory scheme, it is now hopelessly out of date. Today, the distribution system is not as clearly defined – entities are often involved in supply and intermediary functions; there is more vertical integration across ownership. In addition, consumers are exposed to increasing use of internet based technologies for making travel and travel related services. The internet has allowed the sale into the Australian market by intermediaries who remain unlicensed and outside the reach of the National Scheme.

In AFTA's opinion, there is a compelling case for rationalising the structure and content of the existing National Scheme to reinforce the adequacy of the Consumer Protection framework and to address the regulatory burden on the travel services industry.

The NCP Review assessed the need for the National Scheme with a regard to specified fair trading outcomes.⁵ The Review concluded that the National Scheme cost outweighed its benefits. The Review's long term goal was to leave competition and consumer outcomes to market forces. In the meanwhile it recommended the National Scheme be replaced with a new scheme having two key elements:

- (i) licensing, to ensure intermediary probity on 'fit and proper person' criteria, and
- (ii) private insurance to protect consumer payments.

It should be noted that the Ministerial Council on Consumer Affairs concluded that the NCP gave insufficient weight to unquantifiable benefits, particularly regulatory benefits that engendered market confidence, consumer security and the orderly management of arrangements in the event of an intermediary failure.

However, in AFTA's opinion, events in the succeeding period have borne out the NCP's conclusions. In a submission to the Productivity Commission, the ACCC acknowledged it may be necessary to consider whether aspects of regulation remain appropriate where a more competitive environment exists and, acknowledge the role of information deficiency as a rationale for consumer protection.⁶

The ACCC also recognised the potential for well designed effectively implemented and properly enforced self or co regulation to deliver consumer benefits.

AFTA believes policy coordination and regulatory consistency is compromised by the existing regulatory structure. Travel intermediary regulation is shared between licensing authorities in participating jurisdictions (all states and territories bar the Northern Territory) and, the TCF. Licensing authorities are responsible to individual ministers and the TCF is responsible to ministers collectively. The effectiveness of the National

⁵ NCP Terms of Reference required it to assess the extent of access to appropriate information to enable informed decisions to be made by participants, security of monies paid in advance for travel services, supply of travel services with due care and skill, appropriate post-contractual protection of consumers, access to rapid, inexpensive dispute resolution facilities, minimal misleading, deceptive or unconscionable conduct by market participants and minimal compliance costs for business.

⁶ ACCC, submission to the Productivity Commission – discussion draft, National Competition Policy Reform 10 December 2004.

Scheme is compromised by its structure. It is inevitable in sharing the regulation of a national market between seven agreements and the TCF.

The current National Scheme has not encouraged periodic consideration of the scope for complementary or alternative industry self or co regulation.

AFTA provides this information to the Regulatory Burdens review to ensure that the productivity commission is aware of the current arrangements and to highlight that they are simply no longer fit for purpose in a robust and diverse national industry.

AFTA further draws to the attention of the Productivity Commission the review into Consumer Protection being undertaken by the Ministerial Council.

AFTA's preferred approach

AFTA sees the opportunity by way of an assessment of burden on this predominately small business based industry to de-shackle an unnecessarily over regulated and heavily burdened industry.

While the Consumer Protection Review is a foot, the importance of the development of a new national regulatory framework cannot be underestimated to ensure that Australian businesses can compete in a global industry and one that is facing considerable and continued consolidation over the coming 5 – 10 years.

In AFTA's opinion, the National Scheme including the TCF is unsuited to afford sufficient consumer protection in the modern internet age and provides an over burden when considered against the state based licensing legislation that co-exists as a multi layered regulatory environment. Furthermore, that fact that this multi layer environment only applies to certain business which in some cases are trading and competing for the same consumers business, but which sit outside of the regulatory framework, is clearly in need of reform.

In AFTA's opinion, the National Scheme and the TCF should be replaced with a new regulator. Some of the key elements are:

- (a) the Commonwealth should regulate the implementation of a national accreditation/licensing system to replace the current state based licensing regime;

- (b) the accreditation system should be inclusive to cover all parties engaged in the sale of travel and travel related services including principals such as airlines and cruise operators;
- (c) the new national regulator would be solely responsible for managing the probity and prudential requirements of intermediaries through a continuation of positive licensing arrangements;
- (d) quality assurance would be left to market forces but with a capacity to address unsatisfactory performance through licensing conditions;
- (e) the current fund which is funded by travel agents' subscriptions be replaced by new arrangements which would allow consumers to take out insurance against the failure to account by principals and intermediaries, thereby having the effect of transferring compensation funding from industry subscription to consumer funded and possible transaction based contributions.

Conclusion

It is important that the Regulatory Burdens – Business and Consumer Services review ensures that due consideration is given to issues arising in relation to distribution of travel and travel related services whilst at the same time ensuring that there is adequate consumer protection. The current National Scheme overregulated travel agents whilst ignoring other important stakeholders.

AFTA hopes that the proposal set out in the submissions will assist the government in ensuring that appropriate regulations are in place that removes unnecessary burdens on an industry that has some elements over burdened and over regulated.

Yours faithfully

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