

COAG Legislative and Governance Forum on Consumer Affairs

TRAVEL INDUSTRY TRANSITION PLAN

CONSULTATION DRAFT

August 2012

Draft Travel Industry Transition Plan

Background

A draft national Travel Industry Transition Plan is available for public comment until 1 October 2012.

It recommends options to reform regulation of travel agents across Australia.

The draft Plan is the result of a national review, started in 2010. The review considered whether the existing regulatory framework, introduced in 1986, was suitable to modern market conditions.

On 6 July 2012, Ministers for Consumer Affairs approved the release of the draft Plan. For more information about this approval, view the [Consumer Affairs Forum joint communique – 6 July 2012](#).

Consultation process

The draft Plan includes specific questions about requirements for the transition from the existing regulatory framework.

Interested parties are invited to respond to these questions. Feedback received will inform the development of a final Plan that Ministers for Consumer Affairs are due to consider for approval in December 2012.

Submissions

Submissions close at 5pm on **Monday, 1 October 2012**.

Please address to:

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Email: cav.consultations@justice.vic.gov.au in Word or plain text format.

Confidentiality

Please note that your submission will be treated as a public document and may be published on this website, unless you specifically request that it be treated as confidential.

A request made under the *Freedom of Information Act 1982* (Cth) for a submission marked as confidential to be made available will be determined in accordance with that Act.

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GLOSSARY

Travel Agents Acts – Abbreviations

TAA (Vic) – *Travel Agents Act 1986* (VIC)
TAA (NSW) – *Travel Agents Act 1986* (NSW)
TAA (WA) – *Travel Agents Act 1985* (WA)
TAA (QLD) – *Travel Agents Act 1988* (QLD)
TAA (SA) – *Travel Agents Act 1986* (SA)
TAA (TAS) – *Travel Agents Act 1987* (TAS)
AA (ACT) – *Agents Act 2003* (ACT)

Travel Agents Regulations - Abbreviations

TAR (Vic) – *Travel agents regulations 2007* (VIC)
TAR (NSW) – *Travel agents regulation 2006* (NSW)
TAR (WA) – *Travel agents regulations 1986* (WA)
TAR (QLD) – *Travel agents regulations 1998* (QLD)
TAR (SA) – *Travel agents regulations 1996* (SA)
TAR (TAS) – *Travel agents regulations 2003* (TAS)
AA (ACT) – *Agents regulation 2003* (ACT)

Other

ACL – Australian Consumer Law
EIAC – Education and Information Advisory Committee
PRAC – Policy and Research Advisory Committee
CAF – COAG Legislative and Governance Forum on Consumer Affairs
CAANZ – Consumer Affairs Australia and New Zealand
TCF – Travel Compensation Fund
TMC – Tourism Ministers Council
Participation Agreement – *Participation Agreement for the Co-operative Scheme for the Uniform Regulation of Travel Agents*, Dated 19 September 1986
TCF Trust Deed – *Travel Compensation Fund TCF Trust Deed*, Effective 4 December 2009

REFERENCES

- Australian Communications and Media Authority, *Australia in the digital economy – Consumer engagement with e-commerce*, November 2010
- Australian Federation of Travel Agents, *Strong Industry – Secure Travellers, A modern accreditation scheme for the travel industry*, March 2012
- Australian Government, *Going Global: An action plan to adapt to the changing tourism distribution landscape*, 23 November 2011
- Australian Government, *Tourism Operators Online Capabilities Benchmark Survey 2010 – Research Report*,
<http://www.ret.gov.au/tourism/Documents/tmc/Digital%20Distribution%20Working%20Group%20-%20Benchmark%20Survey%202010.pdf>
- Australian Competition and Consumer Commission, *Guidelines for developing effective voluntary industry codes of conduct*, July 2011
- Australian Tourism Data Warehouse, *Tourism e-Kit*,
http://www.atdw.com.au/tourism_e_kit.asp
- Centre for International Economics, *National Co-Operative Scheme for the regulation Of Travel Agents, Working Party report to Ministers on the National Competition Policy Review*, August 2002
- Code Compliance Monitoring Committee, *Inquiry Report: Charge-backs*, January 2012
<http://www.ccmc.org.au/cms/wp-content/uploads/2012/03/Charge-backs-Report-website.pdf>
- Deloitte Access Economics, *The contribution of the cruise sector to Australia – Carnival Australia*, 22 February 2012
- Cordato A J, *Australian Travel & Tourism Law (3rd edition Butterworths 1999)*
- Fraser, Jane E, <http://www.smh.com.au/travel/wrath-all-around-in-wake-of-collapse-20120518-1yuot.html>
- Finch, Caroline, *Bon voyage: Internet savvy tourists say goodbye to agencies and move online*, IBISWorld Industry Report I6641, Travel Agency Services in Australia, May 2012
- International Cruise Council of Australasia, *Cruise Industry Report*, 2011
- KPMG, *Study into the red tape burden associated with the regulation of travel agents*, April 2012, <http://www.afta.com.au/ConsumerProtectionReview> (Prepared for the Australian Federation of Travel Agents)
- MacGowan, Ian, *Come back soon: The tourism industry struggles as Australians travel overseas*, IBISWorld Industry Report X0003, Tourism in Australia, April 2012
- Martin, Peter, *RBA to tackle ‘excessive’ credit card surcharges*, 21 March 2012,
<http://www.smh.com.au/national/rba-to-tackle-excessive-credit-card-surcharges-20120320-1vi2k.html>

PriceWaterhouseCoopers, *Review of consumer protection in the travel and travel related services market*, prepared for the Department of the Treasury, on behalf of the Standing Committee of Officials of Consumer Affairs, November 2010

Reserve Bank Media Release 2012-15 *Payment System Issues: A Variation to the Surcharging Standards* 12 June 2012

Tourism Australia, *2020 Tourism Industry Potential – a scenario for growth*, http://www.tourism.australia.com/en-au/documents/Corporate%20-%20Research/2020_Tourism_Industry_Potential.pdf

Tourism Forecasting Committee, *Tourism Research Australia Report*, October 2011

Tourism Research Australia, *Internet use in Trip Planning and Booking*, September 2011

Tourism Research Australia, *State of the Industry 2011*

Travel Monitor, <http://www.travelmonitor.com.au/news/top-news/saga-over-collapsed-travelscene-amex-agency-continues.html>

Wallace, Louise, *Story of the fortnight: Industry slump?*, *Travel Weekly*, 23 March 2012,

1. INTRODUCTION

Two previous reviews in the last 12 years have considered the suitability of the existing regulatory framework, introduced in 1986, to modern market conditions.

A third review, on foot since 2010, with a similar focus, provides the context for this paper.

1.1 MINISTERIAL COUNCIL COMMITMENT

On 3 June 2011, Ministers for Consumer Affairs made the following announcement:

“The Ministerial Council acknowledges the need for reform of travel industry regulation in Australia given the adoption of the National Tourism Accreditation Framework and the commencement of the Australian Consumer Law in 2011. Ministers consider that modernisation of the regulatory framework for the travel sector needs to foster ongoing consumer confidence in the sector and enhanced consumer protection, business compliance and financial capacity, and competition and innovation.”

The Ministerial Council supports the further development of a Travel Industry Transition Plan, in consultation with industry and consumers, as a pathway to an industry-wide regulatory approach, which complements industry efforts to promote confidence and quality, and maintains appropriate levels of consumer protection.”

Ministers’ decision follows the preparation of a draft decision-making Regulatory Impact Statement originally prepared by Commonwealth Treasury on behalf of MCCA (now the COAG Legislative and Governance Forum on Consumer Affairs or ‘CAF’).

The cornerstone of the draft RIS was a proposal to adopt a deregulated approach to the regulation of travel agents, characterised by the abolition of the Co-operative Scheme for the Uniform Regulation of Travel Agents (‘the National Scheme’), the closure of the Travel Compensation Fund (‘the TCF’) and removal of the requirement to hold a licence to carry on business as a travel agent.

The draft RIS outlined options for reform that drew on the findings of a report prepared by PriceWaterhouseCoopers on CAF’s behalf¹ (‘the PWC Report’). The PWC Report was released by the Standing Committee of Officials on Consumer Affairs (now Consumer Affairs Australia and New Zealand or ‘CAANZ’) for public consultation in March 2011.

The draft decision-making RIS was not endorsed by Ministers at their meeting of 3 June 2011. One key reason was the need to further examine the regulatory overlay applying to travel agents and to understand in detail how the National Scheme interacts with other laws and industry-led arrangements.

The Transition Plan was subsequently proposed as a pathway towards reform, taking into account all previous reviews in this area. On 6 July 2012, Ministers agreed to the draft Transition Plan and requested that consultation about the implementation be undertaken so the Ministers can approve the timetable in December 2012. The meeting communiqué² included the following statement on this issue:

“Ministers present at the Meeting of Ministers for Consumer Affairs acknowledged the Travel Compensation Fund (TCF) had played an important role in protecting consumers in the past.”

¹ PriceWaterhouseCoopers. *Review of consumer protection in the travel and travel related services market*, Prepared for the Department of the Treasury, on behalf of the Standing Committee of Officials of Consumer Affairs, November 2010

² <http://www.consumerlaw.gov.au/content/Content.aspx?doc=caf/meetings/002.htm>

However, Ministers agreed that the TCF could not continue to be the primary vehicle for consumer protection in the travel market. There have been both fundamental changes in the market and recent legislative arrangements entered into between the States, Territories and Commonwealth, in particular the strengthened legislative protections under the Australian Consumer Law (ACL).

Ministers also noted that the current arrangements are not satisfactory. In particular, only about a third of affected consumers have any redress under the scheme and more money is being spent on the administration of the scheme than is being paid out to consumers. There has been extensive consultation about the role of the TCF over the last 4 years following concerns about coverage of the market and the relevance of the TCF for consumer protection. A range of options has been identified but there has been a general acceptance that the current system is a significant regulatory burden with declining benefit. Ministers also note that the larger jurisdictions signalled that in the absence of an agreed transition plan, they would withdraw from the TCF. This may mean that the TCF may no longer be viable.

Ministers have received from officials a draft plan of transition from the existing arrangements to ensure that consumers continue to be protected in the travel market. Ministers intend to release a draft transition plan and invite comments and suggestions from interested parties. Ministers committed to consultation with all interested parties, including industry and consumer groups during the development of the final transition plan. Ministers agreed to receive a final transition plan with the intention that the plan be determined at the December meeting of Consumer Affairs Ministers in Sydney in December 2012.”

1.2 REGULATORY FRAMEWORK

Some contextualisation is required in order to ensure that the Transition Plan aligns with the scope of the existing regulatory framework overseen by CAF.

This framework encompasses the Participation Agreement for the Co-operative Scheme for the Uniform Regulation of Travel Agents (‘the Participation Agreement’), which was originally signed by NSW, Victoria, Western Australia (WA) and South Australia (SA) on 19 September 1986. Queensland (QLD), Tasmania (TAS) and the Australian Capital Territory (ACT) became signatories shortly after, followed by the Northern Territory (NT) in 1990.

The Participation Agreement required member jurisdictions to enact legislation containing uniform provisions. This was achieved through the passage of State and Territory *Travel Agents’ Acts*³ and associated Regulations⁴, collectively referred to as the National Scheme. These provisions included a requirement that travel agents be licensed and for those agents to become and remain members of the TCF, a requirement that currently applies to licensed travel agents in all jurisdictions except NT.

1.3 WHAT THE ‘NATIONAL SCHEME’ COVERS

The National Scheme regulates agents who make travel or travel-related arrangements as intermediaries:

- **"travel arrangement"** means any arrangement entered into with a travel agent for the provision of services which constitutes the carrying on of business as a travel agent;

³ Travel Agents Act 1986 (Vic), Travel agents Act 1986 (NSW), Travel Agents act 1985 (WA), Travel Agents Act 1988 (QLD), Travel Agents Act 1986 (SA), Travel Agents Act 1987 (TAS), Agents Act 2003 (ACT)

⁴ Travel Agents Regulations 2007 (VIC), Travel Agents Regulation 2006 (NSW), Travel Agents Regulations 1986 (WA), Travel Agents Regulations 1998 (QLD), Travel Agents Regulations 1996 (SA), Travel Agents Regulations 2003 (TAS), Agents Regulation 2003 (ACT)

- **"travel-related arrangement"** encompasses specific arrangements (for example, hotel and airport transfers, accommodation, car hire and theatre tickets), as well as any other arrangement that is "normally incidental to travel arrangements".⁵

"Travel Agent"

Someone who:

- (a) sells tickets entitling another person to travel, or otherwise arranging for another person a rite of passage, on a conveyance other than a prescribed conveyance; or*
- (b) sells to, or arranging or making available for, another person rights of passage to, and hotel or other accommodation at, one or more places—*
 - (i) which are within or outside (licensing State / Territory); or*
 - (ii) some of which are within, and others of which are outside, (licensing State / Territory); or*
- (c) purchasing for resale the right of passage on a conveyance other than a prescribed conveyance; or*
- (d) carrying on an activity prescribed for the purposes of this paragraph— or if the person holds out or advertises that the person is willing to carry on any activity referred to in paragraph (a), (b), (c) or (d)⁶.*

Although minor variations exist across existing Travel Agents Acts (TAAs), the definition of 'travel agent' is generally broad enough to encompass agents that also provide travel or travel-related services, for example:

- transport operators;
- accommodation providers;
- restaurants; or
- entertainment providers.

Exemptions apply where the agent is the owner of the travel or travel-related services in question⁷, and is essentially transacting on their own behalf.

A business is also not covered by the National Scheme if, for example:

- its annual turnover is less than \$50000⁸;
- it is selling tickets for day trips or making camping arrangements in conjunction with a tour⁹.

1.4 WHAT THE TCF COVERS

The TCF was established in December 1986 by deed of trust ('the TCF Trust Deed').

Clause 3 of the TCF Trust Deed provides that the purposes of the TCF are to provide compensation for certain people who deal with travel agents, to provide for the operation of

⁵ Clause 1.1 of the TCF Trust Deed

⁶ E.g. Section 4(1) TAA (Vic)

⁷ E.g. section 4(3) TAA (Vic)

⁸ E.g. See Travel Agents Exemption Order No.5 (Vic),

<http://www.gazette.vic.gov.au/gazette/Gazettes2007/GG2007G017.pdf#page=2>.

⁹ E.g. see Regulation 6 of the TAR (Vic)

the Fund and to ensure that only persons who have sufficient financial resources to enable them to carry on business as a travel agent are participants of the Fund.

A person or company must be admitted as a TCF participant in order to be licensed as a travel agent. Their financial viability is assessed both at the time of their initial application for membership, and on an annual basis as part of their licence renewal process.

The TCF Trust Deed provides for compensation to be paid to consumers, including State or Territory Governments, in instances where they have paid a licensed travel agent for travel or travel-related services, and that agent subsequently “fails to account”.

“Failure to account”

Where the agent fails to arrange the services requested by the consumer either because the agent:

- has not paid (and will be unable to pay) the consumer’s money to the end service provider, for example due to fraud or insolvency; or
- has passed all or part of the consumer’s money to another licensed travel agent, who subsequently fails to pay the end service provider; and
- cannot provide the consumer with a refund.

1.5 WHAT THE TCF DOES NOT COVER

The TCF **is not established to** compensate consumers where –

- the travel agent stops trading (because of insolvency or for other reasons), but the end service provider (e.g. an airline) has received the consumer’s payment;
- the travel agent has paid the consumer’s money to the end service provider, but the provider is unable to deliver those services (because of insolvency or for other reasons).

2. FRAMING THE TRANSITION PLAN

The Transition Plan concerns itself with the National Scheme’s coverage of travel agents and their association with the TCF. It is also underpinned by a set of overarching principles developed by jurisdictions to support the development of the Transition Plan.

These emphasise the need for adaptable regulation:

- **Regulation should be forward-looking or “future-proofed”. For example:**
 - regulation should have the flexibility to adapt to an evolving industry;
 - regulation should remain relevant to conditions in the industry, at least until 2020.
- **General, rather than industry-specific, regulation should be favoured. For example:**
 - consistency with the ACL and other Government policy settings;
 - no industry-specific regulation;
 - reliance on industry-specific quality regulation as a complementary regulatory mechanism.
- **Regulation should diminish any existing regulatory burdens. For example:**
 - reducing costs to industry and risks for Government;
 - shifting to a risk-based approach which incorporates industry self-regulation;
 - the benefits of regulation should clearly outweigh any costs to business.

- **There should be a focus on real, specific problems to maintain the integrity of the scheme. For example:**
 - regulation should be relevant – as is appropriate for a mature industry that is functioning reasonably well - in order to avoid distorting the market;
 - any identified information asymmetries should be addressed;
 - regulation should be practically enforceable.

- **Regulation should support a global market dominated by e-commerce. For example:**
 - domestic participants should not be subject to such compliance burdens that their competitiveness against international participants in the market is diminished.

3. EXECUTIVE SUMMARY

The validity of the existing regulatory framework can only be tested by considering the contemporary travel agency market and the key challenges it creates for regulators and those who it regulates.

These consist of a combination of the rise in new business models, the specific nature of existing laws and the passage of time. The chief culprit is technology, which has changed at such a rapid pace, giving rise to new markets and business models, and remodelling consumers' approach to buying travel services as a result.

Making travel arrangements is now predominantly an online business. Travel service suppliers in Australia, encouraged by consumer enthusiasm, have eagerly embraced this new distribution channel, helping break down traditional relationships with consumers, who previously relied on travel agents to make informed decisions.

Forecasts for future growth in this industry indicate that these trends are likely to continue, especially in light of a shift in Australian tourism policy, which aims to promote growth in online distribution of travel goods and services.

Increasingly, direct access to travel and travel-related service providers such as airlines and accommodation providers has pushed a significant number of consumer transactions outside the scope of the existing regulatory scheme, whose coverage is limited to agents (interchangeably referred to as 'intermediaries'). Online and international intermediaries have also entered the market, bypassing licensing controls altogether.

The increasing number of transactions falling outside the scope of existing regulation has translated into shrinking pool of consumers who are eligible to access compensation by the Travel Compensation Fund (TCF). Claims must relate to an agent's failure to pay a travel or travel-related service provider on the consumer's behalf.

Further, the increasing availability of credit card charge-backs as a consumer remedy mean that, in practice, claims relating to cash prepayments are the growing target for TCF compensation.

With these developments, the risk of uncompensated loss has risen. The original objectives of the National Scheme are increasingly being challenged as the agent role is being bypassed or controlled in other ways. These objectives are to shield consumers from the threat of loss due to fraud or insolvency of a travel agent.

Parallel to these concerns is the matter of regulatory duplication: Travel agents, particularly those that are incorporated or publicly listed, are subject to financial controls under laws of general application and other industry-led mechanisms such the International Air Travel Association (IATA) accreditation criteria. In practice, the reach of these measures is estimated to cover the majority of the intermediaries market, which, because of consolidation, is largely dominated by a small group of large companies.

Market concentration and globalisation have brought their own risks: The TCF is no longer able to guarantee to compensate consumers in the event that one of the major travel agent businesses collapsed.¹⁰ As evidenced by the collapse of Ansett Airlines and its related company, Traveland, in 2001, a further such collapse by a major travel agency may require measures such as delaying compensation, imposing an extraordinary charge on other travel

¹⁰ PWC Report, p.100.

agents and/or reliance on government assistance¹¹. Australian based travel agent businesses owned by overseas business could also be forced to close if their parent company becomes insolvent.

Further, the compliance burden associated with TCF compliance is not insignificant: In March 2011, PWC estimated the cost to industry of complying with the TCF's requirements alone at around \$19.3 million; more recently, KPMG put this cost at \$18.4 million, with companies with a turnover of less than \$2.5 million accounting for the bulk of this amount (see **3.3.1(a)**).

3.1 Key ASSUMPTIONS

These factors give rise to the following key assumptions:

- the coverage of the present regulatory scheme has significantly diminished due to the combined effect of new technologies and distribution channels such as e-commerce / m-commerce, as more and more consumers eschew (and are likely to eschew) dealings with travel agents in favour of transacting with travel service providers;
- traditional information asymmetries between suppliers and consumers have largely broken down;
- the greatest proportion of travel expenditure by consumers is therefore not protected by the National Scheme and the TCF due to coverage of payments to travel intermediaries in limited circumstances;
- globalisation and the increasing presence of online and overseas-based agents in the Australian market has increased consumers' exposure to unlicensed trading (i.e. because off-shore based intermediaries are not captured by the National Scheme) and the risk of uncompensated loss, further diminishing the reach of the National Scheme;
- the National Scheme is costly to administer, with an estimated cost of between \$19.57 million (total administrative burden¹²) and \$25.3 million (total compliance burden¹³);
- the market has various effective voluntary measures of self-protection and there may be scope for developing further such mechanisms. In particular, consumers who pay by credit card (including PayPal, BPAY transactions and debits using a credit card scheme) have recourse to measures such as credit card charge-backs, which have proven to be effective;
- prudential oversight similar to that provided by the TCF is provided by other national laws and industry arrangements, which cover a great proportion of the intermediary sector. Trends towards consolidation in the sector resulting in fewer but larger agencies operating as publicly listed companies and wholesale distribution arrangements may further increase this coverage; and
- consumers are likely to engage agents in the future for specific reason and exercise conscious decision-making in selecting the agent, particularly if a fee-for-service model eventuates in the agency business.

Detailed reasoning for these assumptions is provided in the subsequent chapters of the Transition Plan, which also demonstrates that the majority of enquiries and complaints now

¹¹ PWC Report, p.101

¹² KPMG Report, p.ii

¹³ PWC Report, p.viii

logged by consumer protection agencies with regard to travel and travel-related services do not involve agents and those that do, do not relate to insolvency.

Further, consumers aggrieved as a result of their dealings with an intermediary mostly rely on alternative industry-specific regulatory arrangements to obtain a remedy in relation to disputes involving travel agency services.

3.2 TRANSITION PLAN – PROPOSED ACTION

Based on the key assumptions outlined above, CAF proposes the following action:

3.2.1 Repeal Travel Agents Legislation

The present definition of ‘travel agent’ either does not capture or has difficulty capturing, the following players in the intermediaries market:

- overseas companies;
- online companies owned overseas;
- non-retail business models; and
- service providers.

Revising the existing definition to capture these categories would represent an exponential increase in the scope of the National Scheme and TCF and would have significant cost implications for participants in the travel sector. Further:

- the disproportionate cost-benefit ratio of such a scheme would dwarf that of the current framework;
- the TCF would be liable for business insolvency risk in all travel-related markets and locations (domestic and international); and
- auditing all TCF participants would be impracticable¹⁴.

Existing competency requirements appear to have few consumer protection benefits:

“Mandating training requirements, on the whole, provides little consumer benefit; either being unnecessary or likely to be undertaken by business anyway. The practical nature of the training means that many of the key aspects of travel agents’ service are not covered by the training requirements. These include knowledge or experience with the travel destination, travel related advice (e.g. travel tips, insurance, etc.) and trip planning/administration advice.”¹⁵

A previous review of the National Scheme conducted by the Centre for International Economics (CIE) reached the same conclusion¹⁶.

Other additional requirements that appear to provide little value in terms of consumer protection are those associated with notice requirements relating to changes to key personnel or to short-term changes in location. Obtaining relief against an agent under other laws is not contingent on knowing a travel branch manager’s identity, for example.

Notification, competency and conduct requirements are regulated for the purposes of IATA Accreditation and AFTA membership, with effective coverage over most consumer transactions, as well as by other legislation (e.g. the ACL, Corporations Act and ASIC Act). The deregulatory option therefore has the most in-principle merit based on:

- recent changes in the industry that operate to reduce the vulnerability of consumers – e.g. charge-backs, accreditation requirements;

¹⁴ PWC Report, pp.99-100

¹⁵ PWC Report, page 132. Pages 84 to 86 also discuss this in greater detail.

¹⁶ CIE Report, pp 10-11.

- the potential to bypass travel agents altogether via the internet and online purchasing options;
- industry trends such as consolidation that have reduced the volatility of the industry and the exposure of consumer funds to potential loss;
- the risk and magnitude of potential consumer detriment being:
 - comparable to, if not lesser than, many industries that government has not seen fit to regulate in a similar way; and
 - not comparable to the few industries in which it has.

Burden associated with travel regulation - KPMG Report

In April 2012, AFTA published a report prepared by KPMG, “Study into the red tape burden associated with the regulation of travel agents”¹⁷ (‘the KPMG Report’).

The KPMG Report was prepared for AFTA with the objective of estimating the administrative costs for Australian travel agents in meeting requirements imposed by the National Scheme and the TCF. The Report’s methodology was based on the International Cost Model Approach, which is utilised by Australian governments such as Victoria to measure regulatory change management costs.

The report’s terms of reference focused on the **administration** costs incurred as a result of these requirements – that is, the costs incurred primarily to demonstrate compliance with regulation or to allow government to administer the regulatory scheme, for example record-keeping, preparing annual financial statements or filling out paperwork. The figures estimated by the study did **not** consider training costs, licensing fees and the opportunity costs to industry of meeting certain financial liquidity threshold requirements. These would amount to an additional burden.

The Report’s findings estimate the administration costs to Australian travel agents covered by the National Scheme to be \$19.57 million per year. This amount is divided between businesses falling into three categories based on total turnover value:

- under \$2.5 million;
- between \$2.5 million and \$10 million; and
- over \$10 million.

The following table summarises KPMG’s findings:

Table 1: Administration costs (\$'000s) of Regulation for Travel Agents¹⁸

Total Turnover Value	Under \$2.5m	Between \$2.5m and \$10m	Above \$10m	Total
Proportion and number of travel agencies in Australias	57.7% (1616)	34.0% (954)	8.3% (233)	100% (2803)
Licensing	\$700	\$200	\$270	\$1,170
TCF	\$10,600	\$6,600	\$1,200	\$18,400
Total	\$11,300	\$6,800	\$1,470	\$19,570

¹⁷ <http://www.afta.com.au/ConsumerProtectionReview>

¹⁸ KPMG Report, page ii.

As reflected in the table, ninety-four per cent (or \$18.4 million) of the total estimated administrative burden on licensed travel agents relates to compliance with requirements imposed by the TCF. These requirements cover:

- joining the TCF (once-off);
- lodging an annual financial review and paying the associated annual fee;
- preparing the Director's statement and report;
- regular reporting of financial information as part of field audits;
- managing financial ratios;
- notifying the TCF of new branches; and
- notifying the TCF of a new branch manager.

In comparison, the administrative burden associated with State and Territory licensing regimes is estimated at only six per cent (or \$1.17 million) of this total cost.

Businesses with less than \$2.5 million total annual turnover account for over 57 per cent (or \$10.6 million) of the TCF administrative cost burden and over 59 per cent (or \$700,000) of the cost burden associated with licensing.

3.2.2 Increase reliance on generic consumer protection legislation, corporations laws, industry-specific remedies and oversight mechanisms etc.

Much of the Transition Plan is dedicated to emphasising the extent to which the majority of the travel agent sector is already covered by other (and in some instances, equivalent) parallel regulatory mechanisms and market-generated solutions.

These include corporations legislation, industry-accreditation and due diligence measures (e.g. IATA) and credit card charge-backs. A discussion of the relative merits and weaknesses of these mechanisms as compared to the National Scheme is also provided.

With the exception of credit card charge-backs, the parallel mechanisms discussed are not specifically designed for the purpose of providing compensation, unlike the TCF. However, like the TCF, these mechanisms target the broader economic risk presented by trader insolvency.

Consumers affected by an agent's default will need to demonstrate an entitlement to compensation under the ACL (for example, non-supply) or for a breach of contract, through recourse to alternative dispute resolution or a mainstream court or tribunal. Success would be contingent on the agent having sufficient resources (including any business insurance and instruments such as a bank guarantee) to pay the consumer's claim after any other secured creditors had been compensated, and on whether the consumer could fund any necessary legal action.

It should be noted that this particular impact would be limited to consumers who have paid a defaulting agent using cash or who are otherwise ineligible for a charge-back.

In all other circumstances, an inability to rely on the TCF would not be expected to impact greatly on consumer protection levels on the basis that:

- alternative remedies are already available and proven to be effective;
- prepayments to travel service suppliers (which are on the rise) already involve insolvency risk that is not protected by the existing scheme.

The regulatory regime would still address fraud, misleading and deceptive conduct, breaches of officers' and directors' duties and other business misconduct and provide measures for

both deterring and punishing such conduct. Powers to issue information standards also enable regulators to respond to issues relating to information disclosure, in future.

The ability to purchase from well-established, reputable or trusted businesses acts as an added safeguard against insolvency. It is noted, in respect of purchases from larger industry participants, that the TCF cannot currently guarantee compensation in the event of insolvency. As evidenced by the collapse of Ansett Airlines and its related company, Traveland, in 2001, a further such collapse by a major travel agency may require measures such as delaying compensation, imposing an extraordinary charge on other travel agents and/or reliance on government assistance¹⁹. Australian based travel agent businesses owned by overseas business could also be forced to close if their parent company becomes insolvent.

Most importantly, this option harmonises consumer rights and remedies (and trader obligations) across the entire travel industry and creates incentives for the industry to develop its own measures for combating agent behaviour that risks undermining consumer confidence in the industry. This may take the form of a voluntary code of conduct, accreditation criteria or industry-funded insurance scheme.

Reliance on generic consumer protection measures creates a corresponding need to promote awareness of the national consumer protection framework and foster consumer empowerment.

The implementation of the Transition Plan will therefore be supported by a robust communications and education component, with tailored products that not only advise consumers of their rights and businesses of their obligations, but which also draw consumers' attention to risk-minimisation measures that they can take prior to dealing with a travel agent. It is intended that a proportion of the TCF reserves be dedicated to this purpose.

QUESTIONS:

- a) Are there particular consumer or trader information needs that should be addressed by a national communications or marketing campaign? For example, should any particular messages be conveyed?
- b) When dealing with travel agents, what sort of information would consumers find useful?
- c) Are there any special audiences that should be targeted?

3.2.3 Winding up the TCF

On a practical level, the interdependency between the uniform licensing provisions and the TCF means that, **in their current form**, one cannot be retained without the other.

While this does not preclude the retention of a fund going forward, the current scheme would not provide an appropriate vehicle for doing so as it presupposes the existence of a licensing system. Legislation mandating participation in the fund, along with a new participation agreement, would be required.

The overall figures presented in the KPMG Report indicate that any savings from reductions targeting existing licensing requirements would be minimal, and that the greatest reduction

¹⁹ PWC Report, p.101

in existing compliance burden would be obtained from removing existing TCF prudential requirements.

The reach of the TCF's prudential oversight and compensation functions has diminished over time:

- laws of general application, combined with IATA accreditation and other, self-imposed auditing requirements mean that the majority of the industry is already subject to similar oversight; and
- most travel expenditure currently falls, and is expected in future to fall, outside the scheme and is therefore not liable to be compensated in the event of loss.

At present, the TCF's cost effectiveness relative to the amount of compensation awarded annually is outweighed almost nine times to one at worst, and six times to one at best, based on the cost estimates provided by PWC and KPMG, respectively. Back in 2000, CIE reported that the net cost of compulsory TCF membership was \$13 million less unquantifiable benefits²⁰. It concluded that costs exceeded the benefits flowing from existing arrangements.

(a) Potential use of TCF reserves

Under the current TCF Trust Deed, closing the TCF would result in the fund's reserves being redistributed to all jurisdictions except the NT, subject to the TCF's existing liabilities (including any transitional compensation requirements) being satisfied first.

It is proposed that eligibility for transitional compensation be determined according to the TCF's existing criteria. The details of the proposed transitional compensation measures are discussed below as part of the Transition Plan's general implementation process.

Other proposed uses of the TCF's reserves could include (with appropriate modifications to the Trust Deed):

- *Education and information* - As previously indicated, the funds could be used to develop material informing travellers of:
 - the risks associated with purchasing via a travel agent (or of prepayments more generally); and
 - recommended steps for mitigating such risks, for example, understanding how (and how long) prepaid funds are held, purchasing via credit card etc.), amongst other things.
- *Seed funding for voluntary industry accreditation scheme / code* (see discussion under '**Industry Self-Regulation**') - Developing an accreditation scheme will require significant effort and investment, including developing policies and standards, establishing institutional and governance frameworks, and marketing and communications to industry. Existing funds could be provided to a new or existing body to cover the costs of establishing an appropriate scheme or code. Alternatively, the reserves could be used as seed funding for an industry-led dispute resolution scheme.

²⁰ CIE put the gross cost of compulsory TCF membership at around \$15 million per year, generated by both direct cost imposts on agents, such as administration charges and contributions, and compliance costs, such as annual financial reporting and minimum equity requirements imposed by the TCF. CIE found that the benefits of compulsory TCF membership were difficult to quantify, focussing on direct compensation payments made to consumers and avoided litigation costs. The total benefit was estimated to be \$2.7 million annually based on the number of agency failures and the average amount of compensation paid per failure. (CIE Report, p.4).

o *Travel industry sponsored ombudsman*

The implementation of a travel industry sponsored ombudsman to deal with complaints and dispute resolution as part of an industry accreditation scheme could provide an effective consumer protection mechanism as part of any de-regulation of the industry.

Membership of such a scheme would be mandatory and companies whose clients use the scheme would be required to contribute on a per complaint basis. This method would create an incentive to minimise the number of complaints to the ombudsman.

While such a scheme would assist in dispute resolution for operating travel entities it would not have funding reserves that enable refunds as a result of insolvency. It is also noted that dispute resolution already operates to an extent through consumer protection agencies, and in turn these complaints enable regulators to observe and respond to emerging trends. Some costs to industry and ultimately consumers would arise in supporting an ombudsman scheme.

QUESTIONS:

a) Can other uses be suggested for the TCF reserves that would be relevant to the proposed transitional arrangements?

b) Could the TCF reserves be put to other uses that promote consumer protection and fair trading objectives within the sector?

3.2.4 Alignment with Tourism Policy

Developments in broader tourism policy create a corresponding need for any related regulatory initiatives to be aligned or, at the very least, complementary: A failure to accommodate these shifts risks undermining efforts to establish a coordinated strategy for the overall tourism industry.

It is noted that NSW Fair Trading currently represents CAANZ on the Tourism Quality Council of Australia (TQCA), which has been established to oversee the National Tourism Accreditation Framework (NTAF) and administer T-QUAL Accreditation under that scheme. It is proposed that this interaction be maintained to:

- encourage ongoing consultation between Tourism and Consumer Affairs portfolios on matters affecting competition within the travel industry that also raise issues of consumer detriment; and
- promote opportunities for the ACL and the national consumer protection framework to filter down into the broader tourism market, not just the travel intermediaries sector.

QUESTIONS:

a) Are there any other synergies involving consumer policy regulators that ought to be considered?

3.2.5 Voluntary industry Accreditation and/or industry-specific dispute resolution scheme

(a) Benefits of accreditation

An accreditation scheme that does not feature a compensatory function would be of little use in the event of agent insolvency. The merit of an accreditation scheme would lie in its ability to serve as a barrier to entry to the intermediary industry.

As noted in Commonwealth Treasury's *Policy Guidelines on Prescribing Industry Codes under Part IVB of the Competition and Consumer Act 2010*²¹ (CCA), "in most cases, the net benefit of effective self-regulation will exceed that of government intervention. This is the case for a number of reasons, including:

- Industry participants are usually better placed to tailor codes of practice to the business conditions and other circumstances facing an industry;
- Self-regulation will often impose lower compliance costs on business than government regulation;
- Self-regulation is more flexible, as voluntary codes of conduct can be amended by industry participants as required, independent of governmental and parliamentary processes;
- Self-regulation does not impose costs on government in terms of implementation, compliance monitoring and enforcement action.

Accordingly, a scheme that can be effectively developed, implemented and enforced by the participants in an industry are generally to be preferred over the prescription of industry codes in law.

To achieve this, it must be well designed, effectively implemented and properly enforced. In contrast, an ineffective scheme may place compliance burdens on business without any realisable benefits and potentially making signatories to it less competitive.

The PWC Report²² identified the following potential features:

- disclosure requirements, such as the obligation to inform consumers of –
 - the period of time for which consumer's funds or deposits will be held prior to forwarding to the relevant supplier;
 - whether or not the business retains these funds in a separate client account and in what circumstances monies are removed from that account;
 - whether or not the business is a member of a chain, franchise or affiliate group (e.g. a cooperative buying group);
 - whether or not the business is accredited;
 - the availability of insurance, including (if available) policies that cover travel agency insolvency;
 - the availability of external dispute resolution;
- business conduct requirements, for example:
 - fairness and accuracy in advertising;
 - specific rules for online traders, such as disclosure of registration details and transparency concerning the flows of funds; and
- matters to address other issues that may arise in the industry.

Commonwealth Treasury's Guidelines stipulate that an industry will generally only be subject to government intervention where there is a demonstrable problem affecting other participants or consumers that the market cannot or will not overcome.

Summary – Effective voluntary industry codes of conduct²³

Effective codes potentially deliver increased consumer protection and reduced regulatory burdens for business. Some of these benefits include, but are not limited to:

- greater transparency of the industry to which signatories to the code belong
- greater stakeholder or investor confidence in the industry/business

²¹ Version as at July 2011, page 2

²² See pages 133 – 134.

²³ Excerpted from the ACCC's *Guidelines for developing effective voluntary industry codes of conduct*, July 2011, pages 1-4

- ensuring compliance with the (CCA) to significantly minimise breaches²⁴;
- a competitive marketing advantage.

Other reasons for developing a voluntary industry code include:

- it is more flexible than government legislation and can be amended more efficiently to keep abreast of changes in industries' needs;
- it is less intrusive than government regulation;
- industry participants have a greater sense of ownership of the code leading to a stronger commitment to comply with the Act;
- the code acts as a quality control within an industry; and
- complaint handling procedures under the code are generally more cost effective, time efficient and user friendly in resolving complaints than government bodies.

When are voluntary industry codes more likely to be effective?

Research conducted on behalf of the ACCC suggests that codes of conduct tend to be more effective when the self-regulatory body:

- has widespread support of industry;
- comprises representatives of the key stakeholders, including consumers, consumer associations, the government and other community groups; and
- operates an effective system of complaints handling.

Prescribing a code under the CCA

This means that the government has prescribed an industry code of conduct under s. 51AE of the Act either as mandatory or voluntary and it is therefore enforceable under the Act. A purpose of prescribing industry codes of conduct is to strengthen a voluntary code that has failed to meet its objectives.

The government has made it clear that the minister will only consider initiating a proposal for prescription of a code of conduct if:

- the code would remedy an identified market failure or promote a social policy objective;
- the code would be the most effective means for remedying that market failure or promoting that policy objective;
- the benefits of the code to the community as a whole would outweigh any costs;
- there are significant and irremediable deficiencies in any existing self-regulatory regime—for example, the code scheme has inadequate industry coverage or the code itself fails to address industry problems;
- a systemic enforcement issue exists because there is a history of breaches of any voluntary industry codes;
- a range of self-regulatory options and 'light-handed' quasi regulatory options have been examined and demonstrated to be ineffective;
- there is a need for national application as state and territory fair trading authorities in Australia also have the options of making codes mandatory in their own jurisdiction.

(b) Problems with mandatory accreditation

²⁴ Breaches of the Act may lead to: significant financial penalties and/or legal costs; a shift in management focus from growing the business to protecting it and oneself from prosecution; a loss of reputation.

A mandatory accreditation scheme raises concerns about anti-competitive regulation and makes it difficult to assess the suitability of a voluntary scheme in addressing the issue of unstable operators within the industry.

Such evidence is usually required before a mandatory code can be prescribed under section 51AE of the CCA, for example. Lengthy consultation and approval processes are also required. To date, only four mandatory industry codes, and no voluntary codes, have been prescribed.

A key barrier to the implementation of an accreditation scheme is that it would rely on the willingness of industry to facilitate the development of such a scheme and develop incentives for industry participants to subscribe, such as a quality mark and credible sanctions for contravening the scheme's rules.

QUESTIONS:

a) Is there support amongst travel agents and/or consumers for industry-led accreditation?

b) Who should administer an industry accreditation scheme?

(c) Potential Industry-specific dispute resolution scheme

The potential for an industry-sponsored dispute resolution scheme could be explored either as a stand-alone measure for dealing with consumer complaints about travel agents' conduct, or as an ancillary feature of an accreditation scheme.

In the latter context, a dispute resolution scheme would encourage whoever is overseeing industry accreditation to respond to concerns about their members' behaviour.

QUESTIONS:

a) Should an industry-specific dispute resolution scheme be considered?

b) If so, should this scheme be stand-alone or form part of an accreditation scheme?

c) Who should administer such a scheme?

4. APPROVAL REQUIREMENTS

An indicative implementation plan and timeframe for transitioning out of the current scheme is provided below. It is emphasised that these details are not final and are subject to further consultation with jurisdictions and key stakeholders such as the TCF.

4.1 IMPLEMENTATION STEPS

Removal of licensing and Closure of TCF

The implementation options in relation to a decision to wind up licensing and close the TCF will be informed by the provisions in the specific instruments regulating travel agents. These are:

1. The Co-operative Scheme for the Uniform Regulation of Travel Agents (the 'Participation Agreement'); and
2. the Deed of Trust establishing the TCF.

Participation Agreement

In order to revoke the scheme entirely, Ministers will notify each other of their intention to withdraw from the Agreement at least 12 months from the date on which the scheme would be required to cease operation²⁵. The date on which withdrawal becomes effective needs to coincide with the commencement of legislation repealing State and Territory TAAs.

TCF Trust Deed

It is proposed to draft a new TCF Trust Deed, incorporating all steps needed to close the fund, pay out claims, honour any liabilities and distribute any remaining funds, as well as setting out implementation deadlines.

It is proposed that the TCF's prudential oversight be one of the first functions to be suspended. This would include administrative requirements (audited financial returns, other disclosures), compliance with capital adequacy rules and (where necessary) provision of securities.

The amended TCF Trust Deed may provide for the retention of fees for a nominated period as a means of retaining an interim barrier to market entry while arrangements are being made to repeal travel agents legislation.

Compensation would be phased out as part of an extended transitional period.

QUESTIONS:

- a) Should prudential supervision be removed all at once, or should a staged approach be adopted?**
- b) What other TCF compliance requirements should be considered for immediate removal and why?**

4.2 IMPLEMENTATION TIMEFRAME

The TCF in its present form cannot legally exist independent of licensing arrangements. As such, the cessation of the Participation Agreement, repeal of State and Territory legislation and closure of the TCF must occur on the same date.

An indicative timeframe has been provided below for comment. This timeframe includes transitional arrangements.

2012

- Ministers agree in principle to proposed reforms and implementation plan
- Development of new TCF Trust Deed removing prudential supervision and providing for a closure date while continuing to provide compensation for certain people who deal with travel agents

2013

- Withdrawal from Participation Agreement
- Prudential supervision to end.

2014

- Commencement of communications and education strategy
- Agents cease to be members of TCF

²⁵ Clause 9 of the Participation Agreement

2015 - ?

- Transitional period for eligible claims commences
- Travel Agent Acts are repealed and TCF closes

****Note:** A closure date in 2015 has been suggested to cover the Christmas 2014 holiday period, and enable sufficient time for final processes to be completed.

- End of transitional period for eligible claims.
- Remaining Trust funds to be distributed in accordance with TCF Trust Deed.
- Industry accreditation to commence

QUESTIONS:

- a) Is the proposed implementation timeframe too long / short / adequate?**
- b) When should licensing and TCF membership renewals cease?**
- c) Are there any other adjustments or events that need to be factored into this timeframe?**

5. TRANSITIONAL ARRANGEMENTS

5.1 PRESERVATION OF TCF COMPENSATION FUNCTION

It is proposed to phase out the TCF's compensation function gradually to ensure that as great a proportion as possible of its existing reserves is dedicated to consumer protection. The TCF appears to be the logical body to continue this role, which would be provided for in the new TCF Trust Deed.

It is proposed that consumers would be able to lodge claims for any transactions entered into during the period between the cessation of prudential supervision and the closure of the TCF. Criteria for lodging a claim could be determined in a number of ways – for example, claims may be eligible if they relate to services bought during the transitional period following the cessation of prudential supervision. An alternative approach could be to assess claims that relate to a trader's failure to account during the transitional period.

Upon termination of the transitional period, any remaining TCF reserves would be returned to participating jurisdictions in accordance with the terms of the Trust Deed.

QUESTIONS

- a) How much time should be allowed for accepting eligible claims? For example, would a 6-month window suffice?**
- b) Should claims be accepted if they relate to services bought during the transitional accrual period, or should they relate to collapses that occur during that period?**
- c) When should this period start?**

5.2 COMMUNICATIONS STRATEGY

The proposed changes to travel agent regulation would be communicated through tailored communications with stakeholders and the public.

The proposed deregulation of the sector creates a need to emphasise precautions consumers can take when purchasing travel and tourism products, as well as information on the rights and remedies provided by generic consumer protection and company laws in response to the following conduct:

- fraud;
- unconscionable conduct;
- misleading and deceptive conduct;
- false or misleading representations;
- wrongly accepting payment (non-supply);
- consumer guarantees (particularly where only part of a service is rendered);
- single unit pricing – displaying the single price of packaged goods and services (including all relevant taxes and charges);
- prohibition on ‘bait advertising’;
- unfair contract terms; and
- insolvent trading.

Information about industry-led measures such as credit charge-backs would also be provided, as well as any practical, risk minimisation efforts by consumers - for example, dealing with IATA-accredited agents if they are not sure of an agent’s reputation, and avoiding cash-based transactions where possible.

QUESTIONS

See questions under 3.2.2

6. BACKGROUND TO RECOMMENDATIONS

6.1 SHIFTING DISTRIBUTION LANDSCAPE FOR TOURISM

The tourism industry broadly encompasses businesses engaged in attracting international visitors to Australia and in encouraging Australians to travel both internationally and domestically. This includes travel agents.

Purchasers now have increasingly more ways to interact with participants in the tourism industry while planning their arrangements and making bookings. Traditional and digital distribution channels have converged, with the Internet providing more entry and exit points for industry and purchasers and more ways to interact with each other.

In the past, travellers and tourists did not have access directly to these interconnected systems; instead, they made their bookings through a ‘chain’ of intermediaries, including:

- ‘retail’ travel agents who sell to the consumer;
- wholesalers and inbound tour operators who sell to travel agents but often advertise directly to consumers; and
- aggregators of products, services and experiences who co-ordinate inventory for sale by members of the supply chain.

Until the Internet, tourism and travel distribution networks were not visible to the traveller. Much of the activity was behind the scenes and delivered by custom-built technology systems, largely by intermediaries.

Today, the Internet is used not only to research potential destinations but, in many cases, to book individual elements of holidays as well as book whole trips.

Online bookings in Australia have increased from 5% in 2001 to almost 35% in 2008 at an average annual growth rate of 34.6%. Globally, this figure is estimated at over 50%²⁶.

The current level of online capability within the Australian tourism industry may be higher than previously reported and is likely to increase in the next 12 months.

(a) Transformation of the agency industry

The corollary of this change in distribution channels means that travel agents are no longer indispensable in order to gain access travel suppliers and products. IBISWorld has observed in its recent industry report on Travel Agency Services in Australia²⁷:

“Over the past five years, travel agencies experienced systematic technical change that led to consolidation and structural change in the broader travel sector. On the demand side, the global financial crisis decreased corporate spending on industry services dramatically and depressed international arrivals....”

“The Travel Agency Services industry has significant competition for its share of leisure travel spending. Online travel booking facilities have heightened competition for travel agencies, particularly for the traditional bricks-and-mortar shop fronts. Airlines, hotels and other travel service providers have developed websites to attract direct bookings online. In essence, travel service providers are cutting out the role traditionally played by travel agents and capturing a greater share of travel sector revenue. Industry revenue is generated by the commission travel agents charge on the total transaction value (TTV) of travel services sold. As the industry supply chain rationalises, the value of each travel product sold decreases due to competition and TTV is lower.

“Competition from other providers and lower prices means that industry TTV growth has not matched the growth in Australians going overseas in the years through 2011-12....”

“Additionally, in this difficult market, agents have lowered commission to attain sales, a double whammy that has pushed profit margins down.”

(b) Opportunities through the National Broadband Network²⁸

In the 10 years from 2000 to 2010, global internet penetration increased 448%, to reach 29% globally (1.5 billion people). By 2020, the global population of 7.5 billion will have 5 billion internet users.

The National Broadband Network (NBN) provides unprecedented opportunities for Australian tourism businesses. For the first time, 93 per cent of Australia will have access to the same high quality broadband services delivered via a fibre network and the remaining seven per cent will have their existing internet services significantly upgraded.

The NBN will enable more Australian tourism businesses to develop data rich websites, showing video and high-resolution images of products and services as well as allowing access to increasingly sophisticated applications which require high-speed broadband services.

²⁶ Australian Government, *Going Global: An action plan to adapt to the changing tourism distribution landscape*, 23 November 2011, page 6

²⁷ IBISWorld Industry Report I6641, *Bon voyage: Internet savvy tourists say goodbye to agencies and move online* Travel Agency Services in Australia January 2012, page 5

²⁸ Australian Government, *Going Global: An action plan to adapt to the changing tourism distribution landscape*, 23 Nov 2011, page 7

The NBN will create opportunities for Australian businesses to increase revenue through the expansion of markets allowing businesses to compete in the national and global marketplace.

(c) Outlook for online growth and the future of agencies

The global financial crisis, heavy discounting and fewer Australians taking domestic holidays has fuelled predictions that industry revenue will continue on a downward trend of one per cent each year, reaching \$94.7 billion this year²⁹.

With more competitive pricing also likely to worsen strain on profit margins, the latest IBISWorld Tourism in Australia industry report³⁰ has predicted there would be far fewer traditional shopfront travel agents (particularly independent agents) down the track. In particular, online travel information, booking and payment is expected to become the norm for many travellers by 2016 to 2017³¹.

With enterprise numbers slumping 0.6 per cent in the past 12 months, the number of travel agencies is expected to drop off at a rate of 1.5 per cent each year over the next five years. There will be ongoing demand for travel agents, but the outlook is shaky as consumer confidence slumps and online bookings gain momentum³².

Tourism Research Australia's recent snapshot of international and domestic visitors on internet use for pre-trip planning and booking shows the already high reliance on the web to inform the consumer.³³ Tourism consumers will be increasingly reliant on new and changing communication technologies for information and decisions. For example, the strong growth and use of smart (mobile) phones and related social network technologies means consumers have (and expect) rapid access to information.³⁴

Airlines have been most proactive at selling directly to consumers, but large hotel chains have also been offering discounts for direct bookings. The greatest effect was felt during 2008-2009, as operators discounted heavily³⁵.

In future, engaging a travel agent is likely to become a conscious activity, paid for on a fee-for-service basis. The following five-year industry outlook from IBISWorld reinforces this scenario:

- technological advancements will increase the number of direct bookings with travel operators completed by individual and companies. This will encourage bypassing intermediaries altogether;³⁶
- consolidation and restructuring of operators will continue, however the chains and franchisees may have reached their limit;³⁷ and
- growth will occur in internet-based services, services to inbound visitors and for niche products such as cruising³⁸.

(d) Impact of travel-related policy settings

29 Wallace, Louise, *Story of the fortnight: Industry slump?*, Travel Weekly, 23 March 2012,

<http://www.travelweekly.com.au/you-re-the-boss/story-of-the-fortnight/story-of-the-fortnight--industry-slump>.

30 MacGowan, Ian, *Come back soon: The tourism industry struggles as Australians travel overseas*, IBISWorld Industry Report X0003, Tourism in Australia, April 2012, page 9

31 Op cit, page 9

32 See Wallace

33 Internet use in Trip Planning and Booking, Tourism Research Australia, September 2011

34 State of the Industry 2011, Tourism Research Australia, page 28

35 IBISWorld Industry Report X0003, page 14

36 IBISWorld Industry Report I6641, page 8

37 Op cit, page 8

38 Ibid

The release of the National Long-Term Tourism Strategy (NLTTTS) in 2009 by the Federal Minister of Tourism has further sharpened Australian Governments' focus on the changes in tourism businesses' distribution channels towards the online sphere and led to the creation of policies and allocation of resources specifically in response to these new channels.

The NLTTTS was developed in close consultation with the tourism industry and all levels of government. The Tourism Ministers' Council (TMC) is taking the lead role in implementing the strategy, supported by the Australian Standing Committee on Tourism (ASCOT). The next phase of the strategy – Tourism 2020 – was released on 6 December 2011. It aims to enhance growth and competitiveness in the tourism industry by 2020 by focusing on six strategic areas, including growth in competitive digital capability amongst tourism product suppliers.

The NLTTTS outlines the policy framework through which the Federal Government will deliver its vision for the future of tourism in Australia. This strategy is supported by nine working groups to drive the implementation. Of these working groups, the Digital Distribution Working Group (DDWG)³⁹ is driving work to encourage small and medium size tourism enterprises to adopt online distribution channels, such as direct online bookings, online travel agents and social media.

This is aimed at increasing the global visibility of Australian tourism providers and building competitive digital capability, which is currently seen as being undermined by a lack of information about Australian destinations and product offerings, combined with difficulties in purchasing these products online⁴⁰.

A National Online Strategy for Tourism (NOST) has been developed, mapping out a plan for “digital enablement” that will ensure Australia excels in the promotion and distribution of tourism products online. NOST aims to enable any consumer, anywhere, to find and interact with information and products that, amongst other things, is **bookable** online. This objective is supported through the aim of providing the tourism industry with resources that deliver guidance on and resources which tourism suppliers can use to get their business online, enhance their online marketing effectiveness and accept online transactions.

The NLTTTS includes dedicated resources to improve industry's capability to become more proficient in digital marketing and distribution, notably a tourism e-Kit for use in formally educating industry participants⁴¹.

39 Membership of the DDWG is as follows: Destination NSW (Chair); Tourism Australia, Tourism Tasmania, Tourism Victoria, Australian Tourism Data Warehouse, Australian Tourism Export Council, Australian Government Department of Resources, Energy and Tourism (observer).

40 According to a nationwide Tourism Operators Online Benchmarking Survey completed by the DDWG to establish the current level of online representation, capability and the barriers impeding Australian tourism operators in the uptake of digital marketing and distribution, a key finding was that while the level of online presence by tourism businesses is high at 84 per cent, only a third of tourism businesses have online booking and payment facilities (p.ii, Tourism Operators Online Capabilities Benchmark Survey 2010)

41 The e-Kit is a series of online tutorials which has been designed to assist the Australian tourism industry and covers a wide range of subjects from the basics of developing a good web site to advanced topics like search engine marketing and online product distribution. Recommendations for an enhanced and repackaged e-kit are currently being developed, including a pilot program with an Australian TAFE institution to increase uptake by having the e-kit content incorporated into the formal curriculum (see http://www.atdw.com.au/tourism_e_kit.asp)

7. IMPACT OF MARKET CHANGES ON THE NATIONAL SCHEME

Australian governments' conscious decision to focus on fostering growth in the online distribution of tourism products (including travel products traditionally sold by intermediaries) has clear implications for the National Scheme:

- on the one hand, the NLTTs may stimulate growth in the number of online intermediaries, increasing competition with traditional retail establishments and giving rise to regulatory complexity, particularly in terms of how these new intermediaries are accommodated by the National Scheme; and
- on the other hand, the promotion of online distribution of travel products is likely to translate into an increasing diversion of sales from agents to suppliers (e.g. airlines, tour companies, accommodation providers).

7.1 DIFFICULTIES WITH LICENSING ONLINE ENTITIES

One likely consequence of the NLTTs over time (as well as the exponential growth in popularity of new technologies more generally), is the increase in virtual shopfronts as well as less traditional business models, such as home-based travel consultancy services.

Online intermediaries and home-based travel agents are, to some extent, accommodated within the National Scheme⁴², but not across the board, with inconsistency in approaches to licensing such entities across different jurisdictions despite the broadly uniform Travel Agents Acts.

7.2 LICENSING ALTERNATIVE BUSINESS MODELS

A divergent approach is also taken to home-based travel consultants, of which the most well-known operators are TravelManagers and Travel Counsellors.

Though not web-based, home-based travel agency services are becoming increasingly popular; TravelManagers alone has generated around \$313 million in bookings⁴³ over the past 5 years. This is compared with the alleged \$1 billion annual sales in travel bookings negotiated across Australia and New Zealand by TravelManagers parent company, House of Travel, indicating the popularity of this business model with clients.

The key issue raised by this remote travel consultancy business model relates to whether a single license is required for the 'head' company, or whether each individual consultant is carrying on its own travel business in partnership with that head company, therefore requiring a license. This stems from varying interpretations of section 36 TAA (NSW) which is one of the uniform provisions required under the Participation Agreement for all TAA.

Given the Act and the Regulations do not appear to contemplate a business model reliant upon home based consultants, licensing authorities and the TCF have consequently developed their own approaches to determine what is an appropriate regulatory response in this instance.

Franchise arrangements tend to pose a greater risk of unlicensed trading by the travel 'consultant'⁴⁴ due to the increased likelihood of business being carried on at separate branch

42 For example, Regulation 7 of the TAR (Vic) requires licensed travel agents conducting business from a website to post on its home page the licence number and the jurisdiction in which the travel agent is licensed, and to notify the licensing Authority of the website address.

43 Source: TravelManagers

44 See *Dominello v Travel Compensation Fund* [2008] NSWSC 678

locations. However, there are also cases of rogue consultants engaging in unlicensed trading where no franchise was involved⁴⁵.

Features taken to indicate unlicensed trading are:

- a general lack of supervision of the consultant's activities;
- a belief by travel clients that they are making travel arrangements with the consultant rather than with the licensed head company;
- the existence of arrangements or practices which facilitated the consultant holding themselves out as carrying on the business of a travel agent;
- the payment of money by clients to the consultant rather than the TCF participant.

Victoria's criteria for determining whether a remote travel consultant requires an individual license are based on the TCF's advice, resulting in a discretionary approach whereby the need to license is established through a process of risk elimination.

Victorian approach

Any licensed travel agents utilising home based or remote operating consultants or representatives need to guard against the consultants/representatives being regarded as carrying on the business of being a travel agent on their own behalf, or operating a branch location of a travel agency, by satisfying themselves of the following:

1. That the licensed travel agent has in place arrangements for the effective supervision of each consultant/representative's activities;
2. That arrangements have been made for the payment or receipt by the consultant/representative of money from travel clients on behalf of the licensed travel agent in accordance with the law;
3. That consultants/representatives for the travel agent understand their inability to undertake travel agency business on their own behalf for travel clients whilst engaged by the licensed travel agent;
4. That arrangements are in place to make it clear to travel clients that in dealing with a consultant / representative they are in fact dealing with someone who is employed by and/or represents the business of the licensed travel agent and not the consultant.

A different approach is taken in NSW.

NSW Approach

The approach taken in NSW turns largely on the interpretation of a key provision in the TAA (NSW), that *"a licensee shall not carry on business as a travel agent unless, at each place at which the licensee so carries on business, there is present and in charge of the day-to-day conduct of the business at that place a person (whether or not the person is the licensee) who has the prescribed qualifications (section 36).*

In particular, the phrase "at each place at which the licensee so carries on business" is ill suited to mobile travel agents. Wherever the place of business, it would need to be registered with the TCF and each place of business would be staffed by either an employee or an independently licensed agent who may be contracted to a group like TravelManagers.

⁴⁵ See *Orbit Travel Services v Travel Compensation Fund* (1999) NSWCA 63

In the case an employee who manages a branch (for example, their home), the employer would need to have that branch included on their licence. Therefore, an independent contractor must hold a travel agent’s licence to make travel arrangements in the course of carrying on a business from their home. To contravene these requirements would render the licensee liable to be prosecuted for unlicensed trading.

7.3 IMPLICATIONS OF DIVERGENCES IN NATIONAL SCHEME

The lack of a uniform approach under the National Scheme to online agents and remote travel consultancies not only emphasise the inability of the current scheme to deal with emerging business models, but also exposes the following key issues:

- in both instances, there is heightened uncertainty for operators as to whether they are trading unlicensed in one jurisdiction and not in another;
- inconsistent regulatory coverage translates into inconsistent protection for consumers. For example, prior to a company such as Expedia being licensed by NSW, Victorian consumers who had purchased tickets with Expedia would not have been eligible to make a claim on the TCF in the event of Expedia becoming insolvent; and
- in the case of remote travel agency services, where a ‘consultant’ is engaged in unlicensed trading and becomes insolvent without having processed the client’s payment, there would be no obligation on the TCF to pay any claims, regardless of whether the parent company was licensed and a member of the TCF.

7.3.1 Diversion of sales from intermediaries to suppliers

The increase in online distribution channels projected under the NLTTs – not to mention the rise of e-commerce and m-commerce – also reinforces the likelihood of the aforementioned forecasts about the future of the travel agency industry being realised.

At present, only roughly one-third of the gross domestic product attributable to direct tourism is paid to travel intermediaries: This accounts for roughly \$9.2 billion⁴⁶ out of the \$34 billion⁴⁷ spent by consumers in the 2009 / 2010 financial year. As the number of direct transactions between consumers and suppliers increases, the amount of funds held by travel agents will decrease even further.

7.3.2 Decline in agent participation

TCF reserves are now \$30,361,586, representing an increase of 7% on 2010. Yet travel agent participation in the TCF has been declining since 2008,⁴⁸ as illustrated by the following table.

	2008	2009	2010	2011
Head office	3182	3100	3047	3021
Branch	1662	1650	1666	1664
TOTAL	4844	4750	4713	4685

The TCF Annual Report attributes the growth in reserves to the performance of the Fund in relation to the Fund’s sound management and prudential supervision. Other possible explanations include declining use of intermediaries, increased stability of travel agents due

⁴⁶ PWC Report, p.99

⁴⁷ Tourism Australia, 2020 Tourism Industry Potential – a scenario for growth, http://www.tourism.australia.com/en-au/documents/Corporate%20-%20Research/2020_Tourism_Industry_Potential.pdf.

⁴⁸ TCF 2011 Annual Report, page 13

to effect of non-TCF market mechanisms (discussed later in this paper), increased consolidation of intermediaries and a shift towards use of online providers not required to be TCF members.

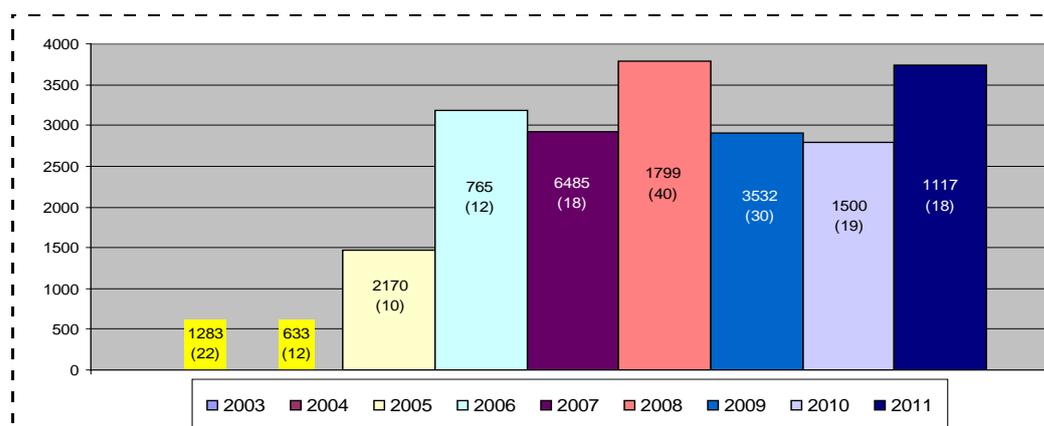
Further, there are businesses that are not readily identifiable as licensed travel agents⁴⁹, such as international airlines, who are TCF participants and may be contributing to the growth in reserves due to their longevity and ongoing participation status.

7.3.3 Recent claims activity

Data sourced from the TCF’s annual reports indicates that, since 2003, the amount of total annual claims paid ranged between \$500,000 and \$4 million, with the average over nine years being \$2 million. The average claim per person since 2003 has been stable, in the vicinity of \$3000.⁵⁰

The table below illustrates the average value of claims paid by the TCF, including the number of claims and number of collapsed agents giving rise to the claims. There is no average claim value for 2003 and 2004 due to the lingering effects of the 2002 Ansett Traveland collapse. The number of agency collapses in 2009 (i.e. 30) is attributed to the fallout from the 2008 international economic crisis⁵¹ although there is no specific reason for the high value of claims for 2007.

The table shows that for the last six years, regardless of the number of agent collapses, the average value of individual claims was between \$2700 and \$3700.



This contrasts favourably with the size of the average claim (\$4,500) incurred by the thousands of consumers affected by the collapse of the Kleenmaid Group in 2009, who had paid deposits or the full cost of kitchen and laundry products that were never delivered.

As previously noted in the PWC Report⁵², there are numerous consumer markets marked by recent supplier collapses where governments have not chosen to mandate a compensation scheme, despite comparable losses to consumers.

7.3.4 Declining coverage and risk

The average amount spent on travel has evolved to the point where it is analogous to common discretionary purchases, such as for whitegoods and electronics. Further, when

49 Businesses for whom the sale of product to partner a conveyance which they own (thereby requiring a travel agents licence) includes companies include Qantas, Singapore Airlines, Carnival Australia branch of Carnival Corporation, Garuda, Cathay Pacific, Emirates, Thai Airways and Malaysian Airways

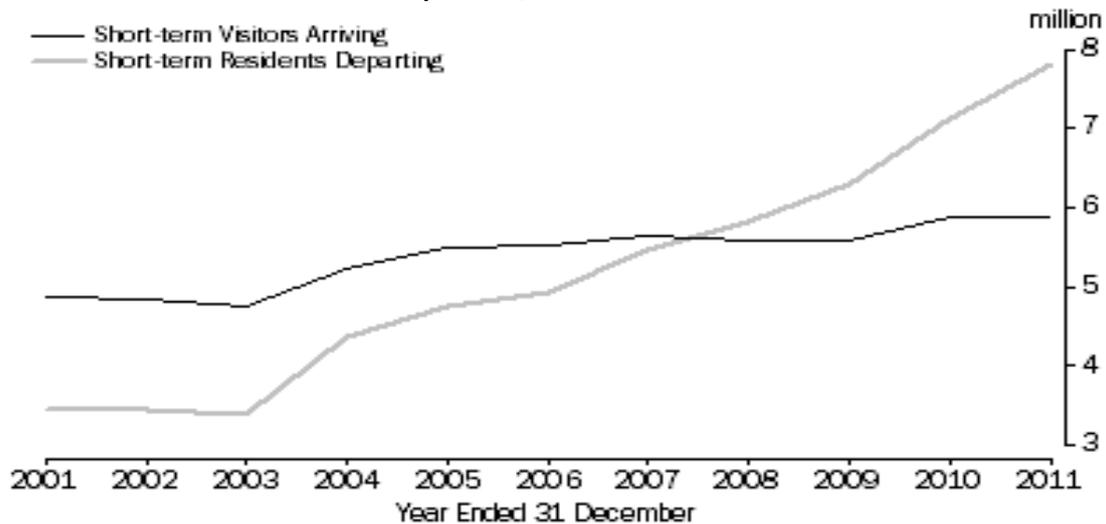
50 TCF Annual Reports 2003 - 2011

51 TCF Annual Report 2009, page 3

52 PWC Report, page 78

considering that the steady increase in international travel – traditionally viewed as a more complex and expensive transaction – has not resulted in increased average claim amounts, it may be argued that the overall risk related to travel purchases has diminished in relative terms. This is borne out by the following table showing trends in exit figures.

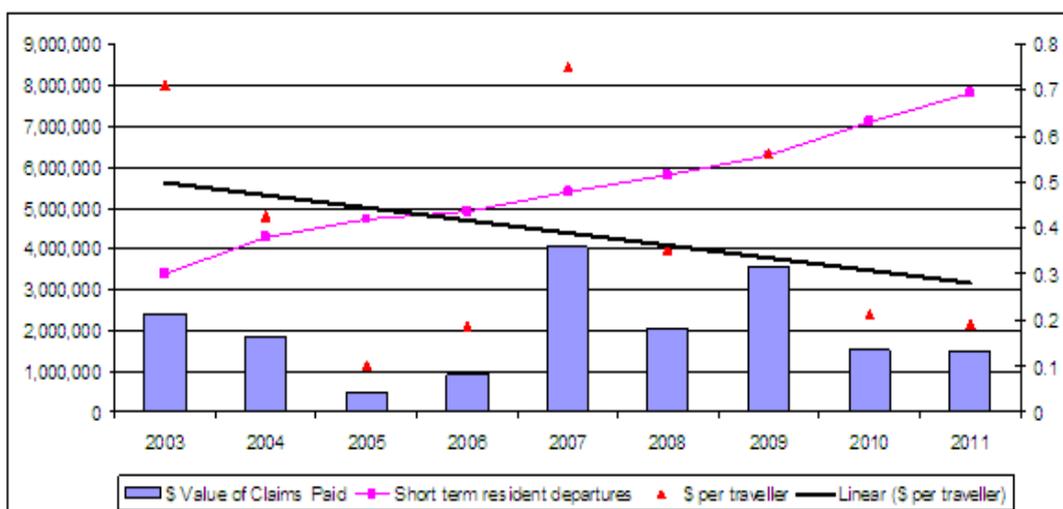
ABS 3401.0 Overseas arrivals and departures, Australia 2011



The currently high value of the Australian dollar has led travellers to prefer international travel over domestic travel, making these arrangements the main focus for agents. The longer-term outlook for outbound travel also remains unchanged, with annual average growth expected to be 3.8% and departures to reach 10.3 million in 2020.⁵³

Longer-term expectations remain modest in relation to reversing the moderate performance of domestic tourism over the past few years. The annual average increase in domestic visitor nights to 2020 is forecast to be just 0.3%, which is not sufficient to keep pace with expected population growth over this period. As a result, the decline in propensity for domestic travel that has been occurring is anticipated to continue.⁵⁴

Further, it is possible to argue that the risk related to international travel has diminished in relative terms by comparing traveller figures with TCF claims activity. The following table illustrates the inverse relationship between the rate of international departures and claims paid by the TCF.



⁵³ Tourism Forecasting Committee, Tourism Research Australia Report, October 2011, page 4

⁵⁴ Op cit, page 13

This suggests a growing number of travel purchases ineligible for TCF cover, potentially because they have been negotiated directly with a supplier. The possibility that the risk of travel agent collapse has also diminished cannot be discounted, although this is difficult to substantiate.

7.3.5 Impact on TCF scope

Changes in consumers' perception of, and appetite for, risk, growth in new distribution channels such as e-commerce or m-commerce and possibly a gradual decline in agent numbers (whether due to consolidation or collapse), support the proposition that there will be an inevitable shift towards direct transactions with suppliers of travel and travel-related services.

Given that funds held by suppliers are not protected by the TCF in the event of insolvency, the projected decrease in expenditure through travel agents is expected to correspond with a progressive reduction in the TCF's coverage of travel and travel-related consumer transactions.

Consequently, through a process of natural attrition, the TCF (and, by extension the National Scheme) will become increasingly ill-suited, not only to industry practice but also to protecting consumers.

7.3.6 TCF prudential oversight

The TCF's 2011 Annual Report makes it clear that the "key role of the TCF is to monitor the financial viability of travel agent participants"⁵⁵, leading to concerns that the risk of travel agent collapse would increase were prudential oversight removed.

Leaving aside the difficulty in predicting agency collapses⁵⁶ and the influence of external variables such as growth projections for the intermediary industry⁵⁷, the following should be noted:

- roughly two-thirds of travel and travel-related expenditure is not accrued by intermediaries, meaning that consumers currently face a greater likelihood of not being compensated for losses stemming from other supplier collapses;
- as the choice available to consumers improves with the growing uptake of information technology and electronic payment options, consumers will increasingly transact with businesses that fall outside the TCF's sphere of influence;
- consumer vulnerability to loss is therefore increasing, despite prudential oversight.

The reality of the travel industry, like other retail industries affected by competition and the vagaries of the global economy, is that unprotected consumer losses have occurred and will continue to occur⁵⁸ because they are simply not covered by existing regulation.

This was illustrated by the high-profile collapses of Air Australia (a travel services provider not covered by the National Scheme) in early 2012 and of a Travelscene American Express agency based in the Northern Territory, which does not require TCF participation as part of its licensing scheme.

55 See inner cover page, TCF 2011 Annual Report

56 The PWC Report suggested that there was little evidence to suggest this effect will be substantial and a six-fold increase in lost funds is required for the scheme to 'break even' (p.111)

57 CHOICE has acknowledged that "to date there have been some very significant consumer losses arising from airline collapse as well as losses due to cruise ship company collapse. Given the highly competitive nature of the airline industry, the rise of low cost carriers, global events such as SARS and the GFC and volatility in fuel pricing mean that further collapses are inevitable" (PWC Report, p.98)

58 See <http://www.travelmonitor.com.au/news/top-news/saga-over-collapsed-travelscene-amex-agency-continues.html>.

8. EXISTING MEASURES OF OVERSIGHT

8.1 COMPLEX REGULATORY SPACE

Travel industry regulation is an increasingly complex landscape, where multiple agencies and regulatory mechanisms converge, including tourism, competition, fair trading and financial services regulators, as well as industry accreditation bodies.

In some instances, there is even market penetration of overseas laws, given the presence of online sellers situated offshore (e.g. Expedia, Orbitz and Priceline, which are all NASDAQ listed, and Carnival Corporation which is listed on both the NYSE and LSE).

Some of these mechanisms incorporate financial audit requirements and, in certain instances, offer industry-wide coverage rather than being limited to intermediaries, demonstrating that the TCF, in fact, duplicates existing laws and regulatory requirements.

An overview of the scope and effect of these concurrent regulatory devices, as well as key advantages and disadvantages compared against the TCF's prudential oversight and compensatory functions, is provided in the table below. A more detailed discussion focusing on the most relevant mechanisms now follows.

8.2 DUPLICATION VIA LAWS OF GENERAL APPLICATION

In addition to TCF requirements, travel agents are covered by many laws of general application which, while not specifically endowed with a compensatory function, are nevertheless designed to provide prudential oversight and thereby ensure financial solvency, transparency and accountability. These include the:

- *Corporations Act 2001 (CA)*;
- Australian Stock Exchange (ASX) Listing Rules; and
- ASX Corporate Governance Principles and Recommendations.

The application of these laws varies depending on the type and size of company, notably whether they are incorporated or publicly listed.

At present, nearly three-quarters of the market share is held by three operators: Flight Centre Limited (33.9 per cent), Jetset Travelworld Ltd (33.5 per cent), Wotif.com Holding Limited (4.2 per cent)⁵⁹.

All are incorporated and publicly listed on the ASX. Other publicly listed travel agents include Wotif.com Holdings Ltd and Corporate Travel Management Ltd. TCF members which are airlines (Qantas, Skywest, and Virgin) are also publicly listed participants.

The trend towards significant consolidation within the intermediary market (corresponding with a decline in numbers of independently owned and operated travel businesses), has expanded the coverage of these general laws, increasing regulatory duplication and imposing excessive regulation on well capitalised and profitable participants.

8.2.1 Financial reports and solvency declarations

⁵⁹ IBISWorld Industry Report 16441, pp 24-27.

Listed entities, public companies and large private companies must prepare a financial report and directors' report annually (s 292 CA). The financial report must be audited (s 301 CA). The directors' report must cover a range of matters, including a review of operations and future expectations for the company (s 299 CA). Listed companies must also include a discussion of business strategies and prospects for future financial years (s 299A CA).

Both reports must comply with accounting standards (s 295(2) and 296(1) CA) and give a true and fair view of the company's performance and financial position (s 297 CA).

Listed companies must provide:

- a declaration that their:
 - financial records have been properly maintained;
 - financial statements and notes are in accordance with accounting standards; and
 - financial statements and notes give a true and fair view (s 295A(2) CA); and
- audited half-year reports that include directors' declarations about solvency, compliance with accounting standards and a true and fair view (s 303).

8.2.2 Solvency

In addition, it is an offence for directors to allow a company to trade whilst insolvent (s 588G). Tests for insolvency concentrate on cash available or accessible to pay debts as and when they fall. However, courts will also focus on resources available to pay creditors.

8.2.3 Minimum capital and reserves

A company may only reduce its overall capital where this does not materially prejudice its ability to pay its creditors (ss 265B and 257A CA).

8.2.4 ASIC and Auditor Roles

Financial and directors' reports must be lodged with ASIC and, if listed, with the ASX (s 319 CA). Auditors have an obligation to tell ASIC if it has reasonable grounds to suspect a contravention of the Act (s 311 CA).

8.2.5 Auditor independence

Strict rules apply to ensure auditors' independence, including a requirement for listed companies to rotate auditors every five years (Part 2M.4, Division 5 CA).

8.2.6 Continuous disclosure

Both the CA and ASX Listing Rules impose significant obligations on listed companies to publicly announce any price sensitive information (see Chapter 6CA and ASX Listing Rule 3.1). Matters that are routinely the subject of announcements under this rule include:

- capital raisings (both debt and equity); and
- compliance with debt covenants.

Penalties apply for non-compliance and there is a growing chance that companies will be the subject of a class action for losses suffered by those who trade during the period the market is uninformed.

8.2.7 Corporate Governance

ASX Corporate Governance Principles and Recommendations apply to listed companies and cover a wide range of matters, including:

- code of conduct;
- independent audit committee with an independent chair (not the full board chair);
- policies to ensure compliance with continuous disclosure requirements; and
- risk management.

ASX listed companies must provide a statement in their annual report disclosing the extent to which they have followed the ASX Corporate Governance Recommendations and, if not, must explain why they have not (ASX Listing Rule 4.10.3).

8.2.8 False and Misleading statements

More generally, the rules applying to false or misleading statements or representations apply to all agents operating in trade or commerce, whether they are companies (s 1308 CA) or not (sections 29 and 151 ACL). This is in addition to the prohibition on misleading or deceptive conduct in the ACL (s 18 ACL).

8.2.9 Coverage of low-turnover participants

Small private companies are generally not required to prepare reports under the CA and, in instances where they are, auditing requirements are unlikely to apply. As such, the issue of duplicate coverage is less relevant to these agents and, even more so in cases where they fall entirely outside the scope of this legislation.

The TCF's 2011 Annual Report⁶⁰ indicates that most retail travel agents (i.e. (683 out of 2339) fall into this low turnover category. This gives rise to the conclusion that the TCF's prudential oversight role is relevant only to smaller agents, who are less likely to be subject to financial scrutiny through other sources of regulation.

Paradoxically, it is these agents who are estimated to bear the highest proportion of the administrative costs associated with meeting TCF requirements, as indicated by the findings of the KPMG Report.

The TCF itself has recognised this and has recently amended its financial criteria for agents with an annual turnover of less than \$1 million. These participants may now provide financial statements prepared by an accredited Public Accountant⁶¹ when lodging their Annual Renewal Application. The TCF will determine on a yearly basis whether a participant is eligible to comply with the revised criteria; new TCF participants must wait at least one year before they can be considered.

While attempting to achieve some measure of administrative burden reduction, these revised criteria mean that the TCF will have to scrutinise reports lodged by low-turnover agents more carefully.

8.3 IATA ACCREDITATION

The International Air Transport Association (IATA) is an international trade body representing some 240 airlines, which comprise 84% of global commercial air traffic.

The IATA Passenger Agency Program is a global program designed to facilitate the secure distribution of airline tickets through a network of accredited sales locations. The program is administered by IATA on behalf of its members. Policy development and changes to the

⁶⁰ See page 16 of the TCF Annual Report 2011

⁶¹ A CPA, a member of the Institute of Chartered Accountants or a member of the Institute of Public Accountants.

operating Passenger Sales Agency Rules and the rules governing reporting and settlement of sales are controlled by the Passenger Agency Conference.

Within the guidelines of the Passenger sales Agency Agreement, travel agents applying for IATA accreditation are required to undergo financial assessment and thereafter on a yearly basis to maintain their IATA accreditation. This is worldwide practice for all IATA accredited agents.

One of the key benefits of IATA accreditation is the ability for travel agents to issue airline tickets, as well as the representation (both explicit and implicit) of service quality that is associated with being an IATA Passenger Sales Agent for the airlines.

The key accreditation criteria applicable to Australia are:

- requirements for share capital and reserves of up to \$150,000 (depending on turnover);
- establishment and maintenance of a client travel or trust account (this is different to the TCF requirement in that it allows commissions to be deducted at the time of ticketing rather than at the time of payment to the supplier);
- maintenance of working capital (at least 1:1 ratio⁶² of current assets to current liabilities);
- requirements for additional paid up capital, or a bank guarantee or insurance bond (from an IATA-approved entity) to be provided if this is necessary to obtain a satisfactory financial evaluation;
- business profitability; and
- audited, annual financial statements prepared in accordance with Australian accounting standards and evaluated against the IATA Agency Program Joint Council (APJC) endorsed financial criteria.⁶³

There is no net tangible assets test.

IATA's Agency Administrator in Australia periodically audits financial solvency. Existing accredited agents have up to 3 months to provide information about their financial standing.

There has been a decrease in the number of IATA accredited agents in Australia as a result of changes in the distribution of travel product and services due to industry consolidation among agent groups, franchise opportunities as well as the ongoing development of on-line sales and social media channels for airlines. Consequently, some travel agents have elected to withdraw from IATA accreditation and ticket through IATA-accredited wholesalers (also known as consolidators).

8.3.1 Parallels with licensing schemes

Certain IATA eligibility requirements evoke aspects of the National Scheme, particularly in respect of notification and experience requirements.

In particular, applicants must provide IATA with the following:

- branch manager name and contact details;
- supporting documentation providing tertiary qualifications for at least two staff members);
- a Certificate of registered company name and current company details (if applicable); and

⁶² This is despite the fact that an abundance of assets over liabilities is not necessarily an indicator of financial strength, especially in the case of online entities, which do not focus on increasing tangible assets but, rather, on goodwill, meaning it may be more difficult to meet TCF asset to turnover ratios.

⁶³ New applications must also attach audited financial statements.

- a registered business name (if applicable).

More specific requirements include:

- adequate security measures (i.e. lockable steel cabinets, network devices) to safeguard hard-copy travel documents or electronic ticketing systems;
- full remittance of consumers' payment is required once a ticket is issued. Delays will attract:
 - administrative charges;
 - clearing bank charges;
 - potential loss of accredited status if this leads to an agent defaulting on payment
- notification of changes (ownership, legal status, name, location) to Agency Administrator (Resolution 818g, section 10 of the IATA Agency Rules);

New applications attract a combined processing and membership fee, including GST, of \$1821.97 per location (for head offices), \$1349.36 per location (for branch offices). Registration of Trust entities attracts an additional \$550 fee.⁶⁴

Renewal fees range from \$273.85 per location (for head offices) to \$191.03 per location (for branch offices).⁶⁵

Accredited agents can also apply for an IATA ID card for \$45.00 (including GST), which is valid for 12 months. The IATA ID Card is a globally recognized industry credential for travel professionals, providing incentives and educational programs at discounted prices. The ID card is not mandatory and may be taken up at an accredited agent's discretion.⁶⁶

8.3.2 Other requirements

IATA accreditation applicants who are shareholders, partners or sole proprietors of the agency in question may be required to hold at least a 20 per cent share in the business, be on IATA's record and/or devote a minimum of 20 hours per week to the industry.

Applicants able to demonstrate professionalism and service quality - such as having a background in the industry and/or holding an industry training certification as well as membership of a qualified trade organisation such as the Australian Federation of Travel Agents (AFTA) - are highly regarded.

8.3.3 Consequences of breaching IATA Rules

Non-compliance with the Passenger Sales Agency Rules and key requirements relating to financial adequacy, or the commission of dishonesty or fraud whilst the agent is IATA accredited or during the application process can have the following implications:

- rejection of the application removal of ticketing authorities by airlines and IATA branding from the agency;
- legal action by the member airlines (for breach of contract or IATA Agency Rules)

Former directors, shareholders or managers of agents delisted by IATA or with outstanding debts are not eligible for future accreditation unless it can be proven that they had no financial involvement in the company at the time of delisting.

A delisted IATA accredited agent may still purchase tickets through an IATA-accredited location, commonly known as consolidator or wholesaler, subject to that agent agreeing to

⁶⁴ Source: IATA

⁶⁵ Ibid

⁶⁶ Ibid

supply air tickets to the delisted agent. Alternatively, the agent may seek to purchase air tickets directly from an airline.

8.3.4 Access to refunds or compensation

IATA provides infrastructure such as the Billing and Settlement Plan (BSP) that serves as remittance and settlement system between agents and airlines. The BSP facilitates the cost efficient transfer of money through a central clearinghouse enabling one consolidated billing to agents for the sale of air travel and one consolidated payment to airlines, negating the need for them to assess the credit worthiness of the multitude of agents with which they do business.

Overview of IATA Bank Settlement Plan

The BSP is a system designed to facilitate and simplify the selling, reporting and remitting procedures of IATA Accredited Passenger Sales Agents as well as improve financial control and cash flow for Airlines. More detail is provided by clicking on the following link:

www.iata.org/ps/financial_services/bsp/Pages/how_bsp_works.aspx

All ticketing transactions issued by IATA accredited travel agents must be remitted and settled through the BSP. The funds for each ticket issued are remitted by the agent (by direct debit) on a weekly basis to a nominated IATA account. IATA then immediately settles all funds to the airlines. IATA does not hold funds on behalf of the airlines at any point in time.

Should an IATA-accredited agent become insolvent, leading to the agent dishonouring its weekly remittance, IATA's Agency Rules relating to defaulting agents come into effect, triggering a series of notification requirements, potential suspension and eventual termination of IATA accreditation.

If the outstanding funds cannot be recovered from the agent, any affected airlines who had issued tickets would be out of pocket, as the agent could not revoke the ticket for non-payment. Airline debt is considered to be an unsecured debt, meaning that subsequent recovery would be difficult.

Agents who are not IATA-accredited obtain air tickets either directly from an airline or indirectly (i.e. through a consolidator, wholesaler, tour operator). As a result, these agents do not transact through the BSP and would be subject to any terms or conditions imposed by the airline directly, the consolidator, or by the supplier providing the product or service under their terms and conditions. Whether a ticket is issued prior to full payment being received from the agent will depend on these terms. For example, if dealing with an airline, a non-IATA accredited agent will usually be required to pay the airline directly (i.e. via EFTPOS, credit card or cheque payment).

This approach allows suppliers to determine what level of risk they are prepared to accept when dealing with non-IATA accredited agents. It also indicates that due diligence measures already apply among airlines and bigger intermediaries to address credit worthiness or potential for misuse of consumer deposits or prepayments. For example, if a supplier or consolidator is unsure whether they are dealing with a reputable agent, they may require immediate payment.

IATA's safeguards do not eliminate the risk that a dishonest agent will delude their customers and pretend that there has been a delay in issuing their ticket despite receiving

full payment. Neither licensing nor prudential oversight by the TCF would be able to eliminate this risk, however.

IATA's oversight, in the context of sales transacted through the BSP, therefore limits the exposure of airlines to the risk of bad debts and collapse of IATA accredited agents between the time of the airline issuing a ticket and the agent remitting full payment. Further, agents who are not IATA-accredited and who have a history of non-payment will have trouble in obtaining tickets for their clients, impacting on their reputation and thus their ability to conduct the sale of travel.

Overall, IATA's prudential oversight function is aimed at ensuring that the most financially stable companies transact with airlines within the IATA framework, indirectly enhancing consumer protection.

8.3.5 Industry coverage

As at 31 July 2012, IATA had 1320 accredited agents in Australia. It is not possible to correlate IATA accreditation with TCF membership due to variable business structures, and not insubstantial cost of obtaining and maintaining IATA accreditation.

For example, Flight Centre comprises several businesses, which it owns, as well as many branches. Flight Centre comprises 968 TCF-registered entities and holds 61 IATA accreditations.

Jetset Travel Group is a franchise structure and comprises 1987 TCF-registered entities, which hold 600 IATA accreditations. There are 4685 TCF registered entities.

Given Australia's dependence on air transport, the IATA requirements have effect beyond the number of accredited agents.

8.4 HOME BASED TRAVEL

The size of, and revenue generated by, the home-based travel agency sector has prompted well-established players in that market to introduce due diligence measures of their own, indicating that sole reliance on the TCF is no longer a viable approach to risk minimisation.

These include the following requirements:

- internal audits;
- scrutiny of consultants' credit and insolvency history prior to engagement;
- internal complaint handling processes; and
- prescribed number of years of industry experience.

8.5 CREDIT CARD CHARGE-BACKS AND TRAVEL INSURANCE⁶⁷

Consumers who have paid for travel services with a credit card may seek relief from their issuing bank by requesting a charge-back, or from their travel insurer.

8.5.1 Charge-backs

One common security feature of credit cards is a process known as 'charge-back', by which consumers can request their financial institution to 'reverse' a transaction where the goods/services are not supplied, are defective or transactions are unauthorised.

⁶⁷ Except where otherwise referenced, the following sections reference information in the PWC Report, pp 49 – 53

In some instances therefore, consumers are able to reverse the charge in the event that they did not receive the goods or services for which they had previously paid.

Where this mechanism is available, the consumers are protected from the risk of travel agency insolvency. Compensation (via reversal of the charge) can be obtained from the credit card provider, who may then recover outgoings from business owners, directors and/or auditors.

The charge-back mechanism may therefore substantially reduce the risks to consumers of supplier (including travel agent) insolvency. To cite a high profile example, when Ansett Airlines collapsed, customers who had booked flights on credit cards were able to apply for charge-back, under which the National Australia Bank reversed several million dollars worth of payments.

It is also understood to have reduced the number of compensation claims made on the TCF, as the TCF does not typically compensate a credit card payment unless a claimant can demonstrate that a charge-back application was made and denied.

(a) Prevalence of credit card payments

Credit cards are an increasingly frequent means of payment for consumers, particularly in the travel sector. Credit cards offer advantages, as compared to cash or other payments methods, including deferring cash payment, the ability to pay online or over the telephone, timely and convenient access to funds and security (e.g. reducing the amount of cash a consumer carries with them). For these reasons, over the past decade credit (and debit) card payments have become increasingly common.

In line with broader market trends, the use of credit cards is particularly common in the travel industry. The Reserve Bank of Australia (RBA) estimates that credit cards account for 42 per cent of payments in the holiday/travel sector. Debit cards (which may, in some circumstances, also benefit from the charge-back mechanism) account for a further 20 per cent of payments.

The RBA's survey also demonstrated that the choice of payment by consumers is related to both the transaction amount and the merchant environment. For purchases of \$200 to \$500, the survey found that credit cards were used 21 per cent of the time, whereas credit cards were used 30 per cent of the time for purchases above \$500. In relation to merchant categories, the travel industry had the highest credit card usage with 42 per cent of purchases; compared to an overall average of 13 per cent. According to the RBA, cash payments accounted for only 27 per cent of purchases.

The PwC Consumer Survey suggests an even greater frequency of credit card use, particularly when consumers purchase direct from travel service suppliers. When purchased directly from suppliers, the overwhelming majority of purchases of airline tickets (87 per cent), accommodation (84 per cent), hire cars (90 per cent), travel insurance (89 per cent) and tours (77 per cent) were purchased via credit card.

Credit cards were less common with cruise ship purchases (59 per cent), the dominant form of other payments being direct fund transfers (e.g. EFTPOS). However, the survey suggested that cash/cheque payments are rare when purchasing direct from travel service suppliers. Such payment methods account for no more than 5 per cent of direct purchases of airline tickets, accommodation and hire cars purchases, although they account for up to 10 per cent of tour and cruise ship transactions.

Payment methods are somewhat different when purchasing via a travel agent. While credit cards account for the majority of airline tickets (55 per cent), accommodation (53 per cent), hire care (50 per cent) and cruise ship (62 per cent) purchases from a travel agent, the majorities are substantially smaller. These numbers are consistent with the PwC Travel Agents Survey, which suggested that credit cards are used for 59 per cent of domestic travel purchases and for 56 per cent of international travel purchases.

In most cases, direct fund transfers (EFTPOS, BPAY) and cash/cheque payments make up the balance of payment types. Consumers using some debit cards are able to select the 'credit' or 'debit' option on purchases. When 'credit' is selected, the payment is made via the 'scheme debit' system' (this system is operated by Visa and MasterCard), which offers the same protection as people who use Visa or MasterCard credit cards including, where available, access to the charge-back mechanism.

Interestingly, cash/cheque payments still account for a substantial proportion (21 per cent) of purchases via a travel agent. This may be reflective of travellers who are less comfortable with electronic payments also preferring the additional service and comfort that comes from purchasing via a travel agent rather than direct from the supplier. It may also reflect the effect of a common practice of additional fees being charged on credit card transactions.

The Payments System Board of the RBA has decided to vary the Standards relating to merchant surcharging on credit and scheme debit cards. The variation allows card scheme rules to limit surcharges to the reasonable cost of card acceptance. The variation continues to ensure that merchants can fully recover their card acceptance costs and it will become effective from 1 January 2013⁶⁸.

(b) Advantages and disadvantages

The charge-back mechanism reflects a relatively simple means by which consumers can protect themselves from this risk. The Financial Services Ombudsman has previously indicated that charge-back is not a particularly problematic mechanism, at least in the travel industry context. Most charge-back related disputes concern the limitation period for claims which, in other circumstances, can be unclear. It was suggested that this is not the case in relation to travel products, where the intended departure date is well established as the 'starting point' for time limits on claims. Specific conditions vary depending on credit card suppliers and product.

Others however are less confident of the ability of consumers to rely on this mechanism. Choice, for example, has stated that:

Charge-back cannot be relied on a (sic) a consumer protection mechanism because less and less consumers are making travel payments by credit card. In addition, the policies and practices of credit providers vary, preventing consumers in many instances from accessing charge-backs as was evidenced by the Ansett collapse. In addition, charge-back is still not well known amongst consumers.

Ozcruising was also sceptical about consumers' awareness of this option:

Most clients would not know the specific details for insurance coverage provided by the use of a Credit Card and understand the ramifications of insolvency.

Respondents to the PwC Travel Agents survey were also less positive about consumers' reliance on charge-back. Only 43 per cent thought consumers should rely somewhat or entirely on the mechanism for insolvency protection, compared to 42 per cent who thought

⁶⁸ Reserve Bank Media Release 2012-15 *Payment System Issues: A Variation to the Surcharging Standards* 12 June 2012

not much or no reliance should be placed on it. This may reflect the likelihood that travel agents indirectly bear the cost of this mechanism, through higher merchant fees and/or having the burden of charge-back placed upon them, under merchant arrangements, for losses from the insolvency of other businesses.

Under typical merchant arrangements, the travel agent may bear the cost of a loss where a travel service supplier fails to deliver a service that was sold via the travel agent. Businesses have highlighted the cost this imposes on travel agents; being predominantly small businesses, such costs are considered a substantial cost burden.

Finally, the PwC Consumer Survey highlights the point, raised by Choice and others, that consumers are largely unaware of the mechanism. While 53 per cent of consumers have heard of the charge-back function, only 31 per cent reported having some or a good understanding of what it entails.

(c) Recent developments

Fewer consumers appear to be aware of the TCF⁶⁹ than they are of charge-backs.

Further, a recent study by the Code of Banking Practice 2004 Code Compliance Monitory Committee identified that banks subscribing to the Code received in excess of 90,000 charge-back requests in March 2011 (the sample month) with a corresponding low number of complaints about Banks' performance⁷⁰.

Overall good levels of quality assurance and compliance oversight were demonstrated by the Banks in relation to their obligations, although card holders were often given open ended timescales without acknowledgement that a charge-back right may be lost if a referral is not made within a specific timeframe.

The information in the PwC Report should be read in the context of actual growth in online sales and direct transactions with suppliers. Further anticipated growth also supports the proposition that credit card payments for travel services will only increase in future.

The recent move by the Reserve Bank of Australia to change the rules on fees charged by retailers, limiting them to the "reasonable cost" of providing a credit card transaction, indicates that credit card surcharges may be traded off as a small cost for ensuring access to the charge-back mechanism.

Recent high-profile collapses of Air Australia and an American Express Travelscene branch in NT (see below), have raised the profile of credit card charge-backs as a viable remedy due to consumers' inability to claim TCF compensation in both those instances. There is significant scope for addressing concerns relating to consumers' awareness of charge-back entitlements and any restrictions such as time limits through targeted education.

8.5.2 Travel insurance

The private market for travel insurance is well established in Australia. A number of policies, with a range of different premiums and coverage, are offered by established market players, including CoverMore, Vero/AAMI, QBE, health insurers and others.

69 An important observation, acknowledged by the TCF, AFTA and other stakeholders, is that consumers are, for the most part, unaware of TCF or the protection it affords. The PwC Consumer Survey suggests that only 14 per cent have at least some awareness of the TCF, with only three per cent having a good understanding of the fund and its functions. This finding is supported by the perceptions of travel agents. Few travel agents (13 per cent) expect consumers to have any awareness of the TCF (PwC Report, p.91).

70 <http://www.ccmc.org.au/cms/wp-content/uploads/2012/03/Charge-backs-Report-website.pdf>

Travel insurance products differ in terms of risks covered. Broadly, the most important areas of coverage are:

- cancellations or amendments to your travel due to circumstances outside your control
- lost baggage or travel documents
- overseas medical expenses.

In addition, policies may also provide protection against loss from travel service supplier insolvency, personal liability, loss of fees paid to agents, rental car excess and other financial risks. Notably however, no travel insurance product currently protects consumers against losses from travel agent insolvency. Consumers would need to check the terms of their insurance to satisfy themselves that the risks they perceive or anticipate are covered. Clause 15.1(c) of the TCF Trust Deed acknowledges, however, that there will be no compensation for direct monetary loss protected by an insurance policy.

8.6 AUSTRALIAN CONSUMER LAW (ACL)

The ACL is contained in Schedule 2 to the *Competition and Consumer Act 2010* (CCA), and came into effect on 1 January 2011 nationally and as a law of each State and Territory. The ACL provides a single national consumer law, which is jointly enforced by the ACCC and state and territory fair trading agencies.

With few exceptions, the ACL applies across the entire Australian economy, including the tourism industry and related markets such as the travel intermediary sector. It includes provisions regulating misleading and deceptive conduct, non-supply, unconscionable conduct, unfair contract terms, unfair practices and consumer guarantees, amongst many other things.

(a) Specific action for non-supply

In relation to undelivered goods or services, section 36 of the ACL prohibits a trader from wrongly accepting payment. That is, a trader must not accept payment or other consideration for goods or services if:

- at the time of accepting payment, the person intends not to supply the goods or services;
- at the time of accepting payment, the person intends to supply goods or services materially different from the goods or services in respect of which the payment or other consideration is accepted; or
- there are reasonable grounds for believing that the person will not be able to supply the goods or services:
 - within the period specified by or on behalf of the person at or before the time the payment or other consideration was accepted; or
 - if no period is specified at or before that time—within a reasonable time; and
 - the person is aware or ought reasonably to be aware of those grounds.

The section also requires that a person who accepts payment must supply all goods or services:

- within the period specified by, or on behalf of, the person at or before the time the payment or other consideration was accepted; or
- if no period is specified at or before that time—within a reasonable time.

A range of civil, criminal and infringement penalties is available. Consumers also have access to damages incurred as a result of a trader's breach.

(b) Benefits of generic regulation

A key advantage of the ACL is that it retains current levels of protection for consumers who transact with travel agents. This is especially the case for customers of agents with a large market share (i.e. Flight Centre), since the TCF's reserves would not be able to guarantee compensation in the event of a collapse.

The ACL also ensures that traders do not gain an advantage over their competitors through unfair trading practices and places obligations on suppliers to be proactive in ensuring that their services are compliant with consumer protection objectives. In particular, the strict liability nature of the ACL offences means that ignorance of the law and breaches by way of omission will not provide a defence.

From the perspective of obtaining compensation, the ACL is self-enforcing in that the burden of seeking a refund or damages is shifted on to consumers. Unless relief can be obtained through a low-cost tribunal or alternative dispute resolution or conciliation, legal action can potentially be time-consuming and costly.

The absence of an automatic compensatory mechanism highlights the importance of choosing carefully when transacting with a particular agent. Consideration of ancillary regulatory mechanisms such as IATA accreditation, AFTA membership, brand awareness and market presence will become a necessary step for consumers who buy travel services.

The rise of online sales and direct transactions has already stimulated awareness of self-protection measures: The report 'Australia in the digital economy - Consumer engagement in e-commerce' found that consumers transacting outside the sphere of the national scheme (and who are therefore reliant on generic legislation such as the ACL) commonly took security precautions such as purchasing from reputable or known sites (94 per cent) and using security software (93 per cent). Other precautions included checking conditions of sale (86 per cent), buying from sites that encrypted payment details (77 per cent) and ensuring that a contact phone number is available (71 per cent).⁷¹

Travel goods and services were the most popular purchased online in the preceding six months of the review (56 per cent)⁷² regardless of income.⁷³ This illustrates the potential impact of consumer empowerment in that particular industry and, more generally, indicates that consumer behaviour can evolve.

(c) ACL capacity to deal with potential future issues

The ACL contains provisions that are adaptable for application to problems that may emerge, in future.

Since access to the internet has become widespread, the dependence of consumers on agents for information in relation to travel arrangements has diminished. A reason for licensing travel agents, albeit superseded, was to regulate their behaviour so that agents did not misuse the information which they possessed to the detriment of consumers.

In future, if it transpires that consumers are not receiving relevant information about their travel purchases, there are powers to develop a mandatory information standard under Part 3.4 of the ACL.

Such a standard would be mandatory and could address the disclosure requirements outlined earlier in relation to an industry accreditation scheme.

⁷¹ ACMA, page 23

⁷² Op cit, page 12

⁷³ Op cit, page 17

Non-compliance with a prescribed information standard may attract civil or criminal penalties of up to \$220,000 for an individual and \$1.1 million for a business. This is in addition to a number of other enforcement outcomes, such as injunctive relief and enforceable undertakings.

8.7 OVERVIEW OF EXISTING REGULATORY MECHANISMS (NON-TCF)

REGULATORY DEVICE	RESPONSIBLE ENTITY	MAIN FEATURES	COVERAGE	PROS	CONS
<i>Australian Consumer Law</i>	ACCC Fair Trading agencies	Prohibitions on misleading and deceptive conduct; false or misleading representations; wrongly accepting payment (non-supply); consumer guarantees; single unit pricing – displaying the single price of packaged goods and services (including all relevant taxes and charges); prohibition on ‘bait advertising’; unfair contract terms. Scope for mandating industry codes of conduct and information disclosure (via information standard)	All travel agent and other travel related businesses	No additional regulatory burden on businesses or government Consumers have a statutory right to refund and damages. Affected classes of consumers would not need to take separate action Range of remedies and enforcement action, including cease trading injunctions and disqualification orders for traders found to have breached the law Appropriate for addressing systemic issues and behaviour, not just insolvency Can stimulate service quality improvements (proactive effect) Scope for coordinated enforcement due to national framework	No financial audit function Entitlement to damages must be established through court action if an outcome cannot be negotiated through dispute resolution. This may be subject to bankruptcy laws and rules around secured and unsecured creditors. While an entitlement to damages may be established, access to monetary remedies would be subject to the trader’s assets or – in the case of an incorporated entity - the ability to access director’s personal assets Reliance on ancillary remedies such as credit card charge backs is necessary
<i>Alternative dispute resolution</i> <i>Access to low-cost tribunal</i>	All jurisdictions	Low cost assistance to resolve disputes	All travel agent and other travel related businesses	Low cost compared with legal action Tribunals may have powers to make additional orders that are not outlined in the ACL	Subject to resourcing of fair trading agencies, application of administrative criteria and jurisdictional constraints imposed by statute Orders may not be binding (difficult to enforce)
<i>Corporations Act</i>	ASIC	Prudential supervision	Incorporated travel agents	Existing regulatory burden for eligible	Sole traders and

REGULATORY DEVICE	RESPONSIBLE ENTITY	MAIN FEATURES	COVERAGE	PROS	CONS
2001	ASX (for public companies)	Prohibition on insolvent trading	and travel-related businesses	<p>companies</p> <p>Broad coverage due to consolidation of market (at least 74% of intermediaries are covered due to the size of the top 3 agents, e.g. Flight Centre)</p> <p>Imposes requirements relating to:</p> <ul style="list-style-type: none"> - financial reports - solvency declarations and requirements - oversight by ASIC and independent auditors - continuous disclosure - corporate Governance - false and misleading statements 	partnerships not covered (although it is acknowledged that these have a limited market share)
<i>National Business Names register</i>	ASIC	Free business name search	All business operating using a trading name	<p>Existing regulatory structure</p> <p>Pro-active checks encourage self-empowerment and behavioural change amongst consumers</p> <p>Public register</p>	<p>Due diligence burden of checking company details (inc. warnings) shifts to consumers</p> <p>May not reveal all intermediaries</p>
<i>ASX Listing (Public Companies)</i>	ASX	Prudential supervision by creditors, investors and ratings agencies	Australian and international public companies	<p>Existing regulatory burden for eligible companies</p> <p>Broad coverage due to domestic market consolidation (includes Flight Centre, Corporate Travel Management, Jetset Travel Group, Webjet, Wotif, Qantas, Virgin Holdings)</p> <p>Also covers international public companies (includes Expedia, Tripadvisor, Carnival and international</p>	No coverage for unlisted companies (although these have a limited market share)

REGULATORY DEVICE	RESPONSIBLE ENTITY	MAIN FEATURES	COVERAGE	PROS	CONS
				airlines operating in Australia)	
<i>Franchising Code</i>	ACCC	<p>Mandatory industry code of under the <i>Competition and Consumer Act 2010</i></p> <p>Regulates the conduct of participants in franchising towards each other and ensures that they are sufficiently informed about a franchise before entering into it.</p> <p>Also provides a cost-effective dispute resolution scheme for franchisees and franchisors</p>	Approximately 40% of intermediaries ⁷⁴ (including Jetset Travel Group)	<p>Existing regulatory burden for eligible companies</p> <p>Consolidation of intermediaries market has created large agencies with strong brands. In an effort to protect these brands, chains or franchises are likely to oversee and monitor their own members</p>	Doesn't cover agents who are not franchisees
<i>Code of Banking Practice 2004</i>	Code Compliance Monitoring Committee	Banking industry's customer charter on good banking service	Consumer purchases made by credit card (including debit purchases made through a credit card scheme)	<p>Provides a right of resolution against the bank, in the case of travel agent insolvency</p> <p>Although voluntary, virtually all retail banks subscribe to the Code, increasing the likelihood of industry-wide coverage of travel purchases made via credit card</p> <p>Confers and protects charge-back rights where consumers are <u>dissatisfied</u> with services purchased (including non-delivery)</p> <p>Charge-back rights as against banks tend to be limited only by credit card scheme rules (e.g. Visa, MasterCard)</p> <p>Subscribers to the Code must institute complaints handling processes</p>	<p>The market share of credit card payments for travel is not known</p> <p>Charge-backs not offered for cash purchases</p> <p>Card scheme rules may impose limitation periods on banks' ability to request a charge-back</p>

⁷⁴ PWC Report, p.13

REGULATORY DEVICE	RESPONSIBLE ENTITY	MAIN FEATURES	COVERAGE	PROS	CONS
				Aggrieved consumers may also complain to FOS	
<i>E-Payments Code</i>	ASIC	Regulates electronic payments, including ATM, EFTPOS and credit card transactions, online payments, internet and mobile banking and BPAY	Electronic purchases made using a credit card (including PayPal, BPAY transactions and debits using a credit card scheme)	<p>Although voluntary, virtually all banks, credit unions and building societies currently subscribe to the E-Payments Code along with a number of non-traditional banking subscribers</p> <p>Confers and protects rights to a charge-back where transaction is unauthorised (e.g. due to fraud or where seller does not fulfil contract terms)</p> <p>Subscriber banks must reproduce the Code in the contract between the card issuer and the cardholder (i.e. the consumer)</p> <p>Banks must warrant that they have incorporated the code's key features - failure to comply is a breach of s 12DB(1)(G) of the ASIC Act 2001 (Cth) and s 29 of the ACL.</p> <p>Subscribers must institutes complaints resolution procedures. External dispute resolution rights also apply</p> <p>Compensation is available against the subscriber bank for a failure to comply with the Code</p>	See above comments re limitation periods
<i>Industry Accreditation</i>	IATA	Prudential supervision of IATA accredited agencies and service providers	There are 1356 IATA-accredited agents in Australia (out of 4685 licensed travel agents)	<p>Prudential requirements are broadly similar to those of the TCF</p> <p>Broad industry coverage in that it is</p>	<p>Accreditation is voluntary</p> <p>Sole traders are not eligible for IATA accreditation</p>

REGULATORY DEVICE	RESPONSIBLE ENTITY	MAIN FEATURES	COVERAGE	PROS	CONS
			<p>35% of agents are IATA accredited (not including Flight Centre, which holds 61 IATA accreditations alone)</p>	<p>not limited to airlines or agents selling airline tickets – also covers cruise industry passenger services and other suppliers</p> <p>Flow-on effect of prudential supervision is provided by ticket consolidators (who make contractual arrangements with airlines / service providers to buy large amounts of tickets at discount prices, which are then distributed to travel agents, usually smaller or independent agents)</p> <p>Consolidators give small travel agents additional buying power, enabling them to compete with larger operators and removing the need to join IATA</p> <p>This essentially lowers the cost of entering the travel agent market and reduces the skills required to run a travel agency business</p>	<p>Prudential supervision only applies to accredited agents</p> <p>Agents who are stripped of their IATA accreditation may continue to participate in the industry</p> <p>Consumers whose funds have not passed through to IATA may not have recourse to a refund</p>
<i>Industry-Specific Accreditation</i>	ICCA	Association of leading cruise lines dedicated to the expansion and awareness of cruising worldwide	ICCA accredited agents	<p>Provides quality mark – accredited agents are deemed by ICCA to provide professional cruise information and reservations</p> <p>Offers Travel Agent training program, specific to local market</p> <p>Recognises experience levels (Accredited and Master Accredited)</p> <p>Endorsed by AFTA</p>	No prudential supervision (unless ICCA member is also IATA accredited or a corporation)

REGULATORY DEVICE	RESPONSIBLE ENTITY	MAIN FEATURES	COVERAGE	PROS	CONS
<i>Industry association membership</i>	Australian Federation of Travel Agents	AFTA is the peak industry body through which the business interests of travel agents are represented	Majority of Australian travel agents - over 2500 retail outlets and over 100 allied industry organisations, hotels, tour operators, wholesalers, etc. resulting in over 2600 members	<p>Majority of industry is covered (70% of current travel agent members represent 94% of intermediary industry turnover) – See Appendix 1.</p> <p>Members are required to comply with AFTA’s constitution and code of ethics, which includes:</p> <ul style="list-style-type: none"> • financial soundness and record keeping obligations • proof of financial position on request • notification requirements • requirement to maintain Professional Indemnity Insurance <p>Members who breach AFTA’s rules may be censured, suspended or expelled</p>	<p>Membership is voluntary</p> <p>No compensatory function for consumers, other than through members’ PII policy (subject to any terms and conditions)</p>
<i>Insurance</i>	Various	<p>‘User-pays’ approach whereby consumers take out their own insurance cover for instances of agent collapse</p> <p>Businesses can also cover themselves for insolvency, business interruption and loss of attraction</p>	Insurance Council of Australia could not provide official statistics on number of insolvency insurance products currently on offer	<p>Consumers can lodge a claim using the underwriter’s prescribed process</p> <p>Consumers involved in a dispute with an insurer can complain to the Financial Ombudsman Service, free of charge</p> <p>AFTA and IATA usually require members to have some sort of business insurance cover</p>	<p>Appropriate insurance product may not be available</p> <p>Consumers must take insurance up voluntarily</p> <p>Consumers may not be able claim on business insurance unless it specifically provides for insolvency coverage.</p>

9. CONSUMER EXPERIENCE OF DETRIMENT

Recent case studies and data illustrate that the majority of contemporary issues faced by consumers who transact with agents do not always relate to an agent's competence or solvency.

Enquiries and complaints tend instead to be triggered by general fair trading matters linked to unfair business practices and contractual issues.

In most cases, consumers had recourse to a range of legal solutions and services, providing further support for the proposition that the prevalent risks encountered by consumers are largely beyond the scope of the National Scheme.

9.1 ISSUES WITH AIRLINES

In less than 12 months, consumers faced numerous disruptions in air services:

- In July 2011, the operating certificate for Tiger Airways Australia was suspended by the Civil Aviation Safety Authority;
- In October 2011, Qantas grounded its fleet as part of an industrial dispute;
- In February 2012, Air Australia was placed into voluntary administration.

These incidents followed the disruptions in April 2010 caused by an ash cloud emanating from a volcanic eruption in Iceland.

On each occasion, the ACCC and jurisdictional consumer protection agency cooperated to promote a resolution for consumers:

- in the case of Tiger and Qantas, refunds or rescheduled flights;
- in Air Australia's case, consumers were directed either to the administrator (to make an unsecured claim), their travel insurer (if any), their bank (to obtain a charge-back) or to their travel agent (for a discretionary refund or other remedy; for example, Flight Centre provided a refund to affected consumers, in certain instances⁷⁵).

Air transporters and insurance companies addressed consumer difficulties arising out of the impact of the Iceland volcanic ash cloud on air traffic.

These cases highlighted the reality that consumers could not obtain a remedy under the National Scheme and that recourse to the ACL, customer service policies, credit card charge-backs were the applicable consumer protection mechanisms.

9.1.1 Case scenario – Air Australia

As at 3 April 2012, CAV had received 118 enquiries and five written complaints

The primary respondent listed in the majority of cases was Air Australia although, in many cases, a number of tickets were purchased through travel agents (primarily Flight Centre and the Getaways Group).

In 68 cases, the consumer specified that they purchased tickets through a travel agent (including three cases where the consumer specified they had paid via Bpay). These consumers were advised of their options, which consisted of contacting the administrators for further advice and to register as a creditor, and/or making a claim through their travel insurance.

In 31 cases, the consumer had purchased tickets directly through the airline:

⁷⁵ http://www.flightcentre.com.au/cms_images/pdfs/press_releases/120220_australia.pdf

- In 18 cases consumers specified their tickets were purchased via credit card on the airline’s website. These consumers were advised of their options, and were specifically advised about the option of applying for a charge-back;
- In nine cases, consumers specified that their tickets were purchased via credit card on the airline’s website, but they had already been refused a charge-back (usually because too much time had elapsed). In most cases, these consumers were referred to the administrators, or advised to make a claim on their travel insurance; and
- In four cases, consumers specified that they had purchased tickets via debit card or bank transfer.

It is unclear how many claims were made on travel insurance policies: Data obtained from CAV indicated that, in many cases, it was not recorded whether the consumer had purchased travel insurance. In those cases where it was specified that the consumer had travel insurance, the policy did not cover the airline going into administration. In four cases, consumers had lodged claims and were awaiting the outcome.

9.2 THEFT BY TRAVEL AGENTS

The suspected theft in January 2012 of consumer funds by an American Express Travelscene agency in NT further illustrates the shortcomings of the licensing component of the National Scheme.

Around \$330,000 is suspected to have been misappropriated, although there might be more people who have not come forward.

There are currently 15 complaints against the agent, of which around a third have been successful in obtaining a charge-back.

While there is generally a limit of around 75 or 90 days for credit card charge-backs, some of the banks apparently apply that time limit from when a person would reasonably become aware of the problem. Anecdotally, some consumers have been able to claim beyond this time limit as they did not become aware of the fact that their bookings hadn’t been purchased for several months.

The NT Government is not liable to compensate consumers.

9.3 UNFAIR BUSINESS PRACTICES

The table below shows the most common complaints related to travel/tourism in Victoria and NSW, as well as complaints such as a failure to account where the TCF may have applicability.

All of these complaints do not necessarily have a relationship with an agent. In particular, the incidence of consumer contact relating to refunds may be explained by the fact that each client might require several bookings – for flights, accommodation and tours – with each having their own cancellation policies. Furthermore, with factors such as itineraries being dependent on flights departing on time, and tours potentially subject to weather conditions, there is also the potential for travel arrangements to be disrupted through no fault of the agent.

9.4 CONCILIATION AND MEDIATION – FAIR TRADING AGENCIES

In NSW, Fair Trading officers resolved⁷⁶ the majority of complaints through reliance on the ACL (NSW), indicating consumers' ability to obtain an outcome through the general law and not the National Scheme.

Issue Category (Vic) Jan – Sep 2011	Enquiries	Complaints	Sub-total	% of Total Cases
Refunds	98	40	138	29 %
Contract Cancellations	44	4	48	10 %
Misrepresentations	30	10	40	8 %
Non-supply / Partial Supply & Delays in Supply	25	6	31	7 %
Overcharging & Charges Above Quote	15	4	19	4 %
Unsatisfactory Services	12	4	16	3 %

Complaint (NSW)	2010 (total 1622)	2011 (total 1853)
Refunds	534 (33%)	593 (32%)
Unsatisfactory – non-performance of service	192 (12%)	284 (15%)
Cancellations/cooling off	111 (7%)	164 (9%)
Accept payment without intention to supply	15 (0.9%)	20 (1%)
Failure to account	7 (0.4%)	6 (0.3%)

9.5 TCF FIGURES

The TCF is another information source regarding the impact and effect of the current scheme. Since 2003, the claims paid each year ranged from \$500,000 to \$4 million, with the average over 9 years being around \$2 million. The average claim since 2003 has been in the vicinity of \$3000.⁷⁷ As previously mentioned, this amount is similar to losses for companies like whitegoods and electrical suppliers like Kleenmaid and, in NSW's case, less than losses due to reported insolvencies of kit home suppliers.

9.6 CRUISES

Cruising is a growing preference for consumer holidays, with the number of Australians taking a cruise holiday in 2011 “surging 34 per cent to reach an all-time high of 623, 294”, a greater growth rate than in any other key international market for that industry.⁷⁸ Cruise passenger numbers have risen by more than 23 per cent annually between 2006 and 2011; the number of passengers by 2020 is expected to be 1 million.⁷⁹ Total value added to the Australian economy by this time is estimated to be \$2.28 billion, or 0.12 per cent⁸⁰.

The South Pacific remains the most popular destination for Australians, attracting 37 per cent of passengers (230,321). New South Wales is the largest source market for domestic passengers, representing 40 per cent of the total. Queensland ranks second with 24 per cent.

2.7 per cent of the Australian population took a cruise in 2011. This puts Australia second in the world in terms of market penetration and represents approximately 3.4 per cent of the world cruise market. The International Cruise Council of Australasia (ICCA) outlines some of the key reasons for the cruise industry's increasing appeal:

⁷⁶ In 2010, 35 matters (2 per cent) were referred for investigation compared with 38 (2 per cent) in 2011. Based on the data in Table 1 of **Appendix 2**, the estimated referral rate in Victoria for unresolved complaints would be even less (around 0.17 per cent).

⁷⁷ TCF Annual Reports 2003 - 2011

⁷⁸ International Cruise Council of Australasia media release 30 April 2012.

⁷⁹ Ibid

⁸⁰ Deloitte Access Economics, *The contribution of the cruise sector to Australia – Carnival Australia*, 22 February 2012, page 23.

- a rise in consumer awareness of cruising's tremendous value, with all-inclusive cruise fares encompassing accommodation, meals and transport proving particularly attractive in the tougher economic environment;
- a significant increase in the number of cruise ships offering an ever-widening range of on-board products designed to appeal to different consumer groups, from the family market through to romantic couples, adventure seekers and wealthy retirees;
- a broadening array of cruise itineraries traversing popular tourist regions such as the Mediterranean and Alaska and remoter waters such as Antarctica and the Amazon;
- an increase in the number of cruise ships operating from Australia and New Zealand as well as those visiting the region, which has given the cruise industry a higher profile and pushed cruising up the holiday wish list for many Australians.⁸¹

9.6.1 Exposure to risk

Payment for cruise holidays can be staggered over an extended timeframe that varies according to the length of the cruise: For example, a deposit is usually required within days of making a booking, followed by final payment a specified number of days prior to departure. Pre-payment for lengthier or premium cruise packages can be required much earlier due to the popularity and cost of these products.

As with airlines, cruise companies usually require travel agents (and consumers booking with the cruise company directly) to remit monies by particular deadlines in order to preserve the consumers' bookings. The cruise company does not have any visibility into particular arrangements made between the consumer and their chosen travel agent, with the result that if consumer agreed to pay a travel agent monies before the deadline set by the cruise company, the travel agent could retain these monies for the period before the deadline.

In the event that a travel agent becomes insolvent before the final due date, consumers whose payment has not been passed on to the cruise company by the required deadline can have their booking automatically cancelled, depending on what systems the cruise company may have in place. The risk of automatic cancellation is particularly high if this system does not distinguish between the reasons for non-payment and is not able to identify where non-payment has occurred because of travel agency default or insolvency.

(a) Example – Travel agent fraud

A travel agent suggested to consumers that their e-ticket was not yet ready when, in fact, the booking had cancelled due to non-payment. In this particular case, the cruise formed a segment of a longer land-based European holiday.

While the consumers were on the first part of their holiday, the travel agent went into insolvency and did not notify the consumers. The consumers only became aware of this when the hotels and tour providers they had booked through the travel agent indicated that they had not received any reservations in the consumers' names.

The consumers contacted the cruise company directly and were advised that their cruise booking had been automatically cancelled due to non-payment by the travel agent and there were no longer any available cabins on the cruise they had initially selected.

These consumers relied on the TCF for compensation to cover their expenses in returning home.

⁸¹ International Cruise Council of Australasia, Cruise Industry Report 2011, page 3

Complaints relating to cancellation fees imposed by the cruise company as a result of the consumer's failure to provide payment by the due date are usually resolved through internal complaints handling processes.

9.6.2 Coverage by alternative means

In relation to cruise bookings made by travel agents, the existence of the TCF to date has meant that, like other travel providers, cruise operators have not had to consider possible mitigants against the risk of travel agent default.

That said, consumers who book directly with cruise companies or providers that are not TCF members do not have recourse to TCF compensation in the event of insolvency.

Companies such as Carnival Australia, the largest operator of cruises in Australia, have IATA accreditation and are also publicly listed, which provides some measure of prudential oversight.

10. CONCLUSION

The Transition Plan recommends a course of action for transitioning out of the National Scheme for travel agents that is appropriate in light of contemporary market conditions, existing regulatory coverage and experiences of consumer detriment.

The paper acknowledges that all risk cannot be eliminated. In particular, information disclosure, security and liability issues, and consumer access to redress will be areas of ongoing concern, just as they are in other retail sectors. This failure is not indigenous to the travel agent sector, however.

The Transition Plan places strong emphasis on education: Consumers must be provided with information centred on key consumer rights and responsibilities to allow them to make informed decisions about entering safely into transactions with intermediaries and how to respond to detriment if it arises.

The Transition Plan places the Australian Consumer Law centrally as the most appropriate form of regulation for travel agents both at present and in the foreseeable future.

APPENDIX 1 – AFTA COVERAGE OF LICENSED TRAVEL AGENT SECTOR

Source: TCF 2010 Annual Report

Turnover	Under \$100K	\$100K - \$500K	\$500K-\$1M	\$1M-\$2.5M	\$2.5 - \$5M	\$5M-\$10M	Above \$10M	TOTAL
Conference	2	7	11	26	13	7	4	70
Corporate	21	32	37	62	57	46	53	308
Retail	91	238	248	604	519	207	100	2007
Sub Total	114	277	296	692	589	260	157	2385
<i>AFTA Members</i>	0	0	55	692	589	260	157	1753
Inbound	13	18	12	24	9	10	14	100
No Category	8	6	8	11	14	7	19	73
Other	32	33	26	46	30	35	43	245
Grand Total	167	334	342	773	642	312	233	2803
<i>AFTA Members</i>	0	0	20	70	39	45	57	231
<i>TOTAL AFTA MEMBERS</i>	0	0	75	762	628	305	214	1984

APPENDIX 2 – OVERVIEW OF COMPLAINTS & ENQUIRIES RELATING TO TRAVEL AGENTS JAN TO DEC 2011 - CAV

This brief report examines travel agents related cases recorded in CAV's case management system during the 2011 calendar year.

Table 1. Travel Agents Cases

Case Stages	Total
Enquiries	419
Complaints	117
Total	536

Table 2. Issues Involved in Travel Agents Cases: Oct – Dec 2011

Issue Category	Issue Sub-category	Enquiries	Complaints	Total
Charges / Fees & Pricing	Charges Above Quote	1	3	3
	Contract Termination Fees	3	3	4
	Disputed / Unreasonable Charges	0	1	2
	Overcharging	1	1	4
Charges / Fees & Pricing Sub-total		5	8	13
Conduct	Licence Lending / Aiding Unlicensed Trading	1	1	1
	Misleading / Deceptive Conduct	1	0	1
	Misrepresentations	2	1	2
	Non-adherence to Terms of Agreement	0	0	1
	Non-disclosure / Misleading Omissions	0	0	1
	Poor Customer Service / Unresponsive to Issues	1	0	2
	Unlicensed Trader	1	2	2
Conduct Sub-total		6	4	10
Quality	Unsatisfactory Services	3	0	3
Quality Sub-total		3	0	3
Rights & Responsibilities	Contract Cancellations	3	1	4
	General Requirements	1	0	1
	Licensing Requirements	0	3	3
	Public Register	1	0	1
	Refund Rights – Non-compliant Refund Policy	4	1	5
	Refund Rights – Query About Rights	11	0	11
Rights & Responsibilities Sub-total		20	5	25
Supply Issues	Contract Not Provided	1	1	2
	Non-supply / Partial Supply of Goods & Services	2	2	4
	Supply of Incorrect Goods & Services	3	0	3

Issue Category	Issue Sub-category	Enquiries	Complaints	Total
Supply Issues Sub-total		6	3	9
Grand Total		40	20	60

Table 3. Most Common Issues Involved in Travel Agents Cases: Jan – Sep 2011

Issue Category	Enquiries	Complaints	Sub-total	% of Total Cases
Refunds	98	40	138	29 %
Contract Cancellations	44	4	48	10 %
Misrepresentations	30	10	40	8 %
Non-supply / Partial Supply & Delays in Supply	25	6	31	7 %
Overcharging & Charges Above Quote	15	4	19	4 %
Unsatisfactory Services	12	4	16	3 %

Both Table 2 and Table 3 indicate that a relatively large number of cases related to refunds for bookings. Many matters also involved consumers who sought to cancel their travel plans. This may be explained by the fact that each client might require several bookings – for flights, accommodation and tours – with each having their own cancellation policies. Furthermore, with factors such as itineraries being dependant on flights departing on time, and tours potentially subject to weather conditions, there is also the potential for travel arrangements to be disrupted through no fault of the agent.