Government of **Western Australia**
Department of **Commerce**
Consumer Protection

CONSULTATION
POSITION PAPER

Regulating Travel Agents in Western Australia

AUGUST 2013

Although every care has been taken to ensure accuracy in the preparation of this paper, the information has been produced as general guidance for persons wishing to make submissions in relation to the future regulation of travel agents in Western Australia. The contents of the paper do not constitute legal advice or legal information and do not constitute Government policy. This paper should not be used as a substitute for a related Act or professional advice.

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COMMISSIONER'S FOREWORD

In December last year, a decision was made by a majority of States to withdraw from the current national scheme for the regulation of travel agents. Western Australia (and South Australia) did not support the full disbandment of the scheme at that time. While WA recognised the need for change there was a desire to first consider less costly regulatory mechanisms rather than full withdrawal. There was also concern that the transition plan to effect the change was not sufficiently detailed.

Given the decision by the majority of States, the landscape for WA regulation changes significantly. The pre-existing scheme very much depended on it operating nationally. Between 2006 and 2012, of the compensation paid to West Australians for failures of travel agents, 87 per cent related to travel agents operating out of Eastern States' based agencies.

As suggested by these figures, the reality is that while the local travel agent still provides an important personalised service, increasingly people are also taking advantage of the option to book on-line – and the provider may well be located interstate, or based overseas.

In many ways this mix of delivery mechanisms and geographic spread was part of the rationale for reviewing the regulatory scheme, and the decision to disband it. The concern being, that for Australian providers to compete with overseas operators, regulation costs need to be contained.

The case to move away from a compensation scheme also recognised that in days gone by, a journey overseas was often a rare, lifetime event costing a great deal in real terms, when today a trip to Asia or Europe is relatively attainable for many and in real terms significantly cheaper.

The question was asked, why are there special protections for travel, when similar outlays for consumer goods do not attract the same level of regulation?

Now that the decision has been made to cease the national scheme, there are real issues as to the viability of WA attempting to replicate the current arrangements in a vacuum. Other options therefore need to be explored.

These options need also to be mindful that an industry accreditation scheme will be established to ensure consumers have the choice of selecting providers who have accredited training and processes, including dispute resolution mechanisms and insurance.

The question for WA then is whether we should default to the national position or whether there is a case for some level of industry based regulation for WA providers. This document tests some options, considers pros and cons – and now seeks your input about whether the conclusion drawn is appropriate.

Anne Driscoll
Commissioner for Consumer Protection
August 2013

EXECUTIVE SUMMARY

The National Scheme for the Uniform Regulation of Travel Agents (the national scheme) was introduced in 1986 in order to promote nation-wide industry standards and to protect consumers from inadequate service from travel agents and financial loss arising from failure to pass on funds to suppliers and/or insolvency of the travel agent.

Under the national scheme, all participating jurisdictions have enacted uniform rules through state based legislation, including a requirement that travel agents be licensed and participate in the Travel Compensation Fund (TCF). In WA, travel agents are regulated by the *Travel Agents Act 1985* (the Act) and the Travel Agents Regulations 1986.

The TCF is based in Sydney and its operation is governed by a trust deed approved by participating state and territory Ministers and participating jurisdictions are represented on its board by officers of the relevant departments on a rotational basis. The board also includes consumer and industry members.

As a result of the national scheme, the regulatory regime for travel agents provides consumer protection in two broad categories:

- licensing with entry and conduct requirements; and
- insolvency protection measures including prudential oversight and a compensation scheme administered by the TCF.

On 7 December 2012, in a majority decision, Ministers from participating jurisdictions in the national scheme approved the Travel Industry Transition Plan (TITP) which, among other things, ends the national scheme for travel agent regulation and winds up the TCF.

While many of the arguments for deregulation are persuasive - less consumer reliance on travel agents due to the rise in on-line marketing and supplier direct transactions; a decline in the relative cost of travel and so risk of substantial loss to consumers; the advent of the Australian Consumer Law (ACL); and the capacity for credit card charge back through banks – Western Australia (WA) did not support the disbandment of the scheme. The main reason was that there is no equivalent to the compensation fund provided by the TCF if deregulation occurs. However, in light of the majority decision WA has no choice but to consider what level of state regulation it will retain, if any, in the face of national deregulation.

Phased implementation of the TITP began from 1 July 2013. Key dates are:

- Execution and commencement of a TCF Substitution Trust Deed from 1 July 2013 which ends prudential supervision of travel agents by the TCF, although travel agents will still be required to participate in the compensation fund until state and territory regulation can be repealed and to comply with state and territory licensing requirements.
- By 1 July 2014 jurisdictions are expected to repeal their respective travel agents' legislation and travel agents will cease to be required to be TCF members and cease to be licensed. In any event participating Ministers have directed the TCF to amend the Substitution Trust Deed to make 30 June 2014 as the participation cessation date.
- A voluntary industry accreditation scheme is expected to commence on 1 July 2014.
- Consumer research and advocacy arrangements are expected to be established during 2014/15. These include assisting the Australian Federation of Travel Agents (AFTA) to establish an accreditation and complaints scheme, and monitoring consumers' experiences with the new travel industry regime including credit card charge back and insurance arrangements in cases where travel services are not delivered.

- Wind-up of the TCF sometime between 1 July and 31 December 2015, although conclusion of TCF recovery action and payment of remaining eligible claims will continue for some time after this.
- Distribution of remaining trust funds to participating jurisdictions in accordance with the TCF Substitution Trust Deed.

Five options have been considered for WA in light of the decision to disband the national scheme. These range from deregulation of the industry in line with most other jurisdictions through to maintaining to the extent possible, the current WA licensing regime, prudential supervision and compensation for consumers.

Options for the regulation of travel agents in WA

Options for the future regulation of travel agents in WA include:

Option A – remove all industry specific regulation for WA travel agents;

Option B – implement a negative licensing scheme for WA travel agents;

Option C – under a code of conduct, require WA travel agents to comply with basic standards and use the Australian Consumer Law (ACL) to sanction non-compliant agents;

Option D – regulate WA travel agent businesses through licensing and prudential oversight but with no compensation fund; and

Option E – maintain key elements of the national scheme in WA, that is, regulate travel agent businesses located in WA through licensing, prudential oversight and a compensation fund for consumers.

The table on page 21 provides a comparison of the costs and impacts of the options for consumers, industry and government.

Separate consideration has been given to how WA might use any residual compensation funds returned to the state after the TCF is wound up. The options considered are continuing to use the funds to compensate WA consumers until they are exhausted, covering transitional costs for government in moving to new regulation or deregulation, returning the funds to consolidated revenue or a combination of these.

Travel agents operate in a national and international market and consumer compensation through the national scheme has been able to operate due to uniformity of regulation across the majority of jurisdictions. Without national regulation, none of the options considered can retain the level of consumer compensation currently provided by the TCF. This is because most WA consumers obtain travel services through interstate providers and it will no longer be possible to regulate travel agents physically based outside WA. Under all regulatory options there is a reduction in compensation available to WA consumers of between 60 - 90 per cent compared to the national scheme.

Options that retain licensing and additionally include a compensation scheme, D and E respectively, are considered to be untenable in light of national deregulation due to increased costs for WA travel agents compared to interstate and overseas competitors, much reduced consumer compensation and likely increased service costs for consumers. It would also be difficult to implement these options in synchrony with phased national deregulation.

Option A, deregulation, would be favoured by industry and is the least cost option for government. Consumers potentially benefit from increased competition and lower service costs while they forego compensation. Median payments to consumers from the TCF from 2006 - 2012 show that most consumers would lose between $1,000 - $1,600 in the event of an insolvency or failure to pass on funds for other reasons and that the average median claim for the period is $1,400. Fortunately, travel agent collapses are infrequent events and this level of monetary loss is not as great for most consumers in real terms as travel costs in the late 1980's when the scheme was established. The proposed voluntary industry accreditation scheme to be developed as part of the TITP is intended to include a requirement for insurance against supplier insolvency and, if this eventuates, it will provide protection for some consumers.

Options prescribing industry operating standards (B and C) impose some regulation on industry which on the whole is considered a minimal barrier to entry. Option C (code of conduct under the ACL) could impose increased costs on travel agents and this would vary depending on the extent of imposed standards. The extent to which government would want to impose standards would also be affected by the voluntary industry accreditation scheme that will be developed as part of the TITP. To ensure an even playing field and consistent standards across all WA based travel agents, elements of the accreditation scheme could be mandated under a code. Alternatively, if a code required additional measures to the accreditation scheme it would likely be opposed strongly by industry as travel agents that become accredited would face duplicate regulation and potentially increased costs.

Options B and C also impose costs on government due to the need to fund Consumer Protection's ongoing work to enforce the regulatory regimes for each option without the revenue from licensing travel agents to offset these costs. Option B (negative licensing) is estimated to cost more than the current licensing and compliance work under WA's role in the national scheme and option C around the same amount provided it was a minimal code of conduct. If an extensive code of conduct was required, costs would exceed those of the current regime. Funding for this work would need to come from the consolidated fund and/or through a reduction in other work undertaken by the Department of Commerce's Consumer Protection Division.

It is recommended that option A, deregulation in line with other jurisdictions, be adopted. This would create a level playing field for travel agents operating in WA and consumers would have the same protections and face the same risks as other consumers nationally. While it is the least cost option for government it would still mean that revenue from licensing would not be available to offset the cost of seeking to resolve travel related consumer disputes and losses and initiating action through the ACL where required.

Mitigation of consumer risk

Several possibilities exist to mitigate the risks for consumers if the travel industry is deregulated and are explored below.

A significant benefit of the current scheme is access to compensation in the event of travel agent insolvency or failure to pass on consumer funds for other reasons. Early proposals for the voluntary industry accreditation scheme being developed by AFTA include requiring agents to obtain insurance to cover insolvency of carriers and accommodation providers. This insurance is provided by some insurers but has not generally been available in Australia due to the existence of the TCF. Without the TCF it may become commercially worthwhile for this type of insurance to be offered. AFTA is also investigating the potential for insolvency cover for travel agents themselves. This type of insurance is not currently available. If such insurance eventuates the protections for WA consumers may not be significantly diminished as only loss through misappropriation of funds would not be covered.

Whether or not insurance against insolvency becomes available it may be possible to influence the proposed accreditation scheme to include provisions that promote consumer funds protection by travel agents. It may also be possible to require travel agents to accept payment by credit card if the consumer wishes to pay this way and this would make credit card charge back through banks a more available option for compensation.

The proposed accreditation scheme is also likely to address conduct, skill and financial management standards that are now addressed through state licensing and the TCF prudential supervision of travel agents. This will mitigate against risk of inappropriate service for consumers and insolvency for businesses. It will also allow travel agents who subscribe to the accreditation scheme to market this to potential consumers and improve the prospects of consumers dealing with sound travel agent businesses.

Residual compensation funds

On the assumption that WA pursues deregulation of travel agents, further consideration of the use of residual funds that are returned to WA after the wind-up of the TCF is warranted. It is estimated the amount will be between $500,000 and $1.5 million.

During the transition to deregulation an option is that all WA consumers who use a travel agent that was formerly a member of the TCF be compensated in the event that the travel agent becomes insolvent or otherwise fails to pass on funds. This use is consistent with the purpose of the TCF and would be seen to be fair by WA consumers as most financial loss to WA consumers is through interstate agent insolvencies.

It is also necessary to use the residual funds to pay for the cost of administering the WA compensation process. This is estimated to cost $156,725 per annum. This would only reduce the period that funds were available to compensate WA consumers by several months but would reduce the transition costs for government. The funds are estimated to last from one to three years.

If WA maintains some form of regulation such as a negative licensing regime or a code of conduct under the ACL, it is recommended that residual funds are used to meet the transitional costs associated with the development of these frameworks. Due to the urgency of settling any regulatory regime prior to the cessation of the national scheme it may be necessary for Consumer Protection to contract additional resources to complete work in time. The cost will be dependent on the extent of regulation required and if extensive regulation is adopted, the cost may consume most or all the residual funds. In this eventuality it is recommended that covering transitional costs take priority over consumer compensation.

Recommendations

1. That WA deregulates travel agents and follows the timeframes of the TITP to the extent possible.
2. That funds returned to WA after the wind-up of the TCF are used to:
    a. compensate WA consumers for loss arising from the insolvency or other failure to pass on funds by a former TCF member; and
    b. pay for the cost of administering the compensation process.

3. That if WA imposes some form of regulation on travel agents that funds returned to WA after the wind-up of the TCF are used to:
    a. meet the transitional costs of implementing the new regulatory framework; and
    b. secondarily, compensate WA consumers for loss arising from the insolvency or failure to pass on funds by a former TCF member and pay for administering the compensation process.

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1. HOW TO HAVE YOUR SAY

Written submissions

You are invited to make a submission in response to the position paper. If possible, please provide evidence to support your views, for example, by including relevant examples, statistics or costings. This will greatly assist Consumer Protection to assess the various options under consideration and make a recommendation to government in regard to the way forward.

The Position Paper is available online by visiting: www.commerce.wa.gov.au/consultations

Where to send submissions

Submissions can be mailed to:	Future Regulation of Travel Agents Department of Commerce (Consumer Protection Division) Locked Bag 14 Cloisters Square PO Perth WA 6850
Or emailed to:	consultations@commerce.wa.gov.au

Submissions close

The closing date for submissions is: ***Friday, 4 October 2013***.

How your input will be used

The information gathered in response to this position paper will form the basis for the next stage of the process. Your input is crucial as it will assist in identifying issues of concern and finalising options for consideration by the Government.

Information provided may become public

After the consultation period concludes, all responses received may be made publicly available on the Department of Commerce's website. Please note that because your feedback forms part of a public consultation process, the Government may quote from your comments in future publications. If you prefer your name to remain confidential, please indicate this in your submission. As submissions made in response to this paper will be subject to freedom of information requests, please do not include any personal or confidential information that you do not wish to become available to the public.

2. BACKGROUND

On 7 December 2012, in a majority decision, Ministers from participating jurisdictions in the national scheme that regulates travel agents approved the Travel Industry Transition Plan (TITP) which, among other things, ends the national scheme and winds-up the Travel Compensation Fund (TCF). The TCF is an organisation established as part of the national scheme to provide financial regulation and oversight of travel agents and administer a compensation fund to reimburse consumers where travel agents become insolvent or otherwise fail to pass on funds paid to them for travel. Phased implementation of the TITP began from 1 July 2013.

The national scheme was introduced in 1986 following some major collapses of travel agents and now includes all jurisdictions except the Northern Territory. However, several jurisdictions, notably NSW and Victoria, have been concerned about the continuing value of the national scheme for several years and in 2009 PricewaterhouseCoopers (PwC) was commissioned by the Ministerial Council for Consumer Affairs to assess the scheme. Their 2010 report found that: the value of national regulation was not cost effective with the regulatory burden on industry far outweighing consumer benefit given the travel market has changed considerably since 1986; and that general consumer protection regulation was sufficient to safeguard consumer interests. PwC recommended that the national scheme be disbanded.

A consultation regulatory impact statement (C-RIS) was released by the Commonwealth in 2011 outlining options for the regulation of the travel industry. It concluded that industry led regulation and reliance on the Australian Consumer Law (ACL) and other safeguards ought to be pursued. A draft decision regulatory impact statement (D-RIS) was circulated to jurisdictions but not finalised and consultation then occurred on a draft TITP in 2012 that reflected the conclusions of the draft D-RIS.

While many of the arguments for deregulation are persuasive Western Australia (WA) did not support the TITP. The arguments for deregulation include:

- there is less consumer reliance on travel agents due to the rise in on-line marketing and supplier direct transactions;
- there has been a decline in the relative cost of travel and so risk of substantial financial loss to consumers;
- the advent of the ACL provides consumers with a nationally consistent means to assess travel agent conduct and seek redress against unfair trading practices; and
- the capacity for credit card charge back through banks allows some consumers to recover their money when services are not supplied.

The main reason for WA not supporting the TITP was that there is no equivalent to the compensation fund provided by the TCF if deregulation occurs. A secondary reason for not supporting the TITP was that WA did not consider that the option of improving the efficiency of the TCF and reducing costs for industry had been sufficiently explored.

Coincident with consideration of the TITP in 2012, two major travel agent collapses affecting consumers occurred - Kumuka Worldwide Travel (July) and Classic International Cruises (December). Payments to WA consumers at 10 July 2013 from the TCF were approximately $2.6 million.

The TCF has managed all consumer enquiries and arranged compensation where due very efficiently with the result that consumers have been inconvenienced by failures, but not left out of pocket, and there has been no pressure for government to intervene.

This paper provides further information on the operation of the national scheme and the TITP and considers potential options for WA given the disbandment of the national scheme. In light of the majority decision to deregulate the travel industry, WA will need to determine its ultimate position on the regulation, or otherwise, of travel agents in this state.

3. REGULATORY FRAMEWORK

National Co-operative Scheme for the Uniform Regulation of Travel Agents (the national scheme)

The national scheme was introduced in 1986 in order to promote nation-wide industry standards and to protect consumers from inadequate service from travel agents and financial loss arising from failure to pass on funds to suppliers and/or insolvency of the travel agent. It is important to note that the focus of the national scheme has been on travel agents or intermediaries and has not usually covered travel and accommodation suppliers.

Under the national scheme, all participating jurisdictions have been required to enact uniform rules through state based legislation, including a requirement that travel agents be licensed and be members of the TCF. In WA, travel agents are regulated by the *Travel Agents Act 1985* (the Act) and the Travel Agents Regulations 1986.

The TCF is based in Sydney and its operation is governed by a trust deed approved by participating state and territory Ministers and jurisdictions are represented on its board by officers of the relevant departments on a rotational basis. The board also includes consumer and industry members.

As a result of the national scheme, the regulatory regime for travel agents provided consumer protection in two broad categories:

- licensing with entry and conduct requirements; and
- insolvency protection measures including prudential oversight and a compensation scheme administered by the TCF.

WA licensing and compliance

In accordance with the national scheme, the WA Act defines the type of travel arrangements which require a licence to operate as a travel agent. These include:

- selling tickets entitling, or otherwise arranging for passage on transport such as planes, boats, or trains;
- selling or arranging travel and accommodation; and/or
- purchasing for resale the rights of passage on conveyances.

An individual applying for a licence must be over 18 years of age; be fit and proper; pay a prescribed fee; and provide certain information. A further condition of the licence is that the applicant must participate in the TCF, membership of which also requires fees.

In addition to these eligibility rules travel agents and certain employees, such as, the day-to-day manager of the business outlet, are required to have a specified level of experience and/or qualifications.

Licensing and work to ensure compliance with the WA Act is done by the Consumer Protection Division of the Department of Commerce and is largely funded by revenue from licence fees. The ACL also operates in addition to the WA Act and provides general consumer protection in addition to the industry specific protections.

TCF prudential oversight and compensation

The TCF requires travel agents to have sufficient capital and financial systems to operate with a reduced risk of insolvency. It uses financial ratio tests and minimum capital requirements based on gross annual turnover as an indication of the adequacy of a business's financial resources. Until 1 July 2013 all TCF participants were required to submit annually audited financial returns and the TCF could impose requirements such as bank guarantees or insurance arrangements on a business which did not meet the capital requirements. Field audits were undertaken of businesses that gave cause for concern.

The TCF also manages the compensation fund and so deals with all enquiries and applications for compensation by consumers. The reserve funds are estimated at approximately $29 million[1]. Most claims are assessed and payments made within seven days on average and recovery action is taken to recoup expenses where possible. This may take several years and involve litigation.

Summary of regulatory costs

WA licensing and compliance

Triennial licensing fees for a natural person range from $1,161 for travel agents with one principal office, to $3,571 for those with ten or more branches. For a body corporate the fees range from $1,711 for one principal office to $4,121 for ten or more branches. There are currently 332 licensed travel agents in WA.

Total licensing income based on the review of fees and charges for 2013/14 is $261,350 and this covers departmental costs for administering licensing and compliance regimes[2].

Travel Compensation Fund

In addition, $8,260 is payable to the TCF on initial application for a travel agent's principal location and an additional $5,515 applies for each additional branch location. An annual renewal fee of approximately $425 for a principal location and $320 for each additional branch location also applies.

The total amount paid per annum by WA agents is $179,125[3].

National scheme

PwC, in a report titled the *Review of consumer protection in the travel and travel related services market* November 2010, estimated the cost of the national scheme including licensing and compliance, prudential oversight and compensation at $25.3 million per annum[4]. Based on WA's proportion being nine per cent[5], the estimated cost to WA was $2.277 million per annum[6].

At a national level, PwC estimated the regulatory costs at around nine times greater than the average value of claims paid. PwC did not provide costs for separate jurisdictions, however, the average pay-out to consumers in WA is $507,340 per annum[7] and based on PwC's national estimates, regulatory costs for WA would be around five times the value of claims paid.

[1] TCF media release 26 June 2013.
[2] Consumer Protection 2013/14 review of fees and charges.
[3] Information provided by the TCF to Consumer protection July 2013.
[4] PwC *Review of consumer protection in the travel and travel related services market* November 2010 p105. This review was commissioned by the then Ministerial Council on Consumer Affairs in 2009.
[5] TCF Annual Report 2012.
[6] TCF Annual Report 2012.
[7] TCF claims data for 2006 - 2012 as of 10 July 2013 supplied to Consumer Protection.

4. TRAVEL INDUSTRY TRANSITION PLAN

Phased implementation

Phased implementation of the TITP for participating jurisdictions is as follows:

2013

- Execution of the TCF Substitution Trust Deed from 1 July 2013.
- Prudential supervision of travel agents by the TCF ceased on 1 July 2013, although travel agents are still required to participate in the fund until state and territory regulation can be repealed.
- Development of a voluntary industry accreditation scheme will occur. The Australian Federation of Travel Agents (AFTA) is funded from the TCF to develop a voluntary accreditation scheme.
- Commencement of a consumer communication and education strategy will occur.

2014

- By 1 July 2014, jurisdictions are expected to repeal their respective travel agents' legislation and travel agents will cease to be required to be TCF members. In any event participating Ministers have directed the TCF to amend the Substitution Trust Deed to make 30 June 2014 as the participation cessation date[8].
- A voluntary industry accreditation scheme is expected to commence on 1 July 2014.
- Consumer research and advocacy arrangements are expected to be established that include monitoring consumers' experiences with the new travel industry regime including the effectiveness of credit card charge back and insurance arrangements.

2015

- The TCF closes sometime between 1 July and 31 December 2015.
- Conclusion of TCF recovery action and payment of remaining eligible claims will continue for some time after this.
- Remaining trust funds are to be distributed in accordance with the TCF Substitution Trust Deed.

Voluntary industry accreditation scheme

It should be noted that early proposals for the accreditation scheme being developed by AFTA include requiring agents to obtain insurance to cover insolvency of carriers and accommodation providers. AFTA is also investigating the potential for insolvency cover for agents. If this cover eventuates, the protections for WA consumers may not be significantly diminished as only loss through misappropriation of funds will not be covered for those participating in the scheme. To date these forms of insolvency insurance have not been the norm nor made available by the insurance industry. AFTA has advised Consumer Protection that the existence of the TCF has made such insurance uneconomical for potential providers and that their inquiries with potential underwriters indicate an interest in entering the market when the TCF closes.

[8] CAF decision 5 July 2013.

The proposed voluntary accreditation scheme is also likely to address conduct, skill and financial management standards that are now addressed through state licensing and the TCF prudential supervision of travel agents. This will mitigate against risk of inappropriate service for consumers and insolvency for businesses. It will also allow travel agents who subscribe to the accreditation scheme to market this to potential consumers and improve the prospects of consumers dealing with sound travel businesses. Accredited agents may also be less likely to require Consumer Protection to take action under the ACL following deregulation.

Distribution of Travel Compensation Fund reserves

The TCF Substitution Trust Deed provides for jurisdictions to share surplus reserve funds following the payment of TCF liabilities in proportion to their participant numbers at 30 June 2014[9]. This is currently nine per cent for WA.

Liabilities under the current trust deed include TCF staff entitlements, payment of consumer claims until cessation and post cessation legal fees and claims. WA's amount of surplus funds will be based on the balance of funds remaining following payment of these liabilities.

The TITP has also provided for costs to develop an industry accreditation scheme, a consumer research and advocacy initiative and a consumer communication and education strategy to be paid from the TCF. On 5 July 2013, $2.8 million was approved for development of the industry accreditation scheme. Costs for the other initiatives are not known yet.

Until further detail is known about the full scope of TCF liabilities, it is difficult to estimate WA's possible entitlement. However, based on WA's proportion of the TCF reserve fund reflecting its current nine per cent participation rate, it is reasonable to assume that the amount will most likely range between $500,000 and $1.5 million.

[9] TCF Substitution Trust Deed clause 27.2(b).

5. OVERVIEW OF OPTIONS FOR THE REGULATION OF TRAVEL AGENTS IN WA

In view of the planned changes in the TITP and the TCF Substitution Trust Deed, alternative options for WA have been considered. In assessing the various options Consumer Protection has also taken into account:

- the report by PwC following a national review of travel and the travel related services market conducted in 2010;
- the national Consultation Regulatory Impact Statement (C-RIS) outlining options for regulation of travel agents released in 2011;
- the draft Decision Regulatory Impact Statement (D-RIS) following the C-RIS consultation;
- the national consultation on the draft TITP undertaken in 2012 outlining the proposed transition to de-regulation of licensing of travel agents across Australia and wind-up of the TCF; and
- the majority decision by Ministers of participating jurisdictions to end the national scheme.

Options for the future regulation of travel agents in WA include:

Option A – remove all industry specific regulation for WA travel agents;

Option B – implement a negative licensing scheme for WA travel agents;

Option C – under a code of conduct require WA travel agents to comply with basic standards and use the Australian Consumer Law (ACL) to sanction non-compliant agents. This could involve mandating parts or the entire voluntary accreditation scheme;

Option D – regulate WA travel agents through licensing and prudential oversight but with no compensation fund; and

Option E – maintain key elements of the national scheme in WA, that is, regulate travel agents through licensing, prudential oversight and a compensation fund for consumers.

The Department of Finance's Regulatory Gatekeeping Unit (RGU) requires government decisions about regulatory proposals to assess whether regulation is required or if policy objectives can be achieved by alternative means with lower costs for business and the community. The options are presented according to how much regulation is imposed.

For each option outlined, there is a description of how it would operate, advantages and disadvantages, and a table of expected costs and benefits by interest group. Appendix 1 contains further detail regarding assumptions, contexts and costs. The assessment of the options has been undertaken in line with the RGU's regulatory impact assessment requirements.

It should be noted for all the regulatory options it is assumed that:

- for practical and legal jurisdictional reasons precluding enforcing regulation on agents based outside WA, only travel agents based within WA would be regulated;
- general consumer protection laws under the ACL would remain available for all options as would other redress options, such as credit card charge back;
- some private sector prudential oversight measures, which are intended to protect commercial interests but indirectly benefit consumers, such as bank merchant arrangements and the International Aviation Transport Association (IATA) accreditation, will continue irrespective of the option being considered; and

- there will be compliance costs for travel agents who voluntarily participate in the proposed new national accreditation scheme. However, these costs have not been included in estimating costs of options as they are unknown and not all travel agents will participate.

For options D and E it is assumed that full cost recovery would be achieved through licensing fees.

A separate analysis of how residual reserve funds might be used is made as there are several alternatives to be considered. Option E requires all funds returned to WA to be used to establish a compensation fund as outlined in the discussion of that option. Under options A to D these funds could be used to compensate consumers who suffer a loss due to agent insolvency or a failure to pass on funds, to offset administration or other costs incurred by government or be returned to consolidated revenue.

All cost estimates are preliminary and detailed estimates will be required when the Government's policy direction is settled. Costs have also been rounded.

6. **OPTION A** – REMOVE ALL INDUSTRY SPECIFIC REGULATION

Under option A industry specific travel agent regulation would be repealed to bring WA into line with other jurisdictions.

Licensing restrictions for travel agents, such as entry requirements would be removed and industry standards and practices and other restrictions with which the agent is currently required to comply would also be removed. General consumer protection provisions and other measures discussed earlier would apply rather than industry specific legislation.

It would be a business decision for travel agents whether or not they participate in the proposed accreditation scheme to be developed as part of the TITP by AFTA.

As licensing would be removed, government would lose revenue from licensing fees and so would not be able to offset costs associated with dealing with complaints and any action required under the ACL. Consumer Protection deals with approximately 247 travel industry consumer complaints per year[10]. The number of complaints is likely to increase in a deregulated market due to complaints that are now referred to the TCF having to be dealt with by Consumer Protection and increased volatility within the industry. A portion would require some form of action under the ACL. However, overall workload would decline through not having to licence travel agents or undertake compliance activity associated with licence conditions.

Advantages and disadvantages

Benefits

The following benefits have been identified in relation to option A:

- this option represents a saving for industry in TCF, licensing and compliance costs;
- removing barriers to entry should also increase competition and lower costs for consumers. However, the travel services market is well consolidated with two players occupying 54 per cent of the market[11];
- travel agents may be inclined to adopt voluntary national accreditation and its associated standards to maintain consumer confidence and market share; and
- there would be consistent regulation of travel agents across Australia (except possibly for SA whose intentions are unknown).

[10] Based on average number of complaints for 2010 - 11 (130) 2011 - 12 (368) and 2012 - 13 (244) Department of Commerce Annual Reports: 2010 - 11, 2011 - 12 and 2011 - 13.

[11] Travel Industry Transition Plan – December 2012 Victoria/New South Wales.

Disadvantages

The following disadvantages have been identified:

- WA consumers would no longer be able to claim compensation in the event of travel agent insolvency or other failure to pass on funds. Under the national scheme compensation is estimated to be worth an average of $507,340 per annum for WA consumers[12]. Median payments to WA consumers from the TCF from 2006 - 2012 show that most consumers would lose between $1,000 - $1,600 in the event of an insolvency or failure to pass on funds for other reasons and that the average median claim for the period is $1,400. If insurance becomes available and is required under a voluntary accreditation scheme this loss would not be as considerable;
- industry is likely to experience increased volatility in a deregulated market with an increase in the number of insolvencies or failures to pass on consumer funds for other reasons;
- while government will have reduced work due to removal of licensing it will not be able to recover costs from industry and so these will become an additional draw on Consumer Protection's budget. These costs, estimated to be $271,980[13] include dealing with increased consumer complaints and taking action under the ACL; and
- there may be pressure on the Government to provide compensation in the event of major consumer losses.

Table of costs[14] and benefits by interest group

Option A – remove all industry specific regulation for WA travel agents	
Consumers	• An average loss to consumers of $507,340 per annum unless mitigated by insurance under voluntary accreditation scheme. • A benefit should arise from increased competition and lower industry costs leading to increased choice and reduced costs for consumers.
Industry	• Industry would make an estimated saving of $1,315 - $2,015 per agent per annum.
Government	• Loss of licensing income of $261,350 per annum. • Complaints would be expected to increase along with actions under the ACL. This additional cost is estimated to be $135,990 per annum. • Net cost to government is estimated to be $271,980 per annum.

[12] TCF claims data as of 13 April 2013 supplied to Consumer Protection.
[13] Appendix 1 Option A, Costs.
[14] Appendix 1 Option A, Costs.

7. **OPTION B** – IMPLEMENT A NEGATIVE LICENSING SCHEME FOR WA TRAVEL AGENTS

Under negative licensing, individuals can operate as a travel agent unless removed due to being unfit. This is in contrast to positive licensing regimes, where legislation requires prospective travel agents to demonstrate that they meet pre-conditions before entering the industry.

New legislation would be required to set a framework to allow the removal of travel agents from the industry who fail to meet set standards of practice and conduct such as for fraudulent behaviour or gross incompetence.

There would be minimal regulatory costs for industry dependent on standards of practice established and costs for government associated with licensing and compliance would be reduced. However, consumer complaints are likely to increase and be a demand on government resources. This would be due to complaints that are now referred to the TCF having to be dealt with by Consumer Protection and possible increased volatility within the industry due to deregulation interstate and negative licensing that increases the risk of unfit agents operating in WA. Government would also need the capacity to investigate and take action against errant agents.

Costs for government of negative licensing could not be recovered from industry through licence fees.

Advantages and disadvantages

Benefits

The following benefits have been identified in relation to option B:

- unfit agents can be removed from the industry;
- this option represents a saving for industry as it removes entry and ongoing costs;
- removing barriers to entry should also increase competition and lower costs for consumers. However, as previously noted the travel services market is well consolidated with two players occupying 54 per cent of the market;
- travel agents may be inclined to adopt voluntary national accreditation and its associated standards to maintain consumer confidence and market share; and
- while government benefits from a reduction in workload due to the removal of licensing, this would be offset by additional costs incurred in complaint handling, investigation and action against errant agents.

Disadvantages

The following disadvantages have been identified:

- WA consumers would no longer be able to claim compensation in the event of a travel agent insolvency or defalcation. This is estimated to be worth an average of $507,340 per annum for WA consumers;
- it is difficult to detect unlawful or grossly incompetent behaviour and consumers could experience significant detriment before an unfit agent is removed from the industry;

- industry is likely to oppose this option due to the national inconsistency of the regulation; and
- government costs will not be recovered from industry and so will become an additional draw on consolidated revenue or a reduction in other Consumer Protection services. These costs, estimated to be $442,780[15] include dealing with agents who do not comply with the negative licensing scheme and dealing with increased consumer complaints.

Table of costs[16] and benefits by interest group

Option B - Implement a negative licensing scheme for WA travel agents	
Consumers	• Unfit agents can be removed. • An average loss to consumers of $507,340 per annum unless mitigated by insurance under voluntary accreditation scheme. • With reduced barriers to entry and reduced costs for industry, greater competition and reduced costs could be expected for consumers.
Industry	• Industry would make an estimated saving of $1,315 - $2,015 per agent per annum.
Government	• Loss of licensing income of $261,350 per annum. • Complaints would be expected to increase. The additional costs are estimated to be $305,760 per annum. • Costs of investigations and legal action to sanction unfit agents are estimated to be approximately $137,020 per annum. • The net cost to government of a negative licensing scheme is estimated to be $442,780 per annum.

[15] Appendix 1 Option B, Costs.
[16] Appendix 1 Option B, Costs.

8. **OPTION C** – CODE OF CONDUCT UNDER THE AUSTRALIAN CONSUMER LAW

Under option C legislation regulating travel agents would be repealed and in its place a mandatory code of conduct for travel agents would be developed under the *Fair Trading Act 2010*.

The extent of requirements to be included in a code of conduct would depend on the adequacy and take up of the proposed industry accreditation scheme to be developed as part of the TITP. The proposed accreditation scheme is likely to address conduct, skill and financial management standards that are now addressed through state licensing and the TCF prudential supervision of travel agents. This will mitigate against risk of inappropriate service for consumers and insolvency for businesses. AFTA is also investigating potential insurance requirements for accredited travel agents to protect consumer funds.

To ensure all agents meet minimum standards it may be appropriate to mandate some elements of the voluntary scheme. Alternatively, if the voluntary scheme is considered deficient the WA code could compensate by requiring set standards.

As this option imposes compulsory conduct requirements there would be a responsibility for government to undertake a proactive program to ensure compliance with the code but without the capacity to recover costs from industry in the absence of a licensing regime. It is also relevant to note that enforcement powers and remedies for breaches of codes made under the ACL are limited[17].

Costs for this option are based on an assumption that the code of conduct would impose minimal conditions such as a requirement for a travel agent to use a trust account to hold consumer funds, to hold certain qualifications or some other form of accreditation. Should a more extensive code be required the costs for government and industry would increase and could potentially be similar to option D. The greater the extent of prudential or other oversight required through a WA code the more costly the code would be for government.

Consumer complaints are likely to increase and be a demand on government resources. This would be due to complaints that are now referred to the TCF having to be dealt with by Consumer Protection and increased volatility within the industry due to deregulation interstate and much decreased WA regulation that increases the risk of unfit agents operating.

Industry is not likely to support the development of a mandatory code of conduct due to it being another layer of regulation compared with other jurisdictions and is likely to view a mandatory code, even a limited code, as unfair, and anti-competitive. This may be especially so for businesses which operate nationally as they may be required to use different funds management and other processes in WA.

[17] The Commissioner for Consumer Protection must apply to the State Administrative Tribunal for an order which may require the travel agent to cease certain behaviour or place conditions on conduct; or to rectify any damage to a consumer. If an order is breached a fine of up to $50,000 may be imposed.

Advantages and disadvantages

Benefits

The following potential benefits have been identified in relation to option C:

- this option represents a saving to industry as there are no WA licensing or TCF costs and only the costs of meeting code requirements. Savings are estimated to be $1,315 - $2,015[18] per agent per annum. However if an extensive code is implemented there may be no savings;
- a minimal code is unlikely to affect new entrants to the WA industry and so is unlikely to reduce competition within the state. However, it is noted that the travel services market is well consolidated with two players occupying 54 per cent of the market; and
- there is a reduced risk of pressure on government to compensate consumers in the event of a major insolvency of a WA travel agent to the extent that a code protects consumer funds.

Disadvantages

The following disadvantages have been identified:

- WA consumers would no longer be able to claim compensation in the event of travel agent insolvency or other failure to pass on funds. This is estimated be worth an average of $507,340 per annum for WA consumers;
- nationally based travel agents could be required to vary funds management or other arrangements for WA and would strongly oppose this option; and
- as there would be no licensing regime there would be increased costs to government with no ability to recover costs from industry through licensing fees. Ongoing activity would include increased complaints, investigations and enforcement relating to code requirements. These costs are estimated to be around $305,760[19] per annum but could range up to $1.1 million if an extensive code with prudential requirements is instituted.

Table of costs[20] and benefits by interest group

Option C - Code of conduct under the ACL	
Consumers	• An average loss to consumers of $507,340 per annum unless mitigated by insurance under voluntary accreditation scheme. • With reduced barriers to entry and reduced costs for industry, greater competition and reduced costs could be expected for consumers.
Industry	• Compliance costs to travel agents of meeting code requirements would vary subject to the extent of the code. • National travel agents may face major accounting or other systems costs of compliance. • Industry would make an estimated saving of $1,315 - $2,015 per agent per annum. There may be no savings and potentially costs with an extensive code.
Government	• Loss of licensing income of $261,350 per annum. • Complaints would be expected to increase and there would be proactive compliance work for the code. The additional costs are estimated to be $305,760 per annum but could range up to $1,100,000. • The net cost of introducing a code for government is estimated to be $305,760 per annum but could range up to $1,100,000.

[18] Appendix 1 Option C, Costs.
[19] Appendix 1 Option C, Costs.
[20] Appendix 1 Option C, Costs.

9. **OPTION D** – LICENSING AND PRUDENTIAL OVERSIGHT BUT WITH NO COMPENSATION

Option D would continue existing WA licensing and compliance requirements for travel agents and impose new prudential supervision of their operations on the basis that this reduces the risk of insolvency. Unlike the national scheme, this option would not provide compensation to consumers in the event of a travel agent insolvency or defalcation.

The licensing regime would continue to provide:

- a means of screening entry of operators to the travel agent market;
- industry standards and practices with which the agent is required to comply;
- experience and/or education qualifications for managers of travel agencies and branches; and
- a means of ensuring agents comply with the licensing conditions and industry standards.

WA legislation and regulations would be appropriately amended to provide, at the state level, for the new prudential oversight function that would be modelled on the current TCF scheme. Prudential oversight would include requirements to ensure that WA agents hold and maintain sufficient capital and submit annually audited accounts.

Advantages and disadvantages

Benefits

The following benefits have been identified in relation to option D:

- protections provided by the scheme may act as an incentive for WA consumers to use WA travel agents;
- standards of conduct and entry requirements such as experience and education qualifications would continue to apply to WA travel agents; and
- prudential requirements would continue to reduce the risk of insolvency of WA travel agents.

Disadvantages

The following disadvantages have been identified:

- WA consumers would no longer be able to claim compensation in the event of a travel agent insolvency or defalcation. This is estimated be worth an average of $507,340 per annum for WA consumers;
- PwC analysis estimated that the prudential oversight is not a significant protection and that it would take six times the current rate of failure before it became cost effective[21];
- there will be increased costs to industry for prudential oversight;
- increased costs for travel agents are likely to be passed on to consumers and could result in consumers using non-licensed interstate and international agents and direct bookings, thereby, further reducing the numbers of WA consumers protected by regulation;
- industry would be strongly opposed to this option due to the national inconsistency of the regulation and the costs of administration and compliance;

[21] PwC *Review of consumer protection in the travel and travel related services market* November 2010 p82.

- a WA scheme could be viewed as unfair and anti-competitive to WA travel agents and act as a disincentive for new participants to enter the market and potentially result in existing licensees leaving the marketplace. National operators may be more inclined to withdraw physically from WA and operate via the internet. The effect could be to take business from smaller WA agents and increase their costs and so increase their risk of insolvency; and
- much of industry is likely to consider it important to participate in the proposed new national accreditation scheme and would also have costs associated with this.

Table of costs[22] and benefits by interest group

Option D - Licensing and prudential oversight but no compensation	
Consumers	• An average loss to consumers of $507,340 per annum unless mitigated by insurance under voluntary accreditation scheme. • Nil direct costs. However, increased costs for travel agents are likely to be passed on to consumers.
Industry	**Current costs to industry:** • Average annual licence fee for WA based travel agents business is $790. • TCF renewal contributions are $425 per annum. • Internal administration - it currently costs each licensed travel agent business approximately $100 - $800 per annum to cover their own administration costs of compliance and licensing requirements other than fees and training[23]. • Total current costs estimated at $1,315 - $2,015 per annum per agent. **New costs to industry under option D:** • Industry would continue to pay most current costs with the exception of contributions to a compensation fund. • It is estimated that the new cost of operating prudential supervision in WA is $1,325 - $2,530 per travel agent per annum. **Total cost to industry under option D estimated at $2,215 - $4,120 per agent per annum** (This figure rebates the $425 TCF annual fee).
Government	• If the costs for licensing, prudential supervision and operation of the residual compensation fund are not fully passed on to industry they would become a draw on consolidated revenue or a reduction in other Consumer Protection services.

[22] Appendix 1 Option D, Costs.
[23] PwC *Review of consumer protection in the travel and travel related services market* November 2010 p84.

10. OPTION E – MAINTAIN KEY ELEMENTS OF THE NATIONAL SCHEME (LICENSING, PRUDENTIAL OVERSIGHT AND A COMPENSATION FUND)

Option E would maintain to the extent possible key elements of the current national scheme by amending existing WA legislation to: continue WA licensing and compliance functions, introduce prudential supervision and introduce a scheme to compensate consumers for loss of funds in the event of a travel agent insolvency or failure to pass on funds.

While it is currently a condition of licence under the Act to participate in the compensation scheme, administration of the scheme is undertaken at a national level by the TCF. Establishing and administering a compensation scheme and providing prudential oversight would be new roles for WA and therefore a new cost to government.

The licensing regime would provide:

- a means of screening entry of operators to the travel agent market;
- industry standards and practices with which the agent is required to comply;
- experience and/or education qualifications for managers of travel agencies and branches;
- mandatory participation of travel agents in a compensation scheme; and
- prudential oversight of travel agents to reduce the risk of insolvency.

Under this option prudential oversight and compensation to consumers would be modelled on the current TCF scheme. Prudential oversight would include requirements to ensure that WA agents hold and maintain sufficient capital and submit annually audited accounts.

Compensation would be provided to consumers who suffer a loss due to agent insolvency or a failure to pass on funds, on the same basis as the TCF currently operates. That is, compensation would not be provided to consumers once the travel agent had passed on the money to the supplier and it would not cover point to point only travel. In addition, compensation would not be provided until the consumer had pursued all other avenues such as credit card charge back.

As only WA travel agents will contribute to a compensation fund there will be a reduction in payments of between 60 - 90 per cent to WA consumers based on claims data from the TCF[24]. This is because most travel agent failures have involved interstate agents and these agents will not participate in the compensation scheme.

Advantages and disadvantages

Benefits

The following benefits have been identified in relation to option E:

- 10 - 40 per cent of consumers' monies, compared to cover under the national scheme, would continue to be protected and consumers who use licensed WA travel agents would have access to compensation in the event of an agent's insolvency or failure to pass on funds;
- protections provided by the scheme may act as an incentive for WA consumers to use WA travel agents;
- standards of conduct and entry requirements such as experience and education qualifications would continue to apply to WA travel agents;

[24] Appendix 1 Option E, costs.

- prudential oversight would continue to reduce the risk of insolvency of WA travel agents;
- WA's share of TCF reserves would be used as seed funding to establish a compensation scheme and therefore reduce the amount of fees that industry would otherwise have to contribute; and
- as insolvencies and defalcations occur criticism of the WA Government for the disbandment of the national scheme will be averted.

Disadvantages

The following disadvantages have been identified:

- compared with the present cover under the national scheme it is estimated that there would be a reduction of between 60 - 90 per cent in compensation for consumers;
- a WA scheme, as compared with the TCF operation, would lose efficiencies from economies of scale resulting in higher licensing fees being imposed on travel agents to recover costs – these are estimated at an additional $2,830 - $3,765 per agent per annum compared to current national scheme costs;
- industry is likely to strongly oppose this option due to the national inconsistency of the regulation and the costs of administration and compliance;
- a WA scheme could be viewed as unfair and anti-competitive to WA travel agents and act as a disincentive for new participants to enter the market and potentially result in existing licensees leaving the marketplace. National operators may be more inclined to withdraw physically from WA and operate via the internet. The effect could be to take business from smaller WA agents and increase their costs and so increase their risk of insolvency;
- increased costs on travel agents are likely to be passed on to consumers and could result in consumers using interstate and international based agents and direct bookings, thereby, further reducing the numbers of WA consumers protected by regulation;
- following the winding up of the national scheme and its liabilities being paid out, WA would be operating with an estimated reserve of $500,000 - $1.5 million. The recent examples of Classic International Cruises' and Kumuka Worldwide Travel's insolvencies show the pay out in WA as at 10 July 2013, amounting to $2,524,366[25]. This amount would wipe out a reserve of $500,000 - $1.5 million. If a similarly large failure of a WA based travel agent occurred the Government would be at risk of having to provide funding to supplement the fund; and
- the existence of the TCF has been cited as a reason that it has been uneconomical for insurers to provide cover in the event of supplier insolvency. The existence of a scheme in WA, although small compared to the TCF, may reduce the likelihood of AFTA being able to provide such insurance through its proposed accreditation scheme.

[25] Information provided to Consumer Protection by the TCF.

Table of costs[26] and benefits by interest group

Option E – Maintain key elements of the national scheme for travel agent businesses in WA through licensing; prudential oversight; and a compensation fund for consumers	
Consumers	• 60 - 90 per cent reduced compensation payments compared to the national scheme. Based on average payments to WA consumers this is an estimated loss of $304,410 - $456,615 per annum. • 10 - 40 per cent of payments compared to the national scheme would continue to be paid to eligible WA consumers representing an estimated $50,735 - $202,940 compensation per annum. • Nil direct costs. However, increased costs for travel agents are likely to be passed on to consumers.
Industry	**Current costs to industry:** • Average annual licence fee for WA based travel agents business is $790. • TCF renewal contributions are $425 per annum. • Internal administration - it currently costs each licensed travel agent business approximately $100 - $800 per annum to cover their own administration costs of compliance and licensing requirements other than fees and training[27]. • Total current costs estimated at $1,315 - $2,015 per annum per agent. **New costs to industry under option E:** In addition to the current costs there would be new costs: • Providing prudential oversight and operating a compensation scheme are new functions for WA and are estimated to cost $940,000 - $1.25 million. The average cost per agent per annum would be $2,830 - $3,765. • Total additional costs per agent per annum are estimated to be $2,830 - $3,765. **Total costs to industry under option E estimated at $3,720 - $5,355 per agent per annum.** (This figure rebates the $425 TCF annual fee).
Government	• If the costs of licensing, prudential supervision and operating a compensation fund are not fully passed on to industry they would become a draw on consolidated revenue or a reduction in other Consumer Protection services. • The benefit to government is that the compensation scheme reduces political pressure in the event of major consumer losses.

[26] Appendix 1 Option E, Costs.
[27] PwC *Review of consumer protection in the travel and travel related services market* November 2010 p84.

11. COMPARISON OF OPTIONS - Summary

	Option A Deregulation	Option B Negative Licensing	Option C ACL Code of Conduct	Option D Prudential Oversight	Option E WA Licensing and Compensation
Consumers	Compensation Loss: $507,340 pa Average median loss per consumer $1,400	Compensation Loss: $507,340 pa Average median loss per consumer $1,400	Compensation Loss: $507,340 pa Average median loss per consumer $1,400	Compensation Loss: $507,340 pa Average median loss per consumer $1,400	Compensation reduced by 60-90 per cent but ongoing cover of 10-40 per cent. Loss: $304,410-$456,615 pa Ongoing benefit: $50,735 - $202,935 pa
	Lower costs	Lower costs	Low to medium costs	Higher costs	Highest costs
Industry	Savings: $1,315 - $2,015 pa per agent	Savings: $1,315 - $2,015 pa per agent	Minimal code: savings: $1,315 - $2,015 pa. Extensive code: costs $2,100 - $3,300 pa per agent	Costs: $2,215 - $4,120 pa per agent	Costs: $3,720 - $5,355 pa per agent
	No barriers to entry	Minimal barriers to entry	Minimal to medium barriers to entry	High barriers to entry	Highest barriers to entry
	Higher risk of insolvencies	Higher risk of insolvencies	Higher risk of insolvencies	Reduced risk of insolvencies	Reduced risk of insolvencies
Government	Less work, costs $271,980 pa	Equal work, costs $442,780 pa	Variable work and costs $305,760 - $1,100,000 pa	New work but less than option E, costs recouped	New work, costs recouped
	Risk of consumer demand for compensation	Risk of consumer demand for compensation	Risk of consumer demand for compensation	Risk of consumer demand for compensation	Lower risk of consumer demand for compensation
TITP Issues				TCF prudential supervision ceased 30 June 2013	TCF prudential supervision ceased 30 June 2013

12. RESIDUAL COMPENSATION FUNDS

After the TCF is wound up at the end of 2015, participating jurisdictions will be refunded the balance of any remaining funds in proportion to their participation in the scheme. It is estimated the amount returned to WA will be between $500,000 and $1.5 million.

Under option E these residual funds would be used to establish a consumer compensation fund. However, if this option is not pursued, consideration of how else these funds might be used is warranted.

There are several options for use of the residual funds:

- compensate WA consumers who would otherwise lose their money in the event of a travel agent becoming insolvent or otherwise failing to pass on funds until the funds are exhausted;
- offset government costs in the transition to new or no regulation of WA travel agents;
- return the funds to consolidated revenue; or
- some combination of these options.

Consumer Compensation

The funds have been vested in the TCF for the purpose of compensating consumers and so continuing to use them for this purpose would be consistent with government's original intent.

Based on TCF claims data from 2006 - 2012 total compensation to WA consumers was $3,551,383[28]. Payments to WA consumers due to WA agent collapses were $472,899 (13 per cent of total payments). It is important to note that claims data is volatile. If calculations were based on 2006 - 2011 data it would be 39 per cent of total payments due to WA agent collapses. During 2012, two large interstate travel agents collapsed and significantly increased the claims made by WA consumers. The median amount of compensation paid to each claimant over the period 2006 - 2012 ranged between $620 - $3,396 with the average being $1,400.

The average compensation payment for WA consumers 2006 - 2012 was $507,340. If this average rate of claims is maintained the residual funds are estimated to last from one to three years on the assumption that WA consumers are compensated for the collapse of any travel agent that was formerly a member of the TCF. The funds could last considerably longer if compensation was restricted to default by WA based travel agents. Even though most financial loss to WA consumers is through interstate agent insolvencies this option may be justified if WA adopts some form of regulation for WA based agents as these agents would have compliance costs that interstate agents do not. If this approach is adopted WA consumers are estimated to receive between 60 - 90 per cent less compensation per annum than currently received through the TCF and the funds could last up to 20 years.

It is not proposed to compensate interstate consumers who use WA travel agents in the event of collapse as it is up to other participating jurisdictions to determine how they will use any residual compensation funds returned to them.

[28] Appendix 1, Use of residual TCF funds.

The benefits of this option are that at least some WA consumers would continue to receive compensation until the residual funds were exhausted and there would be no cost to industry. There would be a cost to government in administering the funds and this is estimated to be $156,725 per annum[29]. There is also a risk that in the event of a major collapse such as occurred in 2012 that the funds would not be sufficient to fully compensate all claimants and pressure might occur for government to make up the shortfall.

Government Costs

Whether WA deregulates in line with other jurisdictions or maintains some form of regulation for WA based travel agents, government will incur additional costs that under most options for reform cannot be recouped from industry. The exception would be if WA retains licensing as outlined in options D and E where government costs are recouped from industry through licensing fees.

Some of these costs such as dealing with increased levels of consumer complaints that would otherwise be dealt with by the TCF and enforcing the ACL will be ongoing and have been estimated under options A to E. Others would be transitional until deregulation or new regulation was established. These include administration of residual compensation funds should they continue to be used for this purpose, costs to develop and implement new regulation such as a code of conduct, negative licensing scheme or establish a prudential supervision process, and costs associated with withdrawing from licensing should government choose to deregulate.

A potential use of any funds returned to WA could be to fund the transitional costs of establishing new regulation or deregulating. Until the option that WA will adopt is known it is not possible to quantify these transitional costs, however, the greater the degree of regulation the more it will cost to establish. It is probable that the estimated residual funds would not be sufficient to cover the transitional costs for options D and E.

The benefits of this option are that it would cover or reduce transitional costs for government which would otherwise have to be funded from the consolidated fund or through reducing other Consumer Protection services. It would also not impose any costs on industry. The capacity to compensate consumers would be reduced or possibly precluded depending on the amount required to make the transition to new regulation or deregulation.

Return Funds to Consolidated Revenue

Any residual funds returned to consolidated revenue would be used to fund government priorities and this would have an overall benefit for the community. While WA consumers would not have access to compensation the financial loss for most affected by travel agency collapse is relatively small and would be no greater than faced by interstate consumers.

[29] Appendix 1, Use of residual TCF funds.

Proposed use of Residual Funds

If WA elects to deregulate travel agents in line with other jurisdictions it is proposed to use the residual funds to compensate all WA consumers affected by the collapse of any travel agent that was formerly a member of the TCF as well as pay for the cost of administering the compensation process until the funds are exhausted. This would only reduce the period that funds were available to compensate WA consumers by several months but would reduce the transitional costs for government in light of the loss of licensing revenue. This option would also be fairer to all WA consumers and easier to administer than restricting access to compensation to users of WA based agents.

If WA maintains some form of regulation it is proposed that the residual funds are used to cover the transitional costs of government and that these take priority over consumer compensation until the funds are exhausted. Establishing a new regulatory scheme involves development costs and there will be time pressure in having any new scheme in place prior to the ending of the national scheme. This is likely to require Consumer Protection to contract additional capacity while maintaining existing services. If the residual funds exceed transitional costs it is proposed that the shortfall be used to compensate WA consumers in the event of a collapse of a WA based travel agent.

APPENDIX 1 - Cost estimates for each of the options for regulating of travel agents in WA

Option A – deregulation

1. ***Context:***
   - WA would be consistent with other jurisdictions.
   - Consumers would be dependent on the ACL and general industry remedies for problems.

2. ***Assumptions:***
   - Problems with travel agents would come to government attention through complaints and complaints would increase due to deregulation.

3. ***Costs:***
   - Loss of income from removal of licensing is $261,350.
   - Currently Consumer Protection gets approximately 250 complaints pa about the travel industry based on average of past three financial years. The TCF has received an average of 550 claims pa from WA consumers (based on claims data from 2001-2012). It is assumed that all these inquiries would be directed to Consumer Protection once national deregulation occurs. This is a 220 per cent increase in inquiries likely to require some form of inspection, investigation or further action. During 2012 there were an unusually high number of claims to the TCF from WA and the average based on 2006 – 2011 data was 160 representing a 65 per cent increase in workload for WA. For modelling, a 100 per cent increase in workload is assumed. Current FTE costs for conciliation and investigations are 1 level 4.3 and 0.5 level 2.4. On costs estimated at a minimum of 30 per cent. Total cost $135,990. Due to a doubling in the volume of work the FTE and costs would double - a net new cost of $271,980 pa as licensing revenue fully recovers the current costs of this work.

Option B – negative licensing scheme

1. ***Context:***
   - There would be no regulation in other jurisdictions and so negative licensing is likely to be seen as restrictive by industry.

2. ***Assumptions:***
   - Problems with travel agents would come to government attention through complaints and complaints would increase due to deregulation.
   - A range of penalties will be available e.g. fines, restriction orders and banning from the industry.

3. ***Costs:***
   - Loss of income from removal of licensing is $261,350.
   - Currently Consumer Protection gets approximately 250 complaints pa about the travel industry based on average of past three financial years. The TCF has received an average of 550 claims pa from WA consumers (based on claims data from 2001-2012). It is assumed that all these inquiries would be directed to Consumer Protection once national deregulation occurs. This is a 220 per cent increase in inquiries likely to require some form of inspection, investigation or further action. During 2012 there were an unusually high number of claims to the TCF from WA and the average based on 2006 - 2011 data was 160 representing a 65 per cent increase in workload for WA. For modelling, a 100 per cent increase in workload is assumed. Current FTE costs for conciliation, proactive compliance and investigations are 1 level 4.3 and 0.5 level 2.4. On costs estimated at a minimum of 30 per cent. Due to an increase in the volume and complexity of work FTE requirements would be 2 level 5.4 and 1 level 2.4 costing $305,760 pa. This would be a net new cost as licensing revenue fully recovers the current costs of this work.
   - Legal and other costs of removing an agent from the industry are estimated using FTE for a senior investigations officer and a legal officer for six months each. The time covers investigation, prosecution and appeal processes. Senior officer costed at level 6.4 and legal officer at specified calling level 3.4 plus on costs of at least 30 per cent. Salaries L6.4 $101,520; SCL3.4 $109,280. Total cost $137,020.
   - Appeal processes would place additional marginal costs on the State Administrative Tribunal or courts.

Option C – code of conduct under the ACL

1. ***Context:***
   - An element of the TITP is the development of a voluntary industry code of conduct so a WA code would not be comprehensive but focus on protecting consumer funds and providing consumers with relevant information.
   - PwC recommended an industry code that included disclosure requirements covering whether funds were held in a client account and the circumstances in which funds were withdrawn; whether the agent was a part of a chain, franchise or cooperative buying group; whether the agent was accredited under any scheme; the availability of any insurance; and the availability of external dispute resolution. The proposed code also had conduct requirements to use fair and accurate advertising and disclosure rules for on-line traders.
   - PwC noted that client accounts were used by 39 per cent of agents but there was low compliance with TCF guidelines for the operation of these accounts. It also noted that in the event of insolvency client account funds were not protected as they were not legal trust accounts.
   - TCF 2011 annual report notes that 84 per cent of consumer funds are held for less than a month and only 6 per cent held longer than two months before being paid to suppliers.

2. ***Assumptions:***
   - WA would adopt a minimal code but possibility of an extensive code.

3. ***Costs:***
   - Loss of income from removal of licensing is $261,350.

- Currently Consumer Protection receives approximately 250 complaints per annum about the travel industry based on average of past three financial years. The TCF has received an average of 550 claims pa from WA consumers (based on claims data from 2001-2012). It is assumed that all these inquiries would be directed to Consumer Protection once national deregulation occurs. This is a 220 per cent increase in inquiries likely to require some form of inspection, investigation or further action. During 2012 there were an unusually high number of claims to the TCF from WA and the average based on 2006 - 2011 data was 160 representing a 65 per cent increase in workload for WA. For modelling, a 100 per cent increase in workload is assumed. Current FTE costs for conciliation, proactive compliance and investigations are 1 level 4.3 and 0.5 level 2.4. On costs estimated at a minimum of 30 per cent. Due to an increase in the volume and complexity of work FTE requirements would be 2 level 5.4 and 1 level 2.4 costing $305,760 pa. This would be a net new cost as licensing revenue fully recovers the current costs of this work.
- Extensive code costs based on the cost of licensing plus prudential supervision ($700,000 - $1,100,000) averaged across 332 licensed travel agents and rounded - $2,100 - $3,300. Prudential oversight is estimated to cost between $440,000 - $840,000.
- Option of maintaining registration of agents in order to keep track of players and to generate some income to help cover costs. If pursued this would require reinstatement of a regime very similar to licensing and cost the same.

Option D – licensing and prudential oversight

1. ***Context:***
   - Potential for national operators to withdraw from WA market to avoid regulation but to operate via the internet and continue to attract WA consumers. The effect would be to take business from smaller WA agents, increase their likelihood of failing criteria for cover and reduce proportion of consumers covered.

2. ***Assumptions:***
   - Prudential oversight same or very similar to existing TCF regime.
   - Model presumes retain current licensing and add prudential oversight and that no savings in WA licensing costs.
   - Presume prudential oversight reduces risk of insolvency, however, PwC analysis estimated it is not a significant protection and it would take six times current rate of failure before TCF became cost effective.
   - PwC external administration rate was 1.8 per cent or approximately six businesses based on 332 licensed agents. However, history indicates an average of 1.3 failures per year in WA.

3. ***Costs:***
   - Model would increase costs for government as need to employ or engage accounting skills for analysis of annual financial statements, proactive compliance and enforcement.
   - Cost of providing prudential oversight. Limited information in TCF annual report to estimate costs – report states that claims are small part of work. Assume 10 - 30 per cent of expenses other than claims paid are for claims management. Estimate of prudential oversight is approximately $2.1 - $2.7 million. Assume 20 - 30 per cent for WA i.e. approximately $0.42 - $0.63 million to $0.54 - $0.81 million.
   - Allow 4 per cent for inflation of costs i.e. $0.44 - $0.66 million to $0.56 - $0.84 million to establish and operate prudential oversight in WA.
   - 332 licensed agents in WA as of 21 January 2013. Approximately $1,325 - $2,530 each to cover new costs. This would be in addition to existing WA licensing fees.

Option E – maintain key elements of the TCF in WA

1. ***Contexts:***
   - Potential for national operators to withdraw from WA market to avoid regulation but to operate via the internet and continue to attract WA consumers. The effect would be to take business from smaller WA agents, increase their likelihood of failing criteria for cover and reduce proportion of consumers covered.
   - Decreasing use of credit cards by consumers to avoid fees and so less option for compensation through credit card charge back – TCF reporting trend in decline of credit cards.

2. ***Assumptions:***

Maintain the service provided by the TCF that includes:

- Licensed agents must meet the same range of prudential criteria and satisfy through annual financial returns that this is maintained.
- Field audits are carried out on selected agents that give cause for some concern against existing criteria (similar to proactive compliance).
- Recovery action taken to recoup expenses where possible. May take several years and involve litigation.
- Sophisticated electronic lodgement of financial returns that aids agents – the TCF system provides agents with immediate result of whether they meet criteria or not.

Costs of TCF based on 2012 Annual Report

Income		$M	WA 10 per cent
	Revenue from operations	5.12	
	Interest income	1.71	
		6.83	**0.68***
Expenses			
	Claims paid	6.03	
	Employee benefits expense	1.53	
	Consultancy	0.11	
	Legal	0.63	
	Occupancy expenses	0.29	
	Other	0.42	
		2.98**	**0.30**

*Based on WA share of funds no significant interest earning assumed.
**Claims paid excluded.

3. Costs:

- Assume TCF is operating efficiently and costs in its annual report are reasonable.
- WA would not earn significant interest income from the estimated $0.5 - $1.5 million available after the TCF meets its liabilities.
- It would take more than 10 per cent of existing TCF expenses to establish and operate a fund in WA, assume 20-30 per cent to establish and operate a fund in WA i.e. $0.9 - $1.2 million.
- Allow 4 per cent for inflation of costs i.e. $0.94 - $1.25 million to establish and operate a fund in WA.
- Assume that IT system development and financial and legal expertise consultancy costs are met within combined staffing and consultancy provision.
- 332 licensed agents in WA as at 21 January 2013. Approximately $2,830 - $3,765 each to cover costs.
- Some offset available from use of existing staff and licensing income, however, would need more specialist staff on payroll or through contract.
- Based on TCF claims data from 2006 - 2012 total compensation to WA consumers was $3,551,383. Payments to WA consumers due to WA agent collapses were $472,899 (13 per cent of total payments). It is important to note this is a volatile average figure. If the average was based on 2006 - 2011 data it would be 39 per cent of total payments due to WA agent collapses. During 2012 two large interstate travel agents collapsed and significantly increased the claims made by WA consumers. For modelling costs will be based on a range of 60 - 90 per cent reduction in compensation payments to WA consumers.
- The average TCF compensation payment for all WA consumers 2006 - 2012 is $507,340. 60 – 90 per cent is $304,410 - $456,615 and 10 - 40 per cent is $50,735 - $202,935.

Use of residual TCF funds

- Cost of managing the residual compensation fund until depleted based on less than five insolvencies per year is estimated at 1 FTE at level 5.4. For 2013 this is $87,070 plus a minimum of 30 per cent on costs - $113,190. A 50 per cent loading is added for complex payouts involving extensive accounting or legal advice. Total cost $156,725.
- Based on TCF claims data from 2006 - 2012 total compensation to WA consumers was $3,551,383. Payments to WA consumers due to WA agent collapses were $472,899 (13 per cent of total payments). It is important to note this is a volatile average figure. If the average was based on 2006 - 2011 data it would be 39 per cent of total payments due to WA agent collapses. During 2012 two large interstate travel agents collapsed and significantly increased the claims made by WA consumers.
- The average compensation payment for WA consumers 2006 - 2012 is $507,340. 60 - 90 per cent is $304,410 - $456,615 and 10 - 40 per cent is $50,735 - $202,935.
- Residual compensation fund estimated to be $0.5 - $1.5 million. Estimated to last one to three years based on average claims of $507,340 pa plus $156,725 pa administration.

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