

TRAVEL AGENTS LICENSING ENDS IN AUSTRALIA ON 30 JUNE 2014

Anthony J Cordato

After forty years, travel agents licensing in Australia will end on 30 June 2014, with nothing but the free market to replace it. The government fund to compensate travellers for money paid to travel agents, which is not passed on to suppliers, will be wound up by 31 December 2015.

Travel Agents Repeal Bills were introduced into the New South Wales and Victorian parliaments in November 2013. The other states and territories are in the process of introducing Bills to repeal their Travel Agents Acts. They are acting upon the Travel Industry Transition Plan which they approved on 7 December 2012.

Travel Agents licensing began in Australia in 1974, in NSW, after a spate of travel agency collapses which left travel consumers stranded because the money they paid had not been passed on to the suppliers – the airlines, the hotels or the tour operators. The problem was that the funds the travel agents had received were not protected, and so the travel consumers lost their travel arrangements and became unsecured creditors in the bankruptcy or liquidation of the travel agent.

In response, the Travel Agents Act, 1973 (NSW) was introduced which licensed travel agents. It required travel agents to deposit all money received from their clients into a separate trust account, with strict rules on payments out of the

trust account. In that way, the travel consumer's money was protected.

In 1986 and 1987, travel agents licensing spread around Australia (except for the Northern Territory). Each State introduced its own Travel Agents Act, in similar terms. Instead of requiring travel agents to have a trust account, the States set up an Australia wide body, the Travel Compensation Fund (the TCF), which they administered. The TCF effectively insures travel consumers against a travel agent's default in passing on money received to suppliers.

Membership of the TCF was made compulsory as a condition of holding a Travel Agents Licence.

It is fair to say that the TCF imposes 'a red tape burden' in terms of travel agents posting substantial security bonds with the TCF and requiring audited accounts annually. This represents a substantial cost and an administrative burden on the 99% of travel agents who look after their clients' money properly.

Travel Compensation Fund will be wound down from 1 July 2014

In introducing the Travel Agents Repeal Bill 2013, the NSW Minister (Anthony Roberts) told parliament on 14 November 2013 that:

The government fund to compensate travellers for money paid to travel agents, which is not passed on to suppliers, will be wound up

"Given that payments are now frequently made directly to travel providers and/or by credit card, the Travel Compensation Fund and licensing has become increasingly redundant. The regulatory scheme has placed a costly administrative burden on the industry."

'Increasingly redundant' is an apt description. These days, money paid to a travel agent hardly has time to clear before it must be paid to suppliers – the IATA BSP being a prime example. All suppliers require money to be paid within a tight time frame, otherwise the booking lapses.

The TCF will accept claims for losses arising up to 30 June 2014, and will then wind down until 31 December 2015.

The Government has not proposed any replacement scheme. The Government expects that "a voluntary industry accreditation system will commence in mid-2014" and that "commercial solutions will be developed to address business insolvency".

The likely 'commercial solution' will have some Government 'encouragement'. Travel insurance providers in Australia are likely to be required to cover financial loss on account of an Australian travel agent's failure to pay travel suppliers, in addition to the existing coverage for fares for any form of transport to be used and accommodation to be used. This coverage is under Commonwealth Government legislation, the Insurance Contracts Regulations, Regulation 26(a).

Consumer Protection after the abolition of travel agents licensing

Strangely enough, the Travel Agents Acts have never contained any consumer protection provisions, other than for the protection of the travel consumer's funds. The Acts do not contain warranties of due skill and care in making travel arrangements, there are no prohibitions on misleading and deceptive advertising, no transparent pricing requirements, no guidelines to allowable deductions from refunds and so forth. These were left to State Fair Trading and Consumer Protection laws.

As the NSW Minister said about the Travel Agents Repeal Bill 2013:

"The 1986 Travel Agents Act is based on an outdated concept of how this industry operates."

"The internet and e-commerce have transformed the way consumers purchase flights, hotels, tours and other travel related products. The 1986 Travel Agents Act is

based on an outdated concept of how this industry operates. The Australian Consumer Law, which commenced on 1 January 2011, has much more relevance to consumer travel purchases both now and into the future."

The Australian Competition and Consumer Commission has published The Australian Consumer Law Guide for the travel and accommodation industry to assist and inform the industry on its obligations to consumers. The Guide contains a summary of the consumer protection provisions in the Australian Consumer Law.

'Outdated concept' is an apt description. Despite the best efforts of the TCF to expand its reach beyond its core of travel agents and tour operators, to wholesalers and providers of travel

related arrangements, it has failed to reach across the travel industry, particularly to suppliers, in any meaningful way. A good example of the failure of travel consumer protection was the collapse of the airline, Air Australia in February 2012, where no TCF coverage was available to passengers who were left stranded in Australia and overseas, and it was left to the travel insurers to assess claims made.

Conclusion

The future is therefore market-based, not government mandated, for travel agents in Australia. Travel agents will be subject to the same consumer protection laws as any other business in Australia.

As the NSW Minister said in conclusion:

"The well-considered transition plan replaces largely redundant institutions and approaches in favour of market-based mechanisms capable of

accommodating all parties' needs for future travel transactions."

The Australian travel market will be therefore open to anyone who wants to operate in it. From the smallest tour operator, to the largest travel providers, from 1 July 2014 they will be able to operate free from travel agents licensing restrictions.

**Travel agents will be
subject to the same
consumer protection laws
as any other business**
