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National Competition Policy review of the National Scheme for the Regulation of Travel Agents

Prepared for the Ministerial Council on Consumer Affairs

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Glossary

ABS	Australian Bureau of Statistics
ACCC	Australian Competition and Consumer Commission
ACT	Australian Capital Territory
AFTA	Australian Federation of Travel Agents
AITT	Australian Institute of Travel and Tourism
ATTRP	Australian Tourism Training Review Panel
BSP	Billing and Settlement Plan
CIE	Centre for International Economics
FITA	Flinders Island Tourism Association
FMRC	Financial Management Research Centre
IATA	International Air Transport Association
ITO	Inbound tour operator
NCP	National Competition Policy
NSW	New South Wales
NT	Northern Territory
SA	South Australia
TAA	Travel Agents Act
TARB	Travel Agents Review Board
TCA	Tourism Council of Australia
TCF	Travel Compensation Fund

TTF	Tourism Taskforce
WA	Western Australia
WAATTRP	Western Australian branch of the Australian Tourism and Training Review Panel

Summary

Background

The Ministerial Council on Consumer Affairs commissioned the Centre for International Economics (CIE), assisted by David Brett, formerly of AT Cocks Consulting and now with PricewaterhouseCoopers, to conduct a National Competition Policy review of the National Cooperative Scheme for the Regulation of Travel Agents, the ‘National Scheme’.

The review team undertook extensive public consultation as part of the review process including preparation of issue and discussion papers and receiving public submissions on both, and consulting with stakeholders in the industry in each state and territory across Australia.

Industry and regulatory framework

The current functional definition of a travel agent captures a range of different business types that are required to be regulated as a travel agent. These include retail and corporate travel agents, consolidators, some airlines, tour wholesalers, inbound tour operators, regional tourism associations, internet based agents, some bus and coach operators, and some hotels, motels, and hostels.

Industry structure

- The regulation governing travel agents affects those business types defined as a travel agent by the Acts, and other stakeholders that can be considered part of the travel agent ‘industry’, including travel agents, other travel service providers not defined as travel agents by the legislation, consumers, both in Australia and abroad, IATA and overseas distribution channels.
- Travel service providers such as airlines, hotels, hostels, bus and coach operators, car hire companies, tour operators, and cruise line companies sell their products through several distribution channels,

including through travel agents, wholesalers, direct to consumers, and in some cases, through consolidators.

- There are several different intermediate distributors of travel service product. Airline tickets can be bought directly from the airlines through IATA. IATA imposes certain financial criteria on all agents that wish to obtain tickets through IATA's Billing and Settlement Plan (BSP). Consolidators also distribute airline tickets, which they purchase directly from airlines, and like IATA, also require retail and corporate agents to meet certain financial criteria before they will deal with them. Terms for payment differ among the different types of intermediate distributors. IATA's BSP, now operates on a 7 day billing cycle.
- Retail and corporate travel agents are a diverse group with businesses both large and small. Larger groups are said to have around 50 per cent of the market, with independent agents comprising the rest. Retail travel agents typically require a deposit from customers on booking. A number of specialised internet-based operators have emerged in recent years which operate much like standard travel agencies, earning commissions on flights, except that they handle no money and have no shop fronts, relying on internet sites to interact with consumers.
- A large number of travel agents that participate in the National Scheme have relatively low turnovers. Around 36 per cent have turnovers less than one million dollars a year. As with many other industries, much of industry income is generated by the bigger travel agencies. The ABS survey found that the 37 per cent of industry income was generated by just 0.6 per cent of businesses.

Regulatory arrangements

- The National Scheme is enacted in various *Travel Agents Acts* in participating states and the *Agents Act 1968* in the ACT. Regulation is essentially twofold: a licensing process directed at service and quality standards; and a compulsory consumer compensation scheme, directed at protecting consumers from financial loss in the event of travel agent default, administered by the Travel Compensation Fund (TCF).
- Licensing procedures are intended to assess technical and business competence of the licensee. The requirements for holding a licence are similar in all jurisdictions: an agent must be aged 18 or over, be a 'fit and proper person', and have experience and/or qualifications to operate a travel agency (or have a manager with the relevant experience and/or qualifications). Exemptions apply in all jurisdictions, but vary in their application.

- To be eligible for a licence, agents must be members of the TCF. The TCF is both the insurer providing compensation in the case of default, and the body conducting the financial assessment of an individual at the point of entry into the industry. The role of the TCF is to:
 - examine the financial resources of travel agents with a view to ensuring that only persons having adequate financial resources that are sufficient to enable them to carry out business as a travel agent are allowed to carry on business; and
 - establish and conduct a fund from which to compensate consumers who have suffered financial loss as a result of a failure to account by a member travel agent, and for the making of emergency payments in appropriate circumstances.
- The TCF only covers consumers who have suffered financial loss in the case where a licensed travel agent fails to account for funds. It does not cover losses arising as a result of financial collapse of travel service suppliers, such as airlines, coach companies etc, not licensed as travel agents. Overseas customers of Australian travel agents are eligible to claim for compensation.
- Participation in the TCF brings with it a number of obligations, including an initial contribution of \$7500 (a rebate of up to \$3000 may be payable) plus an initial administration fee of \$600, ongoing annual renewal fees of \$200, obligations to pay extraordinary levies to replenish the fund if necessary, the submission of annual audited accounts with applications to renew, and obligations to meet certain minimum capital levels and pass specified financial ratio tests.
- Contributions to the TCF are not transferable. Restructuring (including ownership change) of agencies is deemed to represent a new legal entity and so the initial contribution and application fees are payable.
- In 1998–99 out of 3500 TCF participants, 400 agents were found to be financially deficient and were required to implement remedial action or face termination of participation. The TCF submits that around 10 per cent of travel agency business require remedial action each year.

Clarifying the objectives of regulation

- A key requirement of an NCP review is to identify and clarify regulatory objectives and relate them to the problem the legislation is intended to address. In doing so, the review needs to assess the contemporary relevance of those objectives.
- The objectives of existing regulations were found to be:

- to protect consumers against financial loss arising from the failure of travel agents to account for monies deposited with them; and
 - to ensure a minimum standard of service delivery in the travel agent industry.
- NCP presumes that as a rule, voluntary exchanges in unrestricted, competitive markets lead to efficient and fair outcomes. But for certain transactions this presumption may not hold. In the case of the travel agent industry where some consumers pay beforehand but ‘buy later’, there might be an information asymmetry between consumers and agents in that it is difficult for consumers to adequately assess the risks if they know less about the financial viability of the agent than the agent does, and less about the quality of their advice. While information asymmetries might lead to outcomes which are neither efficient or fair, in practice such asymmetries are widespread and frequently generate market responses to correct them. And even where there are no such responses, the relevant question is could intervention do better.
 - Times have changed as many of the risks facing consumers are now that much less. Travel agents no longer hold funds to the same extent. Settlements with airlines are now made four times a month. Some transactions are made direct to the airline through credit cards and the agent is subsequently reimbursed commission. In the case of corporate accounts, the clients may consume travel before making payment. Internet sales involve no cash holdings.
 - However, while these recent changes in the structure and terms of business in the travel agents industry may have diminished the relevance of the objectives, they have not removed them entirely.

Costs and benefits of regulation

The current system of regulation governing travel agents is *strong* regulation. Regulation restricts competition by imposing market entry, exit, and participation requirements.

Licensing

- The benefits of the training, experience and conduct requirements lie chiefly in the establishment of certain standards for principals, agents and consumers. However, these benefits hinge on the extent to which agent competency is *achieved*, and the skills that agents are competent in are *relevant* to the many responsibilities of people required to be

licensed as a travel agent. Many relevant points were raised in submissions that suggest that training and experience requirements do not achieve competency and/or are not relevant. Moreover, the requirements do not mean that the person actually dealing with clients will have passed any experience, training or fit and proper person tests.

- The relevance and benefit of training and experience is considerably diminished for activities caught up in travel agency licensing requirements because they provide agency services even though those services do not involve airline bookings. For those businesses that do agency work as a sideline and for very small businesses the requirements can be onerous.
- On the 'fit and proper' person test, consumers and providers may benefit to the (unknown) extent that licensing requirements discourage 'rogue operators' from entering the industry. On the other hand, the tests do not guarantee that there will be 'no rogues'.
- The direct cost of training programs vary depending on the type of course and levels of qualification undertaken. To this should be added the cost of people's time spent training. The costs of 'fit and proper' person tests are quite small, estimated to cost approximately \$11 100 per annum, plus administration costs.

TCF membership requirements

Benefits of the Travel Compensation Fund include the following.

- The establishment of a mechanism for compensating consumers in the event of agency failure. Consumers are covered when agencies fail and on average 36 fail per year involving some 1700 claims at an average of \$1600 per claim. Total compensation averages \$2.2 million annually.
- In the absence of existing arrangements, governments would come under pressure to rescue travellers affected by agency failure. These pressures might reflect such things as the problems for government when Australian citizens are stranded in foreign countries. The TCF provides a mechanism for handling these pressures which would otherwise fall on government, a mechanism which is paid for by the travelling public, travel agents and travel providers.
- The requirements for good management, including the encouragement of client and trust accounts might prevent some agency failure. Benefits here could arise from *avoided* consumer losses to the extent that the TCF is able to affect the rate of failure through its financial criteria requirements. Other travel businesses such as providers, consolidators and other wholesalers might also be regarded as beneficiaries from any

reduced rate of agency failure. However, it is impossible to identify what the rate of failure of agents would be in the absence of regulation.

- In addition to the direct benefits to consumers who lose money as a result of agent default, consumers more generally might place a benefit on dealing with agents in the knowledge that their monies are secure. How much consumers value this 'security' is difficult to estimate.
- The TCF, in its capacity to recover some of the consumer losses, provides some benefits to other travel agents and, in the long run, consumers. The TCF does this by instituting legal proceedings against former proprietors and directors of failed agencies and sometimes accountants and auditors. The reported overall rate of recovery is 47 per cent of claims paid, less legal fees. Individual consumers also benefit from not having to arrange litigation to recover funds. An estimate of the savings from this collective approach to litigation is \$0.5 million per year.
- Another possible benefit is the enhanced demand arising from greater consumer confidence, which the TCF along with licensing might engender.
- Finally, agents and providers benefit to the extent that demand for their services is enhanced through the confidence engendered by the arrangements. And airlines benefit to the extent that the TCF carries out some of IATA's auditing and reporting requirements leading to synergies and cost savings.

The financial costs of TCF membership are significant.

- Participation costs include application fees and initial contributions, renewal fees, licence fees, audit costs and capital costs, including bank guarantees of nearly 6 per cent of commission income for firms with less than \$1 million turnover and 2.8 per cent on average. Average application costs are around \$5000. To this must be added the costs spent by agents preparing returns, liaising with auditors and the like. For approximately 50 per cent of agents who are IATA members, much of this reporting is similar to IATA membership requirements so the additional costs of time and resources spent for TCF compliance is that much less. And many financially sound firms incur little ongoing expenses to be members.
- The direct costs of TCF membership are more significant for small firms, especially during their establishment phase. To establish an agency, a budget of \$10 000 for the TCF component is required. Audit and interest fees are said to be in the order of \$3000 per annum. Moreover, these processes need to be repeated and establishment costs

incurred again if agency ownership is restructured to the extent that the capital structure of the firm is affected. This means that the scope for an investor to build up a travel agency business and to sell that business at a price which reflects that effort, is compromised.

- Firms also have a contingent cost of levies that in the past have been set at 30 cents per \$1000 of turnover. These could again be levied to top up the pool as needed on a sliding scale so that financially strong firms contribute less. No levies have been imposed since 1993 but some have suggested the scheme would be vulnerable if there were several large scale collapses at the one time. The review team shares this concern.
- For small, non-IATA members, and counting in agents' own time as part of compliance costs, the cost of membership has the potential to be a very large share of profit. For small firms these costs could be equivalent to as much as 60 per cent of profits.
- Bank guarantees cover only 16 per cent of settlements. Should an agency fail, there is a high probability that the claims will be settled out of the compensation pool rather than from a call on a bank guarantee.

Assessing the 'net' benefits of the Travel Compensation Fund

- Total incremental costs of TCF membership are estimated at \$15.0 million annually — equivalent to \$4400 per TCF participant. This represents 14 per cent of profit of an average travel agent. The key components of this total cost are the opportunity cost of capital, the annuitised entry cost and the cost of audits. Across the various size classes, it can be seen that the absolute cost per participant rises with the size of the firm, driven to a large extent by the opportunity cost of minimum capital requirements.
- Balanced against this are identified consumer benefits of \$2.7 million comprising avoided consumer losses and avoided litigation costs. A possible benefit that is not quantifiable is the value of avoided consumer losses as a result of TCF financial criteria leading to a reduced rate of agency failure. Even if failure rates were tripled, other unquantified benefits would still need to be around \$7 million per year to ensure that the requirement for compulsory membership of the TCF generates positive net benefits.
- Some submissions considered that these costs would have to be passed on to consumers while others considered that travel agents bore them completely. The more likely conclusion is that costs are shared between consumers, agents and providers.

- Submissions referred to other costs including the effects on behaviour of consumers. Even though few consumers were aware of licensing and TCF provisions, it is reported that some are, and some of these people are less diligent in their purchase decisions than they might otherwise be, secure in the knowledge that they will be looked after by the TCF. There is no evidence to support this claim, which is mitigated to some degree by the low level of awareness of the TCF.
- Distortions of behaviour, such as firms opting to vertically integrate to avoid regulations or artificial construction of board membership to meet conduct requirements, undoubtedly occur. However, the costs involved are unlikely to be large for typical travel agent firms.
- The functional definition of a travel agent captures some agent types that do not benefit to the same extent as others in the National Scheme. Inbound tour operators are one such group for whom there are few benefits in terms of consumer protection, while costs are incurred in meeting licensing and TCF requirements. A separate national review is currently underway to assess the merits of a range of alternative regulatory arrangements for inbound tour operators to better target their requirements and protect consumers of their services.

Alternative regulatory arrangements

The review examined alternative ways of achieving the objectives of the regulations in less restrictive ways. According to the National Competition Policy (NCP) test applied to the regulations under review, these regulations should not restrict competition unless it can be shown that:

- the benefits of the restriction to the community as a whole outweigh the costs (of the restriction); and
- the objectives of the legislation can only be achieved by restricting competition (Clause 5(1) of the Competition Principles Agreement).

On the first mentioned of these, on the basis of the evidence to hand, the estimated benefits do not exceed the costs of the arrangements — licensing and the TCF. Put another way, if these regulations did not exist, the results of this review would not provide grounds for introducing the arrangements which exist today.

This strong conclusion needs to be tempered by the many difficulties in estimating benefits and costs of existing arrangements, many of which have been impossible to measure. A ‘fuller’ accounting might turn this finding around or indicate that the difference between benefits and costs is even

greater. But the NCP test is that for restrictions to remain, the benefits be shown to outweigh the cost and the review has not done that.

To some extent licensing options can stand on their own, or they can be combined with insurance options to form a regulatory model. For this reason, licensing and accreditation options are first canvassed.

Licensing-related options

- ***Compulsory registration*** would remove existing specifications for certain skills, qualifications and experience levels and provide only recognition of a business entity. There would be no compulsory insurance requirement, fit and proper person or other quality check, beyond that required by broader laws affecting all businesses.
- Registration has the benefit of providing a mechanism for tracing agents to better ensure compliance with business-wide legal requirements (not travel agent specific regulation). Registration does not provide any quality signals, and therefore does not bear the costs of implementing a quality control system. However there is potential for consumers to confuse current licensing with any new registration system, creating an impression that registration implies some indicator of standards or consumer compensation when it does not.
- ***Negative licensing*** is a form of occupational regulation, typically involving a statutory requirement allowing anyone to practice an occupation as long as they do not breach legislative requirements associated with that activity. In the case of travel agents, the negative licensing model could require agents to participate in a *compulsory* consumer compensation scheme, and non-participants could be disqualified from acting as an agent. It could also require agents to meet as many or as few quality standards as deemed appropriate
- Enforcement of a negative licensing model would require additional government resources if a condition of the licence was compensation cover, which was wholly or partly provided by private insurance operators, who may be reluctant to monitor agents. And consumers would bear the cost of bringing non conforming agents to disqualification. Negative licensing would fit more comfortably if exclusive TCF arrangements were maintained, if the TCF assumed the required regulatory responsibilities (at a cost).
- ***Positive licensing***, requiring agents to display their licence (or their licence number in advertisements), provides a simple means for consumers to identify agents that satisfy regulatory requirements. There is also greater opportunity for other industry participants to

identify non-compliant operators. A positive licence also provides a convenient instrument for cost recovery of administration and compliance costs from industry. There are two categories of positive licensing considered: compulsory industry accreditation administered by AFTA; and compulsory government-sponsored licensing, administered by either Fair Trading or equivalent departments, or the TCF.

- AFTA has proposed a **mandatory accreditation scheme**, which may better achieve the minimum standards objective of the current legislation, but not necessarily in a cost effective way. If AFTA were to regulate the industry on a compulsory basis, increased barriers to competition would likely result, raising prices for consumers and agents. Non mandatory accreditation through AFTA already provides a form of badging and competitive accreditation, and in a deregulated industry, accreditation of various kinds would probably become a more widely used indicator of reliability and competence. The competitive accreditation systems that apply in other sectors might not be as effective as they are today if accreditation was compulsory and could not provide this badge-type value.
- **Government licensing** remains an option for travel agent regulation, which could be modified from its existing form to address some of the costs of the current system identified previously. The major changes required to the existing system of licensing concern licensing criteria. A minimalist approach is preferred. This could be to require agents to be a member of any compulsory compensation system, if desired, without the costs of administering a system of complex standards, perhaps beyond that of the fit and proper person test.

Insurance related options

Three insurance/compensation fund membership models or alternatives were explored by the review team, including:

- a privately provided compulsory national insurance scheme with either a private broker or sponsor or the TCF in a trustee role;
- compulsory TCF consumer compensation, with modifications to TCF's current risk assessment practices;
- a privately and publicly offered compulsory national insurance scheme (introducing competition for the TCF); and
- privately provided voluntary insurance (no *regulated* insurance).

Model 1: Privately provided compulsory national insurance

There are two options that comprise a privately provided, *but compulsory*, national insurance scheme depending on who would be the sponsor, or 'trustee' for consumers. For example, it could be designed with or without the TCF in this trustee role.

- The first 'private' option considered would involve *one or more private sponsors or brokers*. In such a model, there would be no need for a TCF. Insurance would be provided only to a licensed or registered travel agent, so long as the travel agent passed the financial criteria set by the underwriter. There would be a statutory requirement that travel agents obtain both a licence or registration and insurance.
- Private insurers would set premiums according to the risk involved, and this could bring about substantial change to the costs currently faced by travel agents. It could mean that the riskiest agents would fail to get insurance, although whether this would mean more or fewer travel agents is rather difficult to gauge. It is possible that a private risk-based approach might admit agents that currently fail to pass the TCF's financial criteria. If costs fall then more agents might enter. The outcome would depend on the approach taken by the underwriters.
- The cost of insurance is something of an unknown. A key benefit of this private scheme model would be the introduction of risk-related premiums, so that well managed and low risk travel agents would not be unfairly penalised by a statutory scheme that for all the efforts to accommodate the needs of different types of agent still has many 'one-size-fits-all' outcomes. A private scheme might also to some extent avoid the barrier imposed by the up front 'premium', especially for small firms.
- There is the issue of whether there is demand in the private sector to offer TCF-type compensation cover. The review team believes there is potential private demand to offer such cover.
- There are attractive 'in principle' benefits of a compulsory private compensation scheme administered entirely by the private sector, mainly in the form of risk-based premiums and in lower overheads. Also, the various travel agent groups that are not well served by the current arrangements because they do not fit the typical travel agent mould are more likely to be accommodated by a private risk-based scheme. There is the possibility of volatility of premiums, and concern about the affect on very small agencies. There is also uncertainty about the initial level of average premiums in a private scheme compared to fees currently charged by the TCF. The feasibility of this model in an Australian context has not been tested, although developments in

IATA's international insurance arrangements suggest there is private demand to operate similar schemes.

- A variation to this option would be to make the TCF a statutory agency with a purely trustee, or broker, role, rather than an insurer. The TCF could also be the focus for consumer complaints, and custodian of the register of travel agents. The advantages and disadvantage of this model are much the same as above, however the continuing 'risk assessment' role for the TCF might make this more attractive for some private insurance industry players — at a regulatory cost. The additional advantage of increasing the likelihood of private underwriting may be offset somewhat by the retention of most of the information/ compliance costs associated with the TCF.

Model 2: Compulsory insurance from (a modified) TCF

There are some changes that could be made to the way the TCF manages the compensation scheme, making a 'modified' TCF an alternative option for this review. These changes involve introducing flexibility in the risk assessment process. This model would need to be considered in the context of a registration or licensing model.

- An important question is 'could the capitalisation requirements be kept in place while relaxing the reporting and audit requirements?' TCF auditing and reporting requirement might reduce risks to the fund from a large pool of agents. However, the requirements do not stop agents failing.
- While strict reporting and auditing requirements might be a good discipline for agents in helping them better manage their business for their own benefit and for consumers, commercial pressures should already encourage this for many agents, whether in the style of TCF requirements or by some other less onerous means for less well resourced agents. It cannot be proven that enforcement of these practices has a significant effect on reducing claims on the fund.
- If the TCF continues to insist on 'adequate' capitalisation levels, then a statement from directors and an auditor that minimum requirements have been met should be considered, for smaller agents in particular.
- Another relevant issue is whether it would be feasible to trade off financial criteria for a higher bank guarantee. With average guarantees at \$81 000 and average 'funds at risk' of \$92 000, the option of setting minimum capital requirements (or guarantees) at a greater level (such as 150 per cent of funds at risk) and abolishing audits is not a cost effective option.

- The current contributions arrangement is only loosely risk related and is not enough to generate a self-supporting fund (levies can be expected from time to time). The arrangements perpetuate exit costs because as firms leave, their fee is sunk in the fund and newcomers taking over their business pay afresh. Contributions also are a bigger cost burden for small firms. An alternative would be to restructure the contribution to incorporate an ongoing premium, while reducing the entry fee component. By introducing an annual contribution scaled to funds at risk, the fixed entry fee could be reduced. This would reduce somewhat the dependence of the fund on entry of new firms and would help to reduce the cost burden on smaller firms in the longer term.
- Introducing flexibility into the way TCF manages the fund would be desirable for agents, and unlikely to impose additional costs for consumers, depending on the types of flexibilities offered. At present, the main pressure for the TCF to alter its risk assessment procedures is the political discipline it operates under, having to satisfy the seven governments on whose continuing commitment it relies. However, with no direct comparison, it is difficult for governments to know whether TCF risk assessment procedures are value for money. Pressure to alter these procedures are unlikely to be as effective as through the introduction of competition.

Model 3: Opening the TCF up to competition

This model involves removing the statutory monopoly on insurance and providing the pre-conditions for competition in the provision of insurance. The requirement to join the TCF would be cancelled. Insurance would still be compulsory. Some form of licensing would probably need to be retained, if only to provide monitoring, trace back and a basis for sanctions. The scheme would be designed to ensure that the TCF has no advantages over a private insurer, that is, the TCF would operate on a competitively neutral basis with respect to private insurers. All insurers would be required to provide the same cover.

- All travel agents would be required to be insured, but they could ‘shop around’ among approved insurers to achieve the most effective insurance solution for them. To place all insurers on an equal footing, all information about *existing* travel agents currently residing with the TCF would need to be available to approved insurers at no cost. All insurance providers would gather their own information about *future* travel agents, using whatever licensing-type information was available.

- This model has all of the advantages (and associated disadvantages) of Model 1 (without the TCF in a broker role), but it would not involve the abolition of the TCF, and so if the private market did not materialise, the continuing operation of the TCF would offer a fall back position for governments. It would ensure that consumers would not be left without insurance. Furthermore, this model may make it more likely that the suggested changes to the TCF in Model 2 would actually occur.
- The possible disadvantage of a private insurance market failing to materialise would be outweighed by the advantage of being able to test the private sector's capacity to fulfil the insurance role, and simultaneously testing the cost-effectiveness of the TCF. The risks of the private market would lie more with possible levels of partial insurance that might emerge, which might be minimum cover providing no worse than that provided by the TCF.
- A possible outcome is that the TCF might collapse in the face of competition. Such an outcome would indicate that the market does not value the insurance product offered by the TCF. In a private insurance market where premiums are unregulated, the review team considers it unlikely that consumers would be left without insurance cover.

Model 4: No industry-specific regulation

This is a 'no statutory insurance scheme', or 'no compulsory insurance' option, rather than a 'no insurance' or no accreditation option, because it is likely that in some instances, private insurance may develop through a voluntary fidelity fund, with or without the assistance or sponsorship of an industry association. It is not a 'no regulation' model because normal laws of commerce and consumer protection would apply as they do to many other businesses.

The no industry-specific regulation model assumes that a travel agent licence is not used by consumers to indicate quality of service, and that other methods are available for providing this signal, if it is so desired. The no industry-specific regulation model shifts the burden of risks involved in travel agency transactions to the consumer.

- Under the no industry-specific regulation model existing market based systems such as franchising and reputation would develop to fill any perceived gap left by the previous system of regulation, such as 'privately provided voluntary insurance' whereby travel agents obtain insurance of their own volition to the benefit of their customers. The

perceived advantage for travel agents would be that they could promote themselves on the basis of offering extra security to customers.

- It is possible that a competitive non-compulsory accreditation system would develop to supplement those aspects of the current licensing system considered valuable by travel agents, whose responsibility it would be to pay for and comply with the accreditation process. Consumers could attribute value to those characteristics by choosing an accredited agent over a non-accredited agent.
- The TCA scheme could be considered a typical response to the kind of accreditation that would be available to travel agents under a ‘no industry-specific regulation’ model, that is, one based on accounting practices and skills development with no regard for formal qualifications, the history and character of the operator. There is also no compensation cover requirements in TCA accreditation.
- A possible outcome from the no industry-specific regulation model is that the industry could collectively decide to invoke a Code of Conduct and allied dispute resolution procedures under the auspices of the ACCC. Some agents have commended this approach as a means of ensuring suitable industry standards. The review team sees ‘no harm’ in this outcome if it is industry driven, although it is acknowledged that the diverse travel agency industry may not agree on a set of standards that are ‘strict’ enough to satisfy the objectives of licensing or to satisfy the requirements of a Code of Conduct.
- While the objectives of the legislation might not be met without industry specific regulation, the costs and risks associated with other options suggest that achieving those objectives do not necessarily produce net benefits for the community. Hence it is possible that in line with the National Competition Policy test, the ‘no compulsory insurance’ model could be a preferred option.

Conclusions and recommendations

- The qualification and experience specified for licensing are not relevant for many travel agents and have not kept pace with technological change. The requirements should be removed.
- The value of the fit and proper person test in ensuring that agents are honest and competent has not been demonstrated. The main reason for retaining the test would be to facilitate a mandatory insurance or compensation scheme. If there were no such scheme the fit and proper person test should be dropped on the ground that demonstrated benefits do not exceed the costs.

- The estimated costs of the TCF substantially exceed the estimated benefits. The requirement for TCF membership should be dropped.
- Of alternative methods of regulation, a competitive insurance system whereby private insurers would be allowed to compete with the TCF — according to prescribed rules and conditions — is the best of the available options. This would be a:
 - *practical option*, because it keeps the corporate memory and administrative structure of the TCF but forces it to respond to competitive pressures;
 - a *preferred option to existing arrangements*, because diverse groups of agents are likely to be better satisfied and premiums are likely to be more risk related; and
 - a *desirable option*, because it would provide information on the likely outcomes of a fully private, voluntary model of regulation for travel agents and might be a transition mechanism to such a voluntary system.
- To support this, the current positive licensing *framework* should remain, and be administered by the present state licensing authorities. However licensing functions should be limited to a fit and proper person test and a check that any compulsory insurance requirements are satisfied.
- Given the inability to demonstrate that either current arrangements or compulsory arrangements with competition between the TCF and private insurance providers produce net benefits, a ‘voluntary’ or ‘no legislated requirements’ model with no mandatory membership of the TCF or prescriptive licensing is the long term recommendation for the regulation of travel agents. Licensing would be unnecessary and a registration system providing a basis for monitoring trace back and sanctions would be sufficient.

If existing arrangements are to continue, exemptions to limits which currently apply might be raised.

1

Background

THE NATIONAL COOPERATIVE SCHEME for the Regulation of Travel Agents (the 'National Scheme') represents a coordinated approach by all state and territories, with the exception of the Northern Territory, to the regulation of travel agents in Australia. The National Scheme requires each travel agent business be licensed in each state/territory where they operate and also be contributing members to the national Travel Compensation Fund (TCF).

The dual regulatory requirements of licensing and TCF membership mean that entry into the travel agents services industry is restricted to operators who satisfy specified criteria covering:

- character;
- educational qualifications and experience; and
- financial viability.

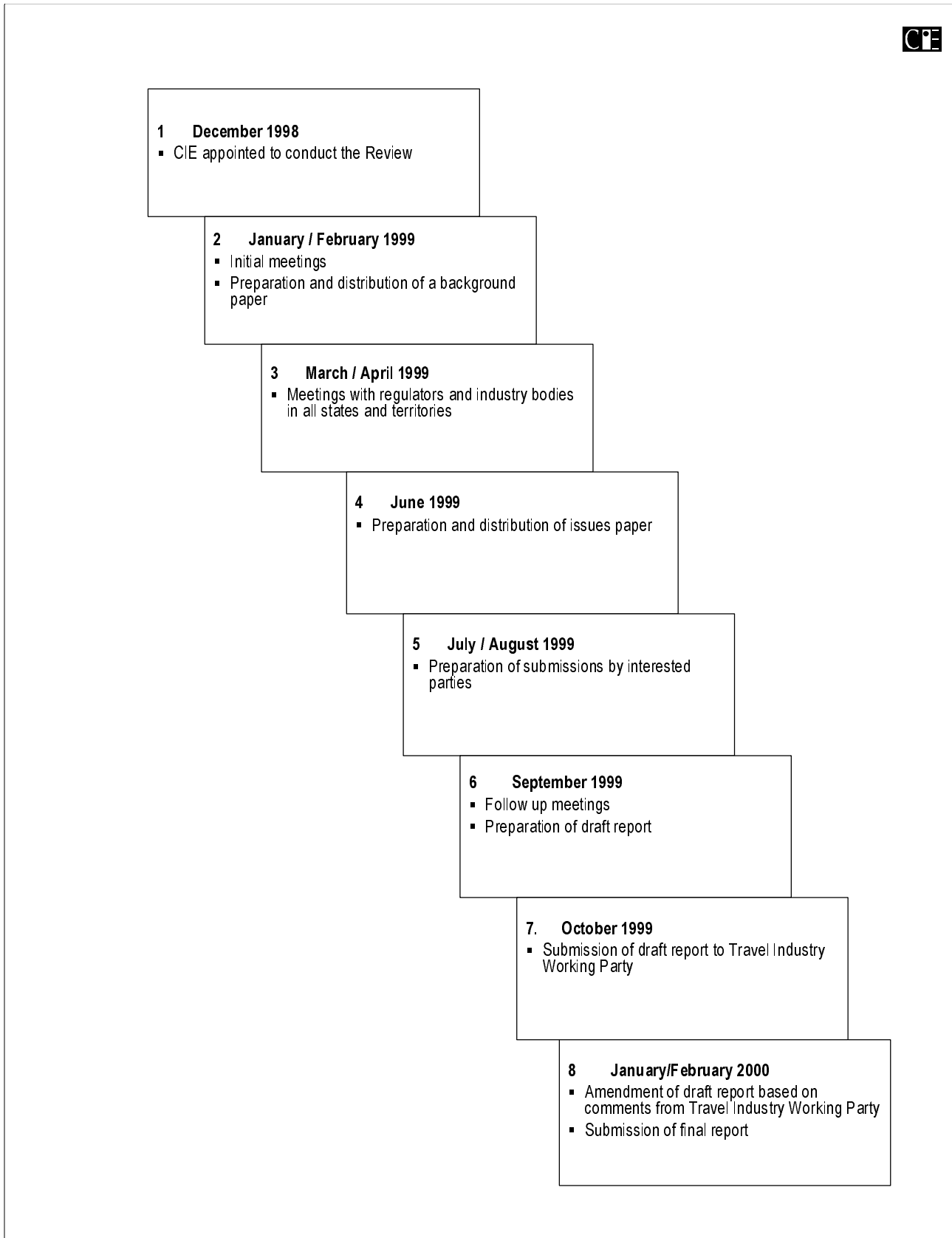
By imposing such restrictions on entry and conditions of supply, the regulation supporting the National Scheme potentially limits competition in the market for travel agent. Accordingly, as part of the commitments of all Australian governments under the National Competition Policy Package, there is a need to review the regulation for consistency with the objectives of National Competition Policy (NCP).

The Ministerial Council on Consumer Affairs initiated this independent review of the National Scheme and in December 1998 appointed the Centre for International Economics (CIE), assisted by David Brett, formerly of AT Cocks Consulting and now with PricewaterhouseCoopers, to conduct the review. The terms of reference for this review are set out in appendix A. In carrying out the review, the CIE team reported to a Travel Industry Working Party appointed by the Ministerial Council on Consumers Affairs.

The review process

Chart 1.1 identifies the key steps taken in the review process.

1.1 Key steps in the review



The review team undertook extensive public consultation as part of the review process. This included:

- distribution of a background paper in February 1999 to all travel agents registered as members of the TCF and also licensed in the Northern Territory, and to other interested parties;
- meetings in all state and territory capitals with regulators, key industry bodies and other interested parties during March and April 1999;
- distribution of an issues paper in June/July 1999 to all parties that had registered an interest in the review;
- advertising the conduct of the review in prominent newspapers in all states as well as liaising with travel industry media;
- attendance at ‘round table’ discussions with travel agents organised by AFTA (involving both AFTA and non-AFTA members);
- acceptance of submissions in response to the issues papers; and
- further follow up meetings, where necessary, to discuss submissions.

Appendix B provides details of the consultation process.

The review received 43 written submissions in response to the issues paper. Details of those that made a submission are also outlined in appendix B.

National Competition Policy — the framework for the review

NCP represents a commitment by all Australian governments to a consistent national approach to improving the overall efficiency and competitiveness of the Australian economy. Reviews of potentially anticompetitive legislation are part of this approach. A key objective of NCP is to develop more open and integrated markets in all sectors of the economy. The intention is to promote competition where it will encourage more efficient use of resources, stimulate cost reductions and bring about quality improvements.

NCP assumes that unrestricted competition is generally desirable *unless* a legislated restriction can be shown, on a case-by-case basis, to deliver socially beneficial or desirable outcomes that are greater than those with no such restrictions in place. The specific test is contained in the *Competition Principles Agreement* to which all Australian governments have agreed that legislation should not restrict competition unless it can be shown that:

- the benefits of the restriction to the community as a whole outweigh the costs (of the restriction); and

- the objectives of the legislation can only be achieved by restricting competition (Clause 5(1) of the *Competition Principles Agreement*).

Market failure as a justification for intervention

Legislative restrictions that, among other things, restrict competition, may be justified as a means of correcting for ‘market failures’ — situations where unfettered competition produces flawed outcomes. For example in its National Competition Policy Guidelines, the Victorian Government has said that:

‘... government intervention in markets should generally be restricted to situations of market failure’ (p. 5).

Market failure is relative. All markets ‘fail’ to some degree. This is because the benchmark against which market failure is measured is an *ideal* case, which in practice does not exist. The ‘textbook’ ideal is where:

- there is no significant market power in the hands of any market participant;
- the actions of any one player do not create costs (or benefits) for others that go uncompensated; and
- all market participants are well informed, in that they have made a rational trade off about how much information they acquire.

The fact that there is divergence from the ideal case or even that such divergence is large and is likely to have large identifiable impacts, is not, *of itself*, a justification for a particular intervention. Under NCP, the test is whether any particular set of arrangements generate positive net benefits — that is, a comparison of actual market outcomes with what can realistically be achieved by intervention.

While generally we would expect legislative restrictions to generate net benefits where there is market failure, other important questions need to be answered first. Would intervention improve an unregulated situation in a net benefit sense? More specifically does the intervention under review that restricts competition produce net benefits? Are there other options that would do better?

Under National Competition Policy, the test for a restriction on competition is that it can be shown to produce benefits, and that there is no less restrictive intervention that would do as well. If a restriction cannot be shown to produce benefits then the presumption under NCP is that it should be removed.

The assessment process in this review

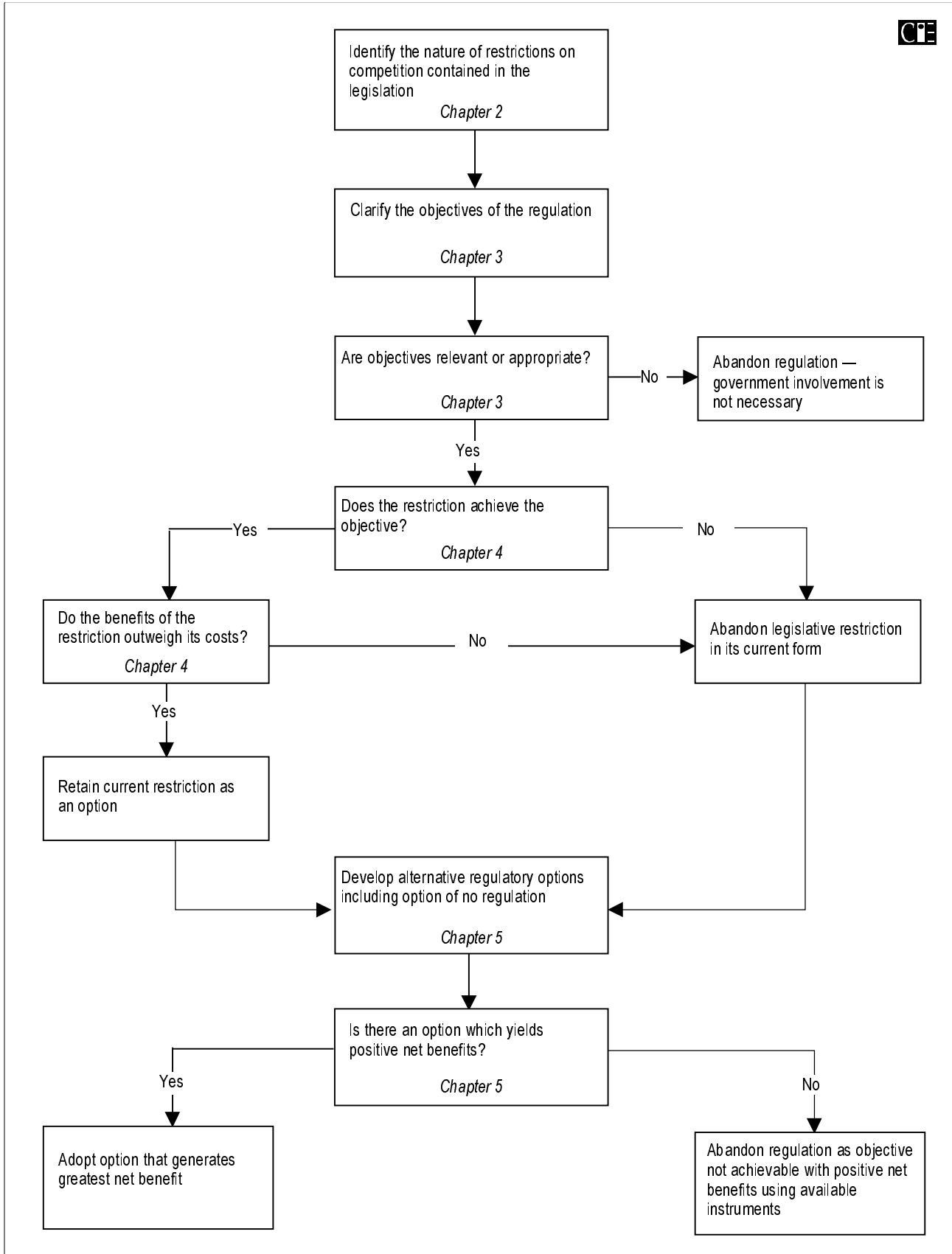
Chart 1.2 illustrates the review assessment process adopted by the review team in conducting the NCP test. This report is structured around this assessment process.

The ultimate objective for this review is to identify a legislative framework which maximises the net welfare of the community. In line with the NCP test, under the protocol identified in chart 1.2, the ‘no regulation’ outcome is adopted unless it can be demonstrated that competition restricting regulation yields positive net benefits to the community. If there is more than one form of regulation that yields positive net benefits, the option with the greatest net benefits is preferred.

The current structure of regulation would be only be retained if:

- its benefits exceed the costs; and
- there is no other means for achieving the objectives of the regulation which yield greater net benefits.

1.2 Review assessment process



2

Industry and regulatory framework

ASSESSING THE NET BENEFITS FROM REGULATION cannot proceed without a thorough understanding of the dimensions of the market that is affected by regulation, the nature of regulation, and where that regulation impacts on the market. Defining what constitutes a travel agent and identifying their suppliers, competitors and customers is a crucial step in determining where the benefits and costs of regulation might lie.

This chapter:

- outlines the existing definition of a travel agent in the legislation, and from that, the types of activities that need a travel agent licence in order to be lawful; and
- describes the review team's understanding of the business of being a travel agent and the regulatory arrangements governing the industry.

Definition of a travel agent

There are many different types of activities that are defined as travel agent services. As a consequence, the travel agent industry comprises a range of different businesses, including:

- retail and corporate travel agents (where corporate travel agents are defined as businesses that derive more than 80 per cent of turnover from sales of travel on credit to businesses or corporate clients);
- consolidators (defined as businesses that derive more than 80 per cent of turnover from sales of airline tickets to retail travel agents);
- some airlines;
- tour wholesalers;
- inbound tour operators (defined as businesses that derive more than 80 per cent of turnover from their operations linking overseas outbound travel agents with Australian suppliers of travel products);

- regional tourism associations;
- internet based agents;
- some bus and coach operators; and
- some hotels, motels, and hostels.

These diverse businesses are defined as travel agents by the legislation (and are therefore subject to regulation) to the extent that they:

- sell or arrange to sell rights to travel;
- sell or arrange to sell rights to travel and accommodation;
- purchase for resale the right of passage to travel; or
- carry on an activity for the purposes on the above criteria.

A person does not carry on business as a travel agent by reason of:

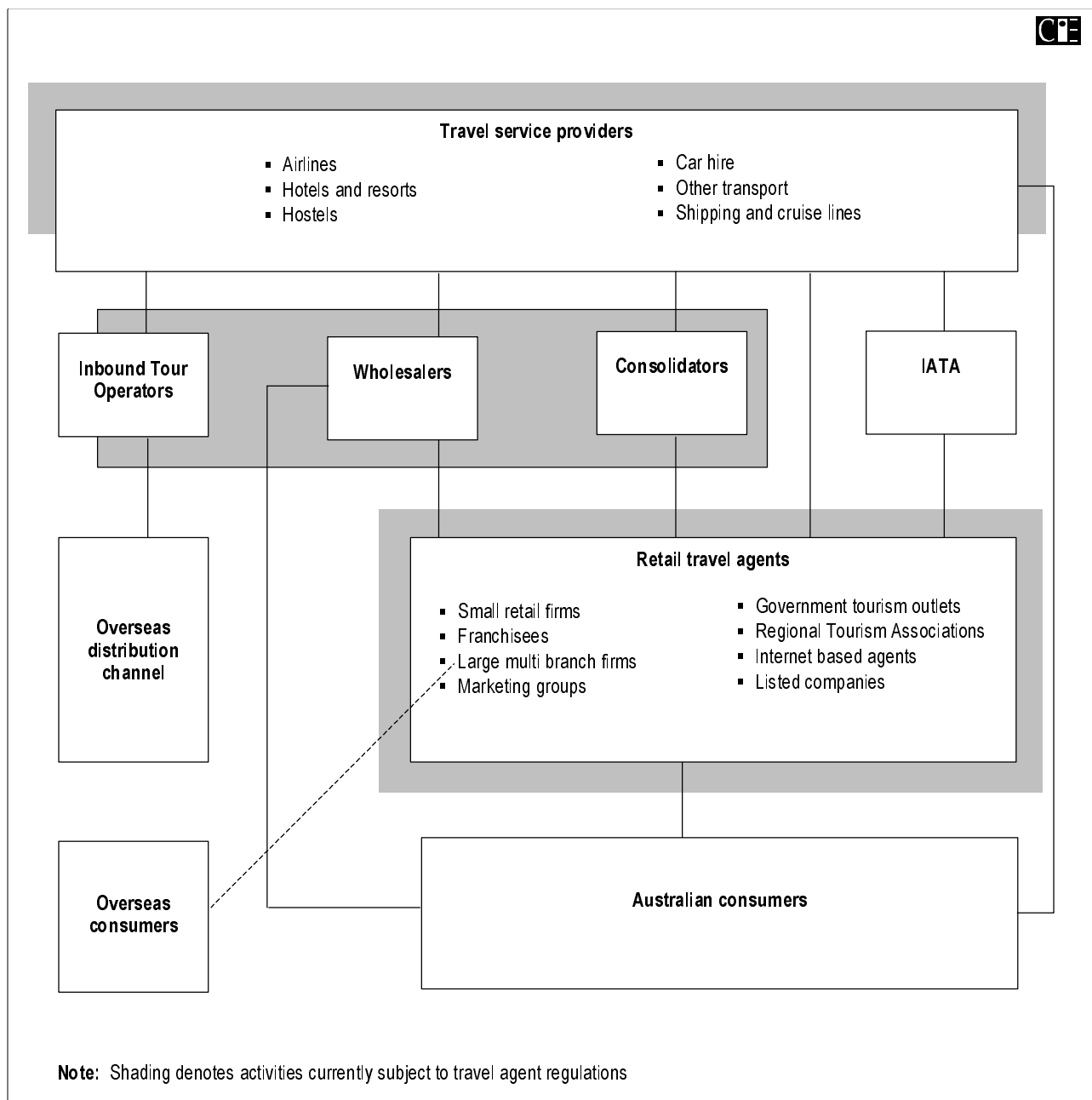
- anything done by that person in the course of employment;
- selling, or arranging for the sale of, rights to travel in a vehicle owned by that person;
- selling, or arranging for the sale of, rights to accommodation at a place owned by that person; or
- carrying on an activity for the purposes of the above exemptions.

Thus, currently, the regulation of travel agents is based on *function* rather than *occupation*. One of the consequences of this is that not all airlines or all coach operators are defined as travel agents, but some are — depending on their activities. To the extent that these operators sell travel services on behalf of other travel operators, they are captured within the legislated definition. This blurs the distinction between the structure of the travel agent industry and the regulatory structure, as some business types are part of the industry, but not all within each type of business are regulated by travel agent legislation.

Industry structure

There are a number of different distribution channels through which travel service suppliers might distribute their products to consumers. Chart 2.1 presents a stylised depiction of the travel industry and the key industry participants. It also seeks to show the way in which travel agent regulation impacts on the industry. Shading in the chart identifies where activities are currently covered, or partly covered, by travel agent regulation.

2.1 Structure of travel agent industry



Travel service providers

Airlines are major suppliers of travel services and sell their products through four main distribution channels — International Air Transport Association (IATA), thereby travel agents, consolidators, wholesalers and direct distribution to the public through their own travel centres, call centres or via the internet. Some airlines are licensed as travel agents

because they sell packages, components of which they do not provide as a principal for example, accommodation. These are typically ones that operate sales offices in Australia.

Other service providers include hotels, hostels, bus and coach operators, car hire companies, tour operators, and cruise line companies. Like airlines these service providers can also sell through wholesalers and/or direct to consumers. Some of these suppliers are also licensed as travel agents depending on the nature of their operations. Businesses are required to be licensed as travel agents if they undertake any of the activities for which a licence is required.

Other business types may also provide inputs to, or be distributors of, travel agent products — such as other transport providers who supply tickets to travel agents. However, they may or may not be travel agents themselves. For instance, buying a train ticket from someone whose employment is to sell tickets does not make that person a travel agent. Thus agents compete for business not only with each other but with some businesses not defined as travel agents by the Acts.

Intermediate distributors of travel service product

Consumers are able to arrange their travel via a number of different distribution channels. Traditionally, the retail or corporate travel agent has been the interface between the consumer and the remainder of the distribution channel. Travel agents sell travel products which they obtain from a number of intermediate distributors, some of whom also deal directly with the customer.

Airline tickets can be bought directly from the airlines through IATA which represents domestic and international airlines, and provides a mechanism for member airlines to distribute air tickets to retail and corporate travel agents, and receive payments for those tickets. IATA imposes certain financial criteria on all agents that wish to obtain tickets through IATA's Billing and Settlement Plan (BSP).

IATA contracts the TCF on a commercial basis to collect and analyse the financial data which is conducted as part of the TCF's ongoing financial scrutiny of travel agents. IATA describes their criteria as being slightly stronger than that of the TCF's with higher paid up capital requirements and less weight on customer account requirements (P. Keogh, IATA, personal communication, 25 March 1999). Agents not satisfying financial criteria might be asked to submit financial data more frequently or to supply a bank guarantee.

Other requirements on IATA accredited agents include having:

- at least one staff member trained in BSP procedures;
- premises that are accessible to the general public during normal business hours;
- a capacity to safely and securely store IATA Traffic Documents; and
- an agency owner/manager who is a fit and proper person to be accredited in that they have not previously been associated with any default of payment to the BSP or been involved in any wilful misconduct associated with the sale of airline tickets (Harris and Howard 1997).

Consolidators also distribute airline tickets, which they purchase directly from airlines. Webjet submitted that around 50 per cent of tickets are sourced through a consolidator (Webjet submission, p.2). Consolidators make use of their economies of scale in terms of their purchasing and distribution systems. Their bulk buying power may enable them to negotiate cheaper ticket prices — they are in effect, air ticket wholesalers.

Like IATA, consolidators also require retail and corporate agents to meet certain financial criteria before they will deal with them. Individual credit arrangements vary, depending on the consolidator involved and also the individual circumstances of their clients. Directors guarantees are commonly requested.

Wholesalers typically package holidays comprising services from a number of different service providers including airlines, hotels and tour operators. These packages are on-sold to consumers through retail and corporate travel agents and also direct to consumers. There is a diverse range of ownership of wholesale businesses with airlines, retail travel agent chains and state governments among those operating wholesale businesses.

Terms for payment differ among the different types of intermediate distributors. IATA's BSP operates under a 7 day billing cycle which has recently been reduced from 14 days. This means that invoices are now issued weekly. Some consolidators also issue invoices on a weekly basis with credit terms varying depending on the assessed credit worthiness of their customers.

Retail and corporate travel agents

Retail and corporate travel agents are a diverse group with businesses both large and small. About half of retail and corporate agencies are represented

by the Australian Federation of Travel Agents (AFTA) which has over 2200 members comprising 1800 retail outlets and 400 allied industry organisations, hotels, wholesalers, and tour operators (AFTA 1999).

Larger groups are said to have around 50 per cent of the market, with independent agents comprising the rest. About half the outlets of big players are franchisees, so independents and franchisees probably represent about 75 per cent of the industry (the balance being wholly owned by some of the big groups).

Retail travel agents typically require a deposit from customers on booking. The balance of payment is made at some prearranged date prior to travel. Travel documentation is forwarded to the customer at some point between payment of balance and the departure date (Harvey World Travel submission, p. 4).

Internet based agents

A number of retail travel agents operate websites to augment their physical sales points. However, a number of specialised internet-based operators have emerged in recent years. These firms operate much like standard travel agencies, earning commissions on flights except that they have no shop front and rely on their internet sites to interact with consumers.

The terms and conditions of trade for these types of firms have implications for the form of regulation. One of these operators, Webjet, submitted that it does not collect or hold consumer funds because sales are entirely by credit card whereby funds are passed directly to either the airline or an IATA approved consolidator (Webjet submission, pp. 2–3). The implications of this method of ‘doing business’ for regulation are discussed further in chapter 5.

There is considerable debate within the industry about how the internet might affect the future structure of the travel industry. This disparity in views was reflected in submissions. The Tourism Task Force (TTF) argued that like ‘the transformations that have befallen other information businesses like banking and stock broking...significant restructuring is a high probability in travel agencies (TTF submission, p. 3). The TTF further argued that there are specific reasons why the internet will rapidly change the travel agency business.

- Firstly, the internet will facilitate increased direct distribution by travel product suppliers to customers.

- Secondly, direct sales on the internet will encourage suppliers to justify lower commissions to the traditional market channels.
- Thirdly, there is increasing investment from technology suppliers such as Microsoft Expedia.
- Finally, the cost of technology investments necessary to compete in e-commerce as a travel agent is rapidly spiralling out of the reach of even middle sized groups (TTF submission pp. 3-4).

AFTA agrees that, while the volume of transactions via the internet is currently very low, internet based transactions 'will become more significant in volume'. However, it does not see the internet as 'seriously eroding the physical distribution system for several years yet'. AFTA see growth in internet transactions being helped by a 'better understanding of credit card fraud protection and also the development of interactive television and other mediums of internet delivery that make it easier to make buying decisions and take the risks of web commerce' (AFTA submission, p. 17).

In contrast, National World Travel Hornsby submitted:

We believe that the Internet will not have significant impact on the retail travel business. We believe that only a limited range of products will be bookable on the Internet in the context of the way the industry is currently structured. We believe these products will mainly be point-to-point published fares or coach tickets. There is also a possibility that land-only products (eg accommodation) could be Internet-compatible. In terms of customers, we believe that those likely to make such bookings are probably the type of person who would not book such fares through an agency anyway (they would probably book directly with an airline).

Whatever the future form of the travel agents industry, it seems likely that the internet and other technology based media will be an integral part of the distribution network for travel products. Key features are likely to be:

- increased direct selling by travel suppliers;
- greater use of the internet and other technological media such as broadband broadcasting as a distribution and marketing channel for domestically based agents;
- competition from overseas agents accessing the Australian market via the internet; and
- increased competition from non-traditional sources such as technology companies.

The challenge is then to ensure that regulation is flexible enough to be able to accommodate whatever structure might emerge in the future.

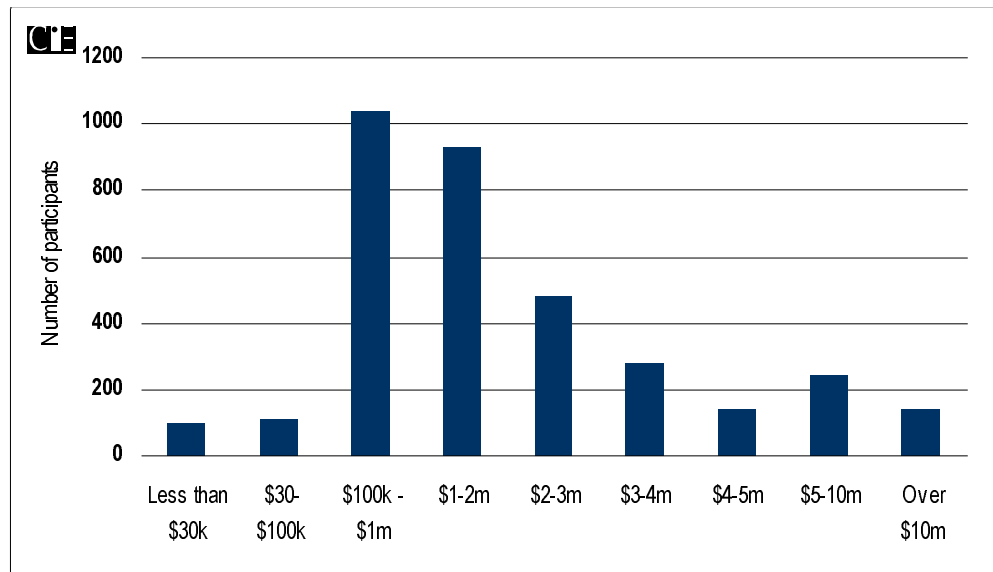
Industry size and profitability

In its 1996–97 study of the travel agents sector, the Australian Bureau of Statistics (ABS) estimated, based on TCF and Northern Territory (NT) data, that the total income of firms providing travel agency services totalled \$1980 million, mainly (65 per cent) in the form of commissions on tickets. Retail travel agents accounted for \$787 million of this income. Commission income was based on gross ticket sales of \$8503 million, 62 per cent of which was sales of international travel (ABS 1998). The majority of this ticket sales revenue was passed through IATA’s BSP system. IATA estimates that turnover through the BSP is in the order of \$7 billion (P. Keogh, IATA, personal communication, 14 October 1999).

Chart 2.2 presents a size profile of TCF participants in terms of annual turnover. It is clear from chart 2.2 that there are a large number of travel agents with relatively low turnovers. Around 36 per cent have turnovers less than one million dollars a year. The TCF submitted that operators in this range generally have other businesses operating alongside the travel agency business (TCF submission, p. 86).

As with many other industries, much of industry income is generated by the bigger travel agencies. The ABS survey found that the 37 per cent of

2.2 Distribution of TCF participants by turnover



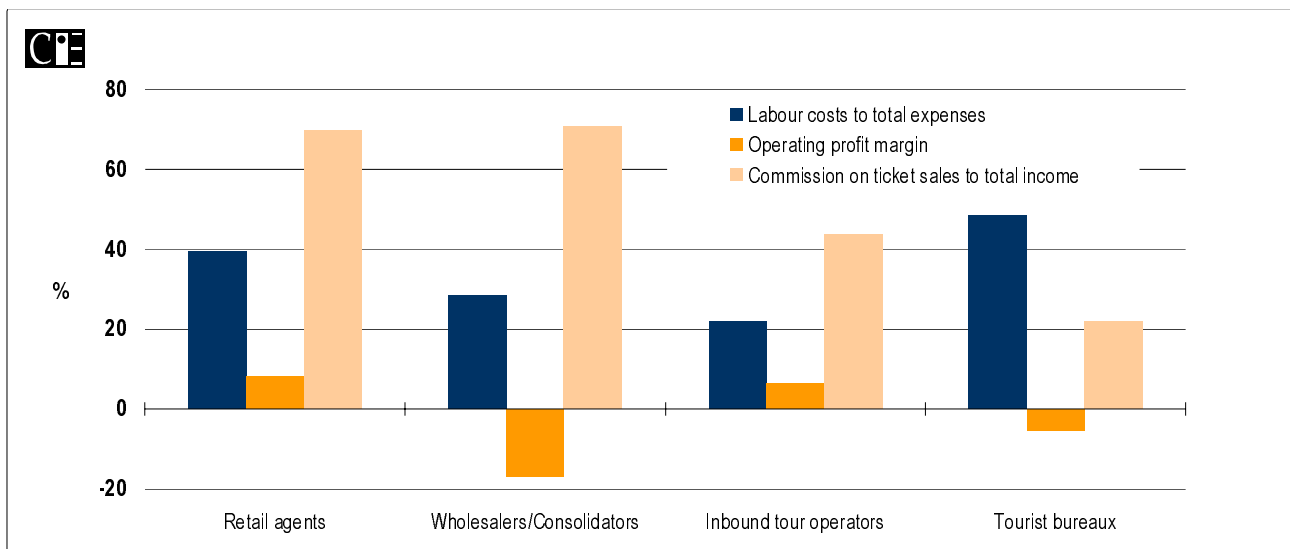
Data source: TCF submission, CIE estimates

industry income was generated by just 0.6 per cent of businesses (here business are defined as the 'highest level accounting units within a business', and so treats multis such as Flight Centre and Thomas Cook as a single business).

Chart 2.3 presents selected statistics on the financial characteristics of the various types of travel agency businesses covered by the ABS survey. A key feature is the low profit margins for these businesses. Retail agents for example faced an operating profit margin of 8.1 per cent of *income*. Wholesalers and consolidators reported a negative operating profit margin. Negative profit margins seem difficult to reconcile and the ABS offers no explanation for this result.

The findings of the ABS survey in terms of profitability of agencies is in contrast to data collected by the Financial Management Research Centre (FRMC) Benchmarking Team which reported a net profit margin of 33 per cent of business income for the average firm in its sample (FRMC Benchmarking Team 1999). In both cases the profit margin represents the amount available for distribution to owners of the business. The discrepancy between the two studies is sizeable, and seems likely to have arisen due to differences in the sample composition of the two studies. In the case of the ABS, the study was based on all members of the TCF and agents licensed by the Northern Territory government whereas the FRMC Benchmarking Team study based on a sample of 20 firms. The FRMC Benchmarking Team emphasise that the results 'should not be considered representative of all travel agencies in Australia' (p. 1.1).

2.3 Different characteristics of travel agency types, 1996-97



Data source: ABS (Australian Bureau of Statistics) 1998, *Travel Agency Services Industry, 1996-97*, Cat. no. 8653.0, ABS, Canberra.

Regulatory arrangements

The National Scheme

The National Scheme is enacted in various *Travel Agents Acts* in participating states and the *Agents Act 1968* in the ACT. Aside from these Acts, the two other main legal instruments forming the legal framework supporting the National Scheme are the *Participation Agreement* and the *Travel Compensation Fund Trust Deed*.

The *Participation Agreement* requires participating jurisdictions to implement uniform core provisions for the licensing of travel agents and to require licensees to be members of the Travel Compensation Fund (TCF). The *Trust Deed* outlines the rights and obligations of the TCF with respect to its members and consumers. The simultaneous requirements that travel agents be licensed and also participate in the TCF sets up a two tier system whereby licensing brings with it certain financial and other obligations associated with participation in the TCF.

The scope of regulation

As discussed previously, the coverage of the National Scheme extends beyond retail travel agents and encompasses:

- service providers such as airlines, bus and coach operators, tour operators, hotels and hostels;
- wholesalers;
- inbound tour operators; and
- consolidators.

This is because regulation is directed to the nature of the business activity irrespective of the type of organisation. So while these groups are not in the mould of the 'traditional' travel agent many will have been captured within the definitions of the National Scheme *by virtue of the legal definition of a travel agent*. Hence they are required to be licensed as a travel agent if they carry on the business of such an agent as described in the Act. The business of a travel agent is defined as selling tickets 'entitling another person to travel' or arranging a 'right of passage', unless the person selling the tickets owns the conveyance or hotel etc. There are certain exemptions and these are discussed below.

The nature of licensing requirements

The licensing procedures are intended to assess technical and business competence of the licensee. The legislation across each participating state and territory is intended to be complementary, with each implementing core uniform provisions. Some discrepancies do exist as is shown in Appendix C, which outlines the main legislative requirements but only in those states and territories currently participating in the National Scheme.

The requirements for holding a licence are similar in all jurisdictions: an agent must be aged 18 or over, be a ‘fit and proper person’, and have experience and/or qualifications to operate a travel agency (or have a manager with the relevant experience and/or qualifications). There are four categories with a different experience/qualification requirement for each. These are described in table 2.4.

The definition of an approved training course depends on the jurisdiction. For example, in the ACT approved training courses are specified in a regulation to the governing Act, whereas Western Australia regards all qualifications adjudged by the Australian Tourism Training Review Panel as being equivalent to a schedule of existing qualifications.

2.4 Qualifications required for licensing

<i>Category of licence</i>	<i>Qualification</i>
Category 1 (sale of international travel)	Five years' experience selling international travel or two years' experience selling international travel plus completion of an approved training course
Category 2 (sale of international travel other than air, eg. cruises)	Two years' experience selling international travel or completion of an approved training course
Category 3 (sale of domestic air travel)	One years' experience selling international or domestic air travel or completion of an approved training course
Category 4 (sale of domestic travel other than by air)	No qualifications necessary

Exemptions

Some jurisdictions have introduced regulations providing for exemptions from licensing. These include exemptions for:

- businesses where the value of travel arrangements for the sale of domestic travel *only* is less than \$30 000 per year;
- for some agencies that arrange day trips; and
- tour desks that operate coaches, depending on the nature of the activities they are engaging in.

Appendix C details the exemptions that apply across the various jurisdictions participating in the National Scheme.

The \$30 000 threshold does not apply to any sales of overseas travel, and does not distinguish between monies held in trust and own business revenues. Nor does it distinguish between those who hold monies in trust and those who do not (but still arrange travel). The TCF submitted that the threshold was implemented to:

enable occasional or one-off dealings by, for example, coach operators, social groups or clubs, to avoid the necessity for licensing and TCF membership costs. It also aided a corporation to conduct its own travel plans without the need to deal through a licensed travel agency. (TCF submission, p. 53)

The interpretation of what is included in the definition of turnover varies across jurisdictions. In South Australia for example, turnover is taken to be total turnover rather than booking turnover (sales of travel services provided by other operators). Whereas in Western Australia, only the latter is taken into account when determining whether a business exceeds the threshold or not.

Exemption is either by formal regulation or on a more pragmatic basis through non-enforcement of the licensing requirements. The Crown is also exempt from the requirement to gain a travel agents' licence. It is recognised, however, that some government travel service providers have obtained a licence regardless of their entitlement to exemption.

Consistency across jurisdictions

The intention of the National Scheme is to provide for uniformity in regulation across all participating states and territories. However, since its initial implementation, individual jurisdictions have made changes in the way they implement regulations which have resulted in differences across jurisdictions. Differences in the interpretation of the threshold for exemption and approved qualifications are two areas where there are identifiable differences. The level of fees for licensing is another such area. A mutual recognition system is in place to offset jurisdictional discrepancies.

Requirements of TCF participation

The TCF is intended to complement the licensing system by assessing the financial resources of the licensee. It is both the insurer providing

compensation in the case of default, and the body conducting the financial assessment of an individual at the point of entry into the industry.

The role of the TCF as defined by the Trust Deed is to:

- examine the financial resources of travel agents with a view to ensuring that only persons having adequate financial resources that are sufficient to enable them to carry out business of a travel agent are permitted to be members of the TCF; and
- establish and conduct a fund from which to compensate clients who have suffered financial loss as a result of a failure to account by a member travel agent, and for the making of emergency payments in appropriate circumstances.

Nature of 'insurance' cover – who is covered for what?

The TCF only covers consumers who have suffered financial loss in the case where a licensed travel agent fails to account for funds. It does not cover losses arising as a result of financial collapse of travel service suppliers, such as airlines, coach companies etc, not licensed as travel agents. Overseas consumers are eligible to claim for compensation.

Travel arrangements eligible for compensation include:

- travel by air, land (coach and rail) or sea;
- accommodation at hotels or resorts;
- car hire;
- airport transfers;
- admission fees; and
- travellers cheques (TCF submission, pp. 18–19).

Losses covered by the consumer's travel insurance are not eligible for compensation, although travel insurance policies generally exclude coverage for losses that are covered by the TCF.

Where alternative arrangements for travel are more costly than the original payment, claimants are required to establish any expense occurred over the original loss. Compensation for this 'consequential loss' are paid as a matter of discretion, with the Board of the TCF approving a 25 per cent ceiling on consequential loss as a proportion of the amount lost in the hands of the agent (TCF submission, p. 20).

The TCF does have the discretion to pay claims arising from the collapse of unlicensed travel agents, but this happens infrequently, and typically involves cases where consumers believe they have been dealing with a licensed agent.

The TCF does not compensate consumers for alleged unsatisfactory performance by travel agents, nor does it compensate creditors or suppliers (eg. airlines, hotels) for losses they incur due to the financial collapse of travel agencies.

Financial tests, audits and fees

Participation in the TCF brings with it a number of obligations. These include:

- an initial contribution of \$7500 plus an initial administration fee of \$600 (a rebate of the initial contribution of up to \$3000 after the first year is available depending on the financial strength of the participant);
- ongoing annual renewal fees of \$200;
- obligations to pay extraordinary levies to replenish the fund if necessary;
- the submission of annual audited accounts with applications to renew; and
- obligations to meet certain minimum capital levels and pass specified financial ratio tests.

The size of the rebate of the initial contribution depends upon the performance of the participant in the financial tests after 9 months of operation.

Additional levies were required to replenish the TCF fund in 1991, 1992 and 1993. In 1994, a scale of 'risk' related levies were specified with levy rates (as a proportion of turnover) dependent on the participant's score in the financial tests but have not been applied. It is anticipated that if future levies were required, these would be based on this risk related scale (TCF submission, p. 21).

Applicants (to both enter initially and renew) must meet certain financial criteria. The financial criteria relate to the adequacy of owners equity (capital and reserves) and a score based upon various financial ratio tests. The minimum level of capital is based upon the level of turnover (table 2.5).

2.5 Minimum capital requirements

<i>Turnover</i>	<i>Minimum capital and reserves</i>
Less than \$750 000	\$10 000
\$750 000 to \$1.5 million	\$20 000
Greater than \$1.5 million	\$35 000

Source: TCF

Two financial ratio tests are calculated on a points basis awarded in the range of –3 to 8. These tests are based on the:

- ratio of the agency’s net tangible assets to gross turnover; and
- net working capital expressed as a multiple of monthly overhead expenses.

Participants are also awarded 4 points for maintaining a fully funded Client Travel Account or Trust Bank Account in accordance with published guidelines.

Compliance with the minimum capital requirements and attainment of a minimum of 10 points from the tests are required for approval of the initial application and for annual renewal of membership.

In 1998–99 out of 3500 TCF participants, 400 agents were found to be financially deficient and were required to implement remedial action or face termination of participation. The TCF submits that approximately 10 per cent of all travel agency business require remedial action each year (TCF supplementary submission, p. 7).

Agents not satisfying the financial criteria may be asked to provide a bank guarantee or more recently, an insurance bond. These bank guarantees are currently the most common form of security used by those agents and are worth around \$70 million, held in favour of the TCF.

Around 240 agents have opted for the bonding scheme option, operated Guernica/QBE Trade Indemnity. This scheme is open to those agents that are required to provide a guarantee to the TCF. In return for an annual payment, Guernica/QBE Trade Indemnity provide a guarantee to the TCF equivalent to the required bank guarantee. The fee for this is calculated as 2.2 per cent of the guarantee amount.

The financial assessment criteria are linked to annual turnover, comprising the total amount paid to the agency by consumers for travel and other services. Where the agency is only one part of the business, the financial tests are applied to the total turnover of the business — agency and non agency. The TCF argues that the ‘non-travel agency business can impinge

on the success of the whole entity and, if that part of the business fails, it could have a consequent flow-on effect to the whole entity and result in a log of claims against the TCF (TCF submission, p. 25).

However, special provisions apply for five classes of businesses:

- airlines;
- bus and coach operators;
- inbound tour operators;
- consolidators; and
- corporate travel agencies.

These special conditions include:

- an option of meeting financial criteria for renewal by providing a bank guarantee for 150 per cent of maximum client funds held at any time throughout the previous year (as certified by their auditor);
- relief for airline and bus and coach operators who take up the 150 per cent bank guarantee option from the necessity to conduct an audit solely for TCF purposes;
- the award of maximum (16) points in the two financial ratio tests to airlines with net tangible assets of \$100 million and its audited financial statements having no negative audit qualifications; and
- the award of maximum (16) points in the two financial ratio tests to airlines or bus and coach operators with an equity (after deleting intangibles) of at least 20 per cent of total tangible assets.

This special treatment of these classes of agents is in recognition of these agents holding minimal client deposits for future travel arrangements in relation to their overall activity. These special cases are also eligible for the Guernica bonding alternative.

Contributions to the TCF are not transferable. Restructuring of agencies is deemed to represent a new legal entity and so the initial contribution and application fees are payable. Some considerations are given to involuntary changes in legal structure due to divorce, death or illness.

3

Clarifying the objectives of regulation

THE OBJECTIVES OF LEGISLATION PLAY A CENTRAL ROLE in the NCP review process. A key requirement of an NCP review is to identify and clarify regulatory objectives and relate them to the problem the legislation is intended to address. In doing so, the review needs to assess the contemporary relevance of those objectives. Once identified, these objectives form the basis for evaluating the effectiveness of the regulation and assessing the costs and benefits of addressing the underlying problems by way of the existing legislative restrictions.

The present travel agent legislation was introduced against a background of high profile agency collapses and emerging pressures to control what was seen as a proliferation of ‘rogue’ agents who were unskilled at best and untrustworthy at worst. It was seen to be in the interests of consumers to impose a more restrictive environment for the entry and operation of agents. In this way, it was expected that certain risks faced by consumers would be mitigated.

‘Protection of consumers’ is a broad concept. It needs to be refined to be useful in establishing the objectives of the travel agent legislation. The task for this chapter is to:

- clarify what is meant by consumer protection in the context of this legislation;
- identify what characteristics of the market for travel agents services might justify government intervention in the market and how regulation might lead to better outcomes; and
- question whether, in the light of changes in the way business is now done, such protection remains a relevant objective for government regulation.

What are the boundaries of the ‘consumer protection’ objective?

Travel agents industry-specific consumer protection regulation is limited to protecting consumers from:

- financial loss arising from the failure of travel agencies to account for monies deposited with them; and
- inadequate service from travel agents perhaps as a result of incompetence on behalf of the travel agent.

Limitations on consumer financial loss are brought about primarily through the operation of the TCF and its defined limits of coverage. Fit and proper person and qualification requirements are also aimed at meeting this objective. Protection against financial loss is limited to consumers who have lost money through the failure of a travel agent. Coverage does not extend to creditors or suppliers for losses nor does it cover consumer losses in respect of amounts paid directly to principals for services provided by those principals.

To the extent that licensing and TCF requirements reduce the risk of agency collapse, they may also *incidentally* protect others in the supply chain of travel services. This was recognised during the debate over the Act in Victoria when Mr Smith, the member for Waverly stated that:

The travel industry cannot afford any sign of negligence or fraud because it shakes public confidence in the industry. (Debate on the second reading of the Travel Agents Act, 22 April 1986, p 1415)

However, while this protection of confidence may confer benefits, and should be taken into account in appraising benefits and costs of the restrictions, it is not a prime focus of the regulation.

Qualification requirements could also be seen as an attempt to ensure that travel agents have some *minimum* level of competency necessary to function as a travel agent. Regulation does not go beyond this. It does not, for example, set out to regulate standards for travel agents beyond this minimum threshold level of competency. The intention of legislators to protect consumers against financial loss and incompetence can be seen from the second reading speech of the Travel Agents Bill in Victoria (1986), where the then Minister for Consumer Affairs, Mr Spyker, stated:

This is an important advance in consumer protection, as it is recognised that the incompetence or dishonesty of a travel agent can destroy a trip for which ordinary people have saved for a long time and which they may never have the chance to repeat.

This sentiment is also present in the second reading speech of the then South Australian Minister for Consumer Affairs who noted:

The purpose of this Bill is to provide for a system of licensing and regulation of travel agents. The need for such a system is apparent. The collapse of a travel agency may mean the loss of life savings for some consumers. For others, it may mean the loss of a once-in-a-lifetime holiday. (Office of Consumer and Business Affairs submission, p.4)

While it is clear that the current legislation sets out to protect consumers from agency failure, some participants submitted that coverage should be extended to include service providers. For example, the Flinders Island Tourism Association (FITA), whose members are facing losses following the demise of an air operator, noted:

It seems amazing that there is no provision to safeguard the forwarding of payments to service operators...The customer is safeguarded but the service provider does not seem to warrant similar importance. (FITA submission, p1)

Other stakeholders raised, during discussions with the review team, the possibility of extending coverage to include compensation for losses as a result of principals failing.

Both these proposals would involve changes to the coverage of regulation which would take it beyond the scope of the original objectives.

Why a national approach?

The national approach to regulation has arisen from a desire for regulation to be implemented as efficiently as possible and with input from the travel industry. As described by Mr Murray, the then member for Drummoyne, during the debate on the second reading of the Act in New South Wales, the *Travel Agents Act* was seen as a 'landmark in industry regulation':

A centrally managed compensation fund is essential to reduce administration costs. The trustees will create such an arrangement and, at the same time, give the travel industry the opportunity to use its commercial and managerial skills in running an efficient scheme. (NSW debate on the second reading, 1986 p. 1608)

The intention of the *Travel Agents Act* was, in the context of a national approach, also to streamline existing licensing procedures by disbanding the registration board system that existed along with the government administration of any previous compensation funds, correcting any perceived deficiencies in existing legislation.

This bill goes further than the existing provisions governing the industry in that it gives the commissioner an alternative to the present disciplinary provisions...By integrating the licensing systems and disciplinary functions within the existing occupation licensing systems, a less legalistic and more streamlined regulatory system will result. (ibid pp. 1607-8)

Part of these perceived deficiencies of state based legislation related to the ability of an individual state to control an industry which operated nationally. In its submission, the TCF contend that:

By the mid-1980s it was clear that while the NSW scheme provided a measure of protection for the travelling public, it was a partial success only. It could not achieve the national protection that was necessary for an industry that operated across State and Territory borders. In addition, the imposition of trust account requirements, which inhibited cash flow and investment of client funds, encouraged nationally operating agents to channel client funds through other jurisdictions where trust accounting was not required. In one case a major company allegedly relocated to Melbourne to avoid the TARB [Travel Agents Review Board] requirements. (TCF submission, p. 10)

Recent technological changes which allow business to operate more effectively from remote locations, may strengthen arguments for a uniform national approach.

The review was not presented with any arguments for states to 'go it alone' in the regulation of travel agents. The benefit of the National Scheme, as a coordinated approach across states, is that it is intended to avoid differences in regulation that give rise to behaviour that is unlikely to be efficient. For example, it is unlikely to be efficient (from an economywide perspective) for a firm's choice of location to be influenced by differences in government regulation.

The review team can see no good reasons for moving away from a national approach to the regulation of travel agents in Australia. Further, the review team notes that the absence of the Northern Territory as a party to the National Scheme is inconsistent with such a national approach to regulation.

What are the drivers of travel agent specific regulation?

NCP presumes that as a rule, voluntary exchanges in unrestricted, competitive markets lead to efficient and fair outcomes. But for certain transactions this presumption may not hold and markets are said to 'fail'. Legislative reviews in an NCP context flow from this possibility and involve testing questions such as has market failure actually occurred?

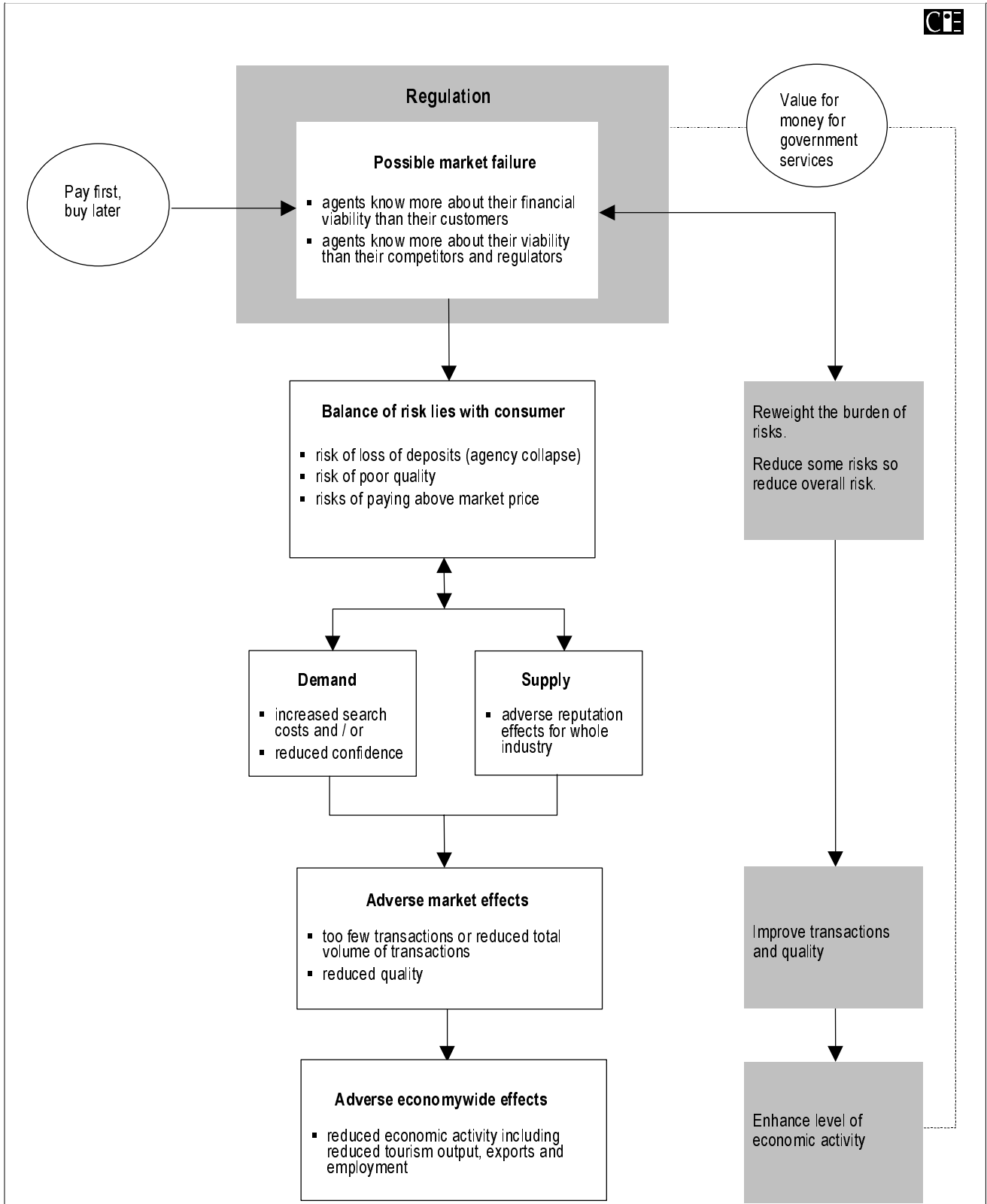
Have interventions that are intended to redress market failures led to improved outcomes? And, if they have not, are there any interventions that would?

Travel agent activity is that of an intermediary who receives consumer prepayments, holds the funds for a period of time and then passes on to the principal who provides the service that has been paid for. In the travel agent industry, as with a number of other industries such as real estate, where some consumers may pay beforehand but effectively ‘buy later’, some submissions, for example the TCF, suggested that there might be an information asymmetry between consumers and agents. It might be difficult for consumers to adequately assess the risks involved in a transaction if they know less about the financial viability of the agent with which they deal than the agent does, and less about the quality of their advice. Similarly, agents might know more about their financial position, and presumably the quality of their advice, than their competitors and their regulators. On the other hand, it could be argued that consumers also have knowledge that agents might not have, for example, whether they are serious buyers or simply shopping around without any intention of travelling. Such uncertainties, both on the supply and demand sides, are features of most markets. To the extent that information asymmetries exist, there may be a case for regulation if those imbalances can be addressed without producing net costs to the community.

Chart 3.1 illustrates how such an information imbalance might lead to adverse impacts on economic efficiency and economic activity more generally. With this information imbalance consumers know less about the financial viability or quality of a particular agent than the agent themselves. This means the balance of risk in a transaction lies more with consumers than it would be the case if payments were made directly to the principal. Ignorant of the true competence, financial position or intentions of some agents, some customers might get caught when individual agencies fail. There might also be an indirect effect whereby reduced consumer confidence could lead to a reduction in the number of total transactions, reduced quality of service, and eventually a reduction in tourism and economic activity more broadly.

Market mechanisms might correct for imbalances in information in the travel agent industry to mitigate the effects of this market failure. In other industries, such mechanisms sometimes emerge to offset apparent imbalances in information and thereby provide confidence for consumers. Offering guarantees and warranties is one way in which markets address information imbalances.

3.1 Efficiency effects of market information problems



For example, in the case of second hand cars, independent inspection services are widely available for informing consumers about quality of a product. Market mechanisms for addressing information imbalances in the travel agent industry might include accreditation systems or awards for past performance for instance.

As shown in chart 3.1, regulation *in principle* seeks to address these types of problems with the intention of reweighting the burden of risks, reducing some — and thereby overall — risk. Regulatory provisions which seek to screen out unfit persons, ensure market participants are qualified, set minimum standards and provide relief to consumers who are victims of fraud or mismanagement, are all aimed at reweighting this risk away from consumers. Whether existing or other forms of regulation deliver better outcomes than market driven solutions is a key issue for this review.

Some participants in the review questioned why transactions with travel agents should be treated differently from other large retail transactions such as purchases of home appliances or furniture. It could be argued that such transactions might also involve payments being made in advance of goods being delivered and where similar information imbalances are likely to exist.

In their submission, the West Australian branch of the Australian Tourism and Training Review Panel (WAATTRP) addressed the issue of whether travel services are different from other consumer goods and argued that the:

purchase of a holiday package is unlike other consumer goods where the item can be delivered, tried out, and or inspected. Large amounts of money are exchanged before the consumer is able to gain the benefit of travel agency services. It is easy to mislead the consumer; the benefits of a quality product are often intangible and subjective...The consumer can often only be given an *impression* of a product. (WAATTRP submission, p.1)

Others considered that consumers are now so much better informed about travel, although they may not be more informed about the relative reliability of agents as holders of funds.

Travel has become a commodity that most people indulge in every year or even more frequently. The consumer is therefore much better informed than twenty years ago. (Gerd Wilmer, Landmark Travel, p. 2)

While increased frequency of travel is likely to better inform consumers about travel options and distribution channels, it may not improve their ability to judge the financial viability of a particular agent. Any reduction

in risk in dealing with travel agents then comes more from a reduction in the amount and duration of holding of funds.

The risk of losing prepayment was highlighted by the NSW Department of Fair Trading. In their view, consumers expect governments to regulate where prepayments are involved. And where intermediaries are involved, governments have been even more prepared to regulate.

In the review team's opinion, Australian consumers are surrounded by many products with intangible and subjective components. As a general rule people seem to like such aspects of goods. Similarly, these days the purchase of many goods and services involves payment and commitment well before actual receipt of the product. To try and 'protect' consumers from exercising all these choices, beyond existing consumer protection legislation, could run the risk of saddling them with unsustainable costs.

Are the objectives for regulation still relevant?

As discussed, the original drivers for the regulation of travel agents were predominantly:

- the nature of the transaction whereby travel agents had access to client funds before the client had acquired the travel product and the consequent scope for an agent to become bankrupt taking consumer funds with them;
- the nature of the purchase whereby consumers were making relatively large outlays on a product that they knew relatively little about; and
- the inability of individuals to identify where and when their funds are at risk.

Several submissions contended that these features of travel agency services, which may have been important in days gone by, were now much less important.

Risk of financial losses

For several reasons, travel agents no longer hold funds to the same extent.

- Settlements with airlines are now made four times a month.
- Some transactions are made direct to the airline through credit cards and the agent is subsequently reimbursed commission.

- In the case of corporate accounts, the clients may consume travel before making payment.

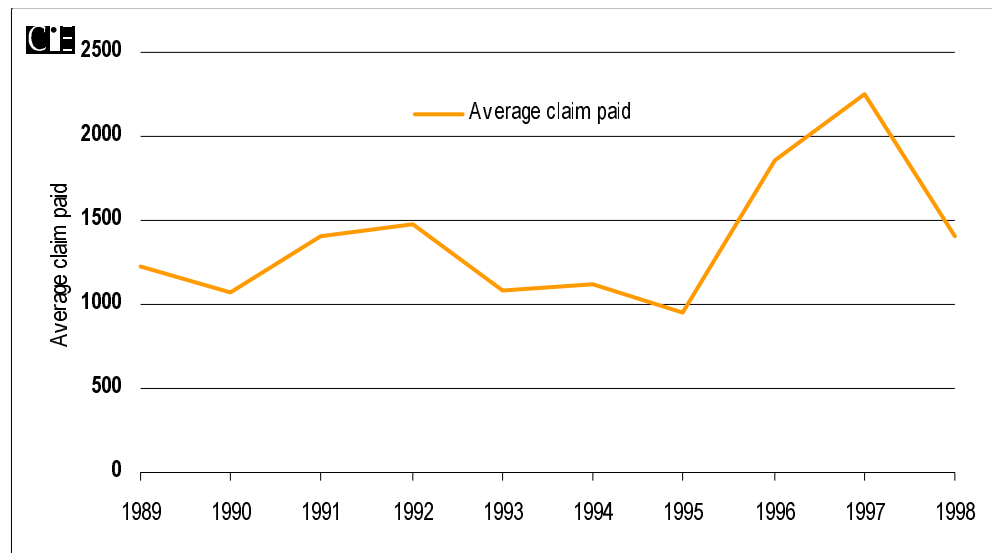
Several submissions concluded that agents are holding fewer funds.

It is understood that, depending on ticketing time limits and conditions, few travel agents now retain consumer funds for more than a few days. Therefore, the risk to consumers from travel agents not passing on ticket monies has been greatly diminished. (Small Business Development Commission)

In summary, yes, travel agents are holding less money for a shorter time. (Gerd Wilmer, Landmark Travel, p. 7)

A key question is whether these changes mean that consumers are likely to face smaller losses as a result of agency failure. Chart 3.2 presents the profile of claims paid by the TCF since 1989. It is difficult to identify a clear trend in the claims paid over time, although in 1996 and 1997, the average claim jumped markedly as a result of two large failures. It seems clear that, despite the changes in terms and conditions of trade and the way which travel business is conducted, this has yet to flow through in terms of any impact on consumer losses as a result of agency failures.

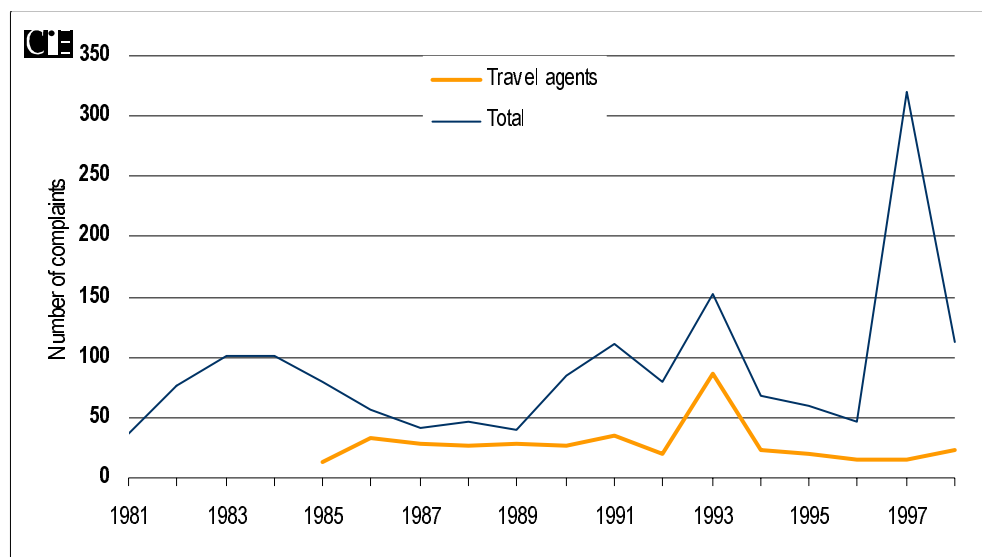
3.2 Average claim paid by the TCF



Data source: TCF Database, CIE calculations.

Minimum standards of service

The South Australian Office of Consumer and Business Affairs submitted that there is continuing need for regulation of travel agents. The office cited the ongoing level of complaints in respect of travel and travel-related services (chart 3.3) in support of this view.

3.3 Travel related complaints received in South Australia^a

^a Total includes complaints against domestic and international tours and 'Other'.

Data source: Office of Consumer and Business Affairs submission, p.5.

However, the submission recognised, as a proportion of trips or some similar measure, the rate of consumer complaints will have fallen since the 1980s as a result of increased travel by Australian consumers. It is not clear to what extent these complaints concern matters related to competency — which is the focus of current licensing regulation. Matters that are beyond the control of the travel agents are not relevant here.

The Consumers Association of Western Australia also support continued regulation of travel agents submitting that:

Many consumers of travel agency services however tend to be less well informed, make purchase decisions infrequently ...and hence may not have the capacity to gather the information they require to adequately assess the risks between agents or agent types. The emergence of web based agents and other forms of electronic booking will reshape the role of travel agents and will increase the choices and confusion of consumers. (Consumers Association of Western Australia, submission p.1)

On the other hand, it could be argued that the emergence of web based agents in fact demonstrates that there are lower risks in the industry. It could be the case that people are now willing to complete transactions on the web because booking travel is perceived as being less risky than it was a decade ago, or it is at least a more familiar type of activity to engage in. This familiarity might make consumers better informed and more assertive over their rights as consumers.

It seems reasonable to conclude that recent changes in the structure and terms of business in the travel agents industry *have not* diminished the relevance of the objectives of regulation to a point where regulation is not worth contemplating. Those objectives being:

- to protect consumers against financial loss arising from the failure of travel agents to account for monies deposited with them; and
- to ensure a minimum standard of service in the travel agent industry.

The key question that the review needs to address is whether current or alternative forms of regulation are able to *fulfil* these objectives and in doing so, whether the benefits that are generated are sufficient to outweigh the costs of administration, enforcement and compliance by industry. This is the focus of the following chapters.

The scope of the National Scheme

The current definition of a travel agent under the legislation is based upon *function*, defining those covered under the Act by the functions they perform. A number of submissions suggested that the coverage of the definition was too broad, drawing in businesses that were never intended to be covered when the legislation was introduced.

The National Scheme does cover a wide range of firms as a result of the functional definition of the acts. In the review team's opinion, claims of too broad a coverage arise not so much as a result of the coverage of regulation per se — to varying degrees those covered by the scheme pose some risk to consumer monies — rather the problem lies with the requirements of the regulations themselves. This issue is discussed further in the following chapter while the review team's conclusions on the scope of the scheme are presented in chapter 6.

4

Costs and benefits of regulation

SUBMISSIONS REFLECTED A RANGE OF VIEWS about the impacts of the regulations under review. Some people considered licensing to be a practical way of achieving the consumer protection objectives identified in chapter 3 and well worth the costs, while others considered it to be ineffective, not justified in terms of costs and not a true store of value of agents: ‘Consumer awareness and recognition of state’s licensing is very low’ (AFTA submission, p. 1).

Similarly, some people saw the TCF as a relatively low cost way of protecting consumers on the grounds that direct monetary costs were small relative to the turnover of most agents. These people also considered compliance costs were small in as much as TCF audit and reporting requirements were not much different from what a well run business should be doing and, for some 50 per cent of TCF members, were required anyway as part of IATA membership. According to the TCF:

As the TCF requirements impose an obligation to have sufficient financial resources and encourage separation of client monies, it is a non-sequitur to suggest the TCF requirements tip some agencies into failure. On the contrary, the rules promote financial success if understood and adhered to.

Others considered the TCF to be ineffective in preventing agency failure and that reporting requirements required considerable time over and above that required for normal good business management. Some submissions considered that consumers were generally unaware of the existence of licensing requirements and TCF cover. Others again contended that costs in terms of consumer behaviour should also be considered. For example, AFTA submitted that ‘there now exist consumers who are so aware of the cost recovery effects of TCF legislation against travel agency collapse that there is a high propensity to take risks in purchasing travel at a low price because it won’t matter if a loss occurs’ (AFTA submission, p. 6). Gerd Wilmer of Landmark Travel said that, contrary to suggestions in the issues paper, consumers ‘...are not lulled into a false sense of security — they are pretty much protected no matter how foolishly they act. It is this security that distorts the market’.

Weighing up these quite different points of view is no easy matter and it is not possible to get a full quantification of benefits and costs. The relevant comparison is between a base case of no regulation and current regulation. Yet the evidence available to measure the size of various claimed benefits and costs of regulation compared with that base case is not fully available. And both cases have indirect elements that preclude precise measurement. In these circumstances, the only practical option is to carefully identify and weigh up each of the components of benefits and costs. This chapter draws on submissions, industry visits, roundtables and the review team's own research to draw together such an account of these benefits and costs as they apply to each restriction to competition.

Several submissions suggested that there are strong imperatives for regulations to 'pay their way' by demonstrating benefits that exceed costs as travel agent activities are increasingly competing with unregulated forms of supply which do not offer the benefits of licensing and TCF membership and do not charge for these services. The supply of web based internet services is one such source of supply, as is direct research and booking by travellers, and direct sale by providers. The Tourism Task Force suggested that:

Problems in enforcement of the current travel agent legislation is meaning that internet travel agencies commonly have a competitive advantage against more traditional rivals because they do not have the compliance costs of being licensed and, more importantly, contributing to the Travel Compensation Fund. (Tourism Taskforce submission, p. 4)

In this sense, the benefits and costs of existing arrangements are being required to pass their own commercial test as travel agents, the regulatory framework they operate in and the administrators of that framework increasingly face direct competition from these other ways of delivering travel agency services.

The current system of regulation governing travel agents under the National Co-operative Scheme is *strong* regulation. Regulation restricts competition by imposing market entry requirements, market exit requirements, and market participation requirements. As set out in chapter 2, the mechanisms used include:

- occupational (qualification and experience) requirements, including 'fit and proper person' tests;
- membership of the Travel Compensation Fund (TCF); and
- compliance requirements with respect to participation in the TCF.

These restrictions are imposed by the two-tier system of licensing and TCF membership requirements.

The benefits and costs of occupational requirements

Occupational requirements, which might vary slightly from state to state in terms of their implementation, generally relate to:

- fit and proper person (age and criminal background); and
- travel agent training, qualifications and experience.

The *in principle* benefits of requiring travel agents to meet certain occupational requirements include:

- improving industry standards by ensuring market participants are of a good character and have minimum competencies; and
- providing confidence of consumers to deal with travel agents *of all types*.

Comments on licensing

The questions for the review are how large are these potential benefits and what costs do they impose? According to Jetset: ‘...licensing is fundamental to keeping standards high and preventing the entry of unqualified and uncapitalised businesses into the industry’ (Jetset submission, p. 1). Indeed, Jetset suggested tightening licensing conditions to include IATA accreditation and membership of AFTA.

Qantas considered that the benefits of the legislation lie in the extent to which it directly protects consumers. According to Qantas: ‘Prior to the introduction of this legislation, consumers had been disadvantaged by bogus, incompetent or dishonest travel agents which had taken advantage of low entry costs and barriers’.

On the other hand, a number of participants contended that: the incidence of ‘rogue traders’ was quite small; ‘rogue traders’ still exist, even with licensing; and there is now other general legislation which would cover needs.

AFTA, for example, considered that the need for consumer protection should be put in perspective. According to AFTA: ‘The move to state licensing and TCF was originally influenced by exaggerated media response to small isolated cases of unacceptable abuse’. Following this line of

reasoning, it could be argued that consumer awareness of the need to choose a travel agent with care might have been heightened by the media publicity, thereby making the need for legislation that much less. On the other hand, just how long such therapeutic shocks would be effective is an open question.

Peter Colliver, the owner of an independent travel agency, questioned whether licensing has actually caused any reductions that may have occurred in agency failures. To the extent that there have been any reductions, it is difficult to sort out the extent to which this reflects a more sophisticated and discerning travelling public and changes in the general legislative framework.

The Tourism Council of Australia submitted that:

...industry specific regulation of travel agents is unnecessary as there are other legal remedies to protect consumers against purchases of substandard goods or services such as through the Trade Practices Act and state and territory fair trading acts. (Tourism Council of Australia submission, p. 1)

State fair trading legislation and the *Trade Practices Act* do offer legal remedies for a range of circumstances also addressed by the Travel Agents Acts. For instance, the *NSW Fair Trading Act 1987* covers:

- accepting payment without intending or being able to supply as ordered (Section 53);
- misleading statements about certain business activities concerning profitability or risk (Section 54);
- unconscionable conduct (Section 43);
- bait advertising where advertisements cannot be made to supply services where there is reasonable grounds that the person will not be able to supply those services (Section 51); and
- certain misleading conduct in relation to services where a person shall not engage in conduct that is liable to mislead the public as to the nature, characteristics, suitability for their purpose, or the quantity of any service (Section 50).

The *NSW Consumer Claims Act 1998* also allows for any consumer to apply to the Tribunal for determination of a consumer claim.

The *Trade Practices Act 1974*, upon which state fair trading legislation is based, also covers most of these features. For example, reference is made to:

- unconscionable conduct;

- misleading or deceptive conduct;
- false or misleading representations of services of a particular standard, quality, value or grade; and
- warranties in relation to the supply of services, where there is an implied warranty that services will be rendered with due care and skill.

Broader consumer protection legislation stipulates the rights and the expectations of the consumer and the appropriate behaviour of service suppliers. What they do not do is specify *how* suppliers' behaviour can be made appropriate apart from providing for penalties for breaches of the Acts.

The 'fit and proper person' test

The fit and proper person test attempts to take a preventative approach to ensuring appropriate standards of travel agents.

Benefits of the 'fit and proper person' test

As set out in chapter 2, among other things, holders of a travel agent's licence must be 18 or over and a 'fit and proper person'. Opinions about the 'fit and proper person' requirement vary. Most participants regarded the requirements to be unnecessary and ineffective.

No submission strenuously argued that the 'fit and proper person' test delivered major benefits. Even with it, it is said, consumers still complain and some agents behave improperly.

A truly 'fit and proper person' does not need a piece of paper issued by a government department to say so. It is the performance by that person that makes for 'fit and proper' classification. (AFTA submission appendix, p. 15)

It is likely that the fit and proper person test discourages some people from applying. However, it is not possible to establish the extent to which people are discouraged from applying or for that matter, the proportion of those so discouraged who would have turned out to be poor travel agents.

Without knowing the statistics regarding the number of applications declined, we cannot comment on the effectiveness of the 'fit and proper' clause, other than to observe that there does not seem to be too many unsuitable persons obtaining a licence. (Harvey World Travel)

The difficulty is that the existing mechanism for determining ones 'fit and proper' status (criminal record checks) may not achieve its objective. It is rarely possible to determine a person's disposition to act improperly from a

criminal history check alone. Moreover, without renewed checking, the record check upon entry provides little guarantee against inappropriate behaviour in the future.

The value and appropriateness of ‘fit and proper person’ tests are matters of quite difficult judgement. On the one hand, it could be argued that people are entitled to a fresh start and that ‘fit and proper’ person tests constitute a rather rough justice. But, by another view, it could be argued that repeat offenders have caused some travel agency problems and, if travel agents are to be licensed at all, there needs to be some basis for keeping these people in check.

Costs of the ‘fit and proper person’ test

The direct costs of the ‘fit and proper person’ test are not very high. The actual cost of checking one’s own criminal record is \$30. Assuming a constant number of travel agents and an annual turnover of 370 agents (the average number of new entrants between 1989 and 1998), this would give rise to an implied annual cost of performing these checks of \$11 100.

A less tangible cost of the fit and proper person test arises as a result of the imperfect nature of the test. Since it is not possible to screen for criminal intent, the fit and proper test excludes what might be considered ‘high risk’ individuals — that is, those with criminal records. It is therefore likely that the test prevents otherwise appropriately qualified applicants from entering the industry on the basis of their past criminal record (and who would have had no intention of committing fraud or otherwise misappropriating funds). Consumers are unlikely to see any material reduction in competition as a result of this exclusion so that the main costs will be borne by those excluded.

Assessment of the fit and proper person test

Thus, it could be argued that, even if the benefits of the ‘fit and proper person’ test are not well demonstrated, the costs are relatively low and, on these grounds, the requirement should be left in place. However, this approach would not be consistent with National Competition Policy, which requires that all interventions, big and small, be required to pay their way through the benefits they yield. If the knowledge that a ‘fit and proper person’ test applies does instil confidence in consumers (which many submissions doubt) and that confidence is unwarranted because the test is an ineffective screen, then a potential cost would be the misinformation given to consumers and the consequent misguided conclusion that any agent will do. The general thrust of submissions was that few people were

aware of the ‘fit and proper person’ test, so that any such indirect costs are probably small. So costs are likely to be small, but so are benefits and, on balance, there is insufficient evidence to conclude that these benefits exceed the costs.

However, it is useful to ask the question ‘how big would the benefits have to be in order to justify the presence of the test?’. The quantified costs are in the order of \$11 000 annually. Assuming that the average loss per failed agency of \$62 000 applies (see below), then the fit and proper person test would need to prevent one incident of consumers losing their money every five and a half years in order to generate net benefits.

Training and experience requirements

Travel agents are also required to have certain experience and/or qualifications. As noted in chapter 2 (table 2.4), there are four categories with a different experience–qualification requirement for each. Category 4 covers the role of domestic travel other than air and requires no experience or qualifications. Categories 3 and 2 require one and two years experience respectively selling international or domestic travel and completion of an approved training course. Category 1 requires five years experience selling international travel, which might be reduced to two years if an approved training course has been completed. The definition of an approved training course depends on the jurisdiction.

Benefits of training and experience requirements

There were a range of benefits of training and experience requirements put to the review team.

Quality training will ensure that the agent has an accurate understanding of the product and their responsibility to the consumer and their profession... Awareness of the ethics that the agent operates under should ensure that the agent understands the obligations and guidelines that exist to protect the consumer and maintain the integrity of the profession. (ATTRP submission, p. 1)

There is value in licensing and categorisation reflecting the qualification and or level of experience achieved by the agent as an indication of the skill/competence level. (ibid p. 3)

The requirement to employ qualified staff may well impose costs, but unless employees have at least minimum skills in making bookings according to procedures laid down by principals, an agency — a classic service industry — cannot provide the services required by the public. (Qantas submission)

The view expressed by Qantas might reflect the fact that the training and experience requirements are closer to the requirements of major airlines than they are for many of the other entities now caught up in the regulation of travel agents including, for example, bus and coach operators and inbound tour operators. It might also reflect the fact that under existing arrangements airlines share whatever the benefits are from licensing but do not incur many of the costs. If there were no licensing, providers might have to be more stringent in their own appointment and supervision of agents.

Some submissions questioned the value of training and experience requirements on the grounds that one person could not guarantee competence.

One person alone does not impose standards. (Gerd Wilmer, Landmark Travel)

It is curious that only the 'day to day manager' needs such experience whereas any consultants can use a CRS and potentially cause havoc. (Bruce Doig, Snow Time Tours Pty Ltd, p. 3)

The benefits of training and experience requirements hinge on the extent to which:

- agent competency is *achieved*; and
- the skills that agents are competent in are *relevant* to the many responsibilities of people required to be licensed as a travel agent. Many relevant points were raised in submissions that suggest that training and experience requirements do not achieve competency and/or are not relevant.

John Donovan of Traveland, Yarralumla, submitted that travel agents should be licensed, but that three years of experience — as required in the Act — was unnecessary. Some other participants considered that the requirements had few benefits (and substantial costs) for small, specialist operators offering limited agency services that are ancillary to their main business.

Some participants submitted that, while the training and experience requirements may have once had benefits in providing and verifying the possession of relevant skills, these days the skill needs were much different and were more about general skills of system application. The review team was told several times that some large agencies recruit for such general skills rather than travel agency experience and training.

The Act does not improve the standard of competence of a travel agent. It measures 'time spent' rather than 'knowledge or skills acquired'...Con

structuring an airfare used to be a skill unique to the travel industry. Today, probably 90 per cent of all tickets are point to point. If you do happen to come across a mileage fare, you let the computer do the work... (Gerd Wilmer, Landmark Travel)

Other participants considered that the requirements were not widely enforced and, when they were, still did not achieve benefits by way of ensuring a professional level of service.

...the 'qualification' aspects of licensing are not widely enforced and, even when enforced, do not guarantee a professional level of service. Our preference would be for licensing to be restricted to a strict enforcement of financial profitability and capital adequacy requirements. (Harvey World Travel submission, p. 7)

These sentiments do not suggest that training and experience are not important attributes. The issue is whether the requirements in place achieve the best outcomes. Ideally all travel agents, and indeed other professionals, would engage in ongoing professional development. The review team does not question the diversity and complexity of skills necessary to be a successful consultant for example, interpersonal communication and selling abilities, product knowledge from local tours to world cruises, documentation skills, world geography including a knowledge of visas and health regulations, computer skills, accounting abilities and an overall attention to detail (Reed 1997, p. 371).

The problem is that the training and experience requirements of the existing legislation *do not* deliver these skills. Therefore, the benefits of the acquiring of these skills for the professionalism of the industry and for consumers, cannot be attributed to the *Travel Agents Acts*.

Costs of training and experience requirements

The direct cost of training programs varies depending on the type of course and levels of qualification undertaken. As an example, a Certificate III course might cost somewhere between \$1500 and \$4000 depending on the provider and whatever additional courses are offered. To this should be added the cost of people's time spent training.

However, only the *incremental* cost of these qualifications is relevant here. This means that if required qualifications would have been sought anyway regardless of the regulation, the incremental costs of the qualification requirement would be low. Obviously, a key point here is how relevant the qualification requirements are to a person seeking to become an agent. As the above comments from submissions to the review suggest, for a portion

of the industry the required qualifications are not relevant and so generate a real cost to some new entrants to the industry.

The TCA referred to costs incurred through double regulating and that the hoped for savings through uniformity on core provisions were being diluted. The council referred to agents shopping around for a legislative environment that suited them and then relying on mutual recognition to conduct business in other jurisdictions.

The direct cost of experience requirements is likely to be low, so long as people are working in a relevant area. But some submissions strongly concluded that experience requirements in areas of limited relevance to their business were potentially a large cost.

The requirement for two years experience is not the problem, the problem is that the experience must be '**selling or arranging international airfares**'. If experience must be a criteria, its scope should be expanded to incorporate people who have generally good business skills and competence. (Bruce Doig, Snowtime Tours submission, p.2)

One submissions questioned the ACT requirement that ownership of travel agencies be limited to people with three years experience and completion of particular fare and ticketing courses. These requirements mean that investors in travel agencies must include on the Board people so qualified.

To comply with ACT law I have had to put one of my staff on the board of my family company. She is paid a retainer and this is an unnecessary expense. If she were not a person of good will she could put me out of business simply by resigning. (John Donovan, Traveland Yarralumla submission, p. 4)

Assessment of training and experience licensing requirements

The benefits of the training and experience requirements lie chiefly in the establishment of certain standards for principals, agents and consumers. There appears to be considerable competition between providers of approved courses and agents appear to recruit on the basis of courses completed. Training courses are developed in association with industry groups, which should provide strong disciplines of relevance for conventional travel agents whose main business is domestic and international airline booking.

The relevance of the requirements is tempered by:

- the increased use of software to program in information and booking instructions to settle how bookings are made; and

- the claims by some participants that enforcement is relatively limited and variable.

The costs of these requirements are substantial for firms not requiring international airline experience and requirements to have board members with these requirements is also reported to impose costs and expose others to some risks. Finally, there seems to be some duplication with IATA, which also has some training requirements.

In addition to these compliance costs, the cost of administering the licensing system must also be recognised. The New South Wales Department of Fair Trading suggests that, of its total licence compliance and investigation activities, perhaps 5 to 10 per cent is occupied by travel agent matters. By comparison, motor vehicle related licensing activities absorb as much as seven times that amount of resources. Referrals by the TCF are one trigger for the department's activities. The department's own monitoring can lead to further investigatory and compliance action. Complaints (including those from customers and other agents about, for example unlicensed trading) can be a third source. To the extent that licence fees are cost reflective, then these should reflect the cost of administration and the cost of monitoring and compliance. The review team estimates these fees to total \$1.2 million annually. It has not been possible to partition these costs between the various aspects of the licensing framework.

While the review team does not have the evidence to conclude that benefits do not exceed costs, there is sufficient doubt about this to look very hard at alternative ways of doing things. It does seem clear, however, that the current arrangements are generating net costs for operators that do not fit the conventional mould of a travel agent. There is some doubt about whether the current licensing framework is the most appropriate method of enforcing minimum standards. This provides an opening for testing competitive accreditation approaches and these matters are discussed in chapter 5.

Some of the benefits and costs claimed for the regulatory arrangements relate to the total set of regulatory arrangements, including the TCF, and these matters are addressed following discussion of the TCF.

Benefits and costs of compulsory membership of the TCF

While many submissions sought major change in licensing arrangements, there was stronger support for the role of the TCF. Some of the reported

benefits relate to the nature of the market where there could be imbalances in information between consumers and agents. According to the TCF, market sponsored corrections which might overcome these imbalances are not practical in the travel industry.

Benefits of the TCF

The benefits of the presence of the TCF arise primarily from its role in compensating consumers in the event of agency failure. This leads to direct benefits to consumers equal to the compensation received from the TCF, less compensation from some alternative to the TCF. Such compensation, paid for by imposts on the travel agents industry, could be viewed as a transfer, but is nonetheless viewed as a benefit to the consumers that receive it (and a cost to those that have to pay it).

A benefit of compensation from the TCF is partly in its expedition — while compensation would be available from other sources, it may take longer to retrieve. The amount of compensation from other sources may be more or less than that from the TCF. The existence of the TCF makes this difficult to estimate.

The TCF, in its submission, said that in the life of the TCF, extending over 13 years, there had been 377 agency failures resulting in claims paid to consumers of over \$23 million. On average, there are 36 failures a year with over \$2.2 million paid to consumers. Chart 4.1 illustrates the profile of claims paid by the location of the claimant and also the location of the agent against which a claim was made.

From chart 4.1 it can be seen that:

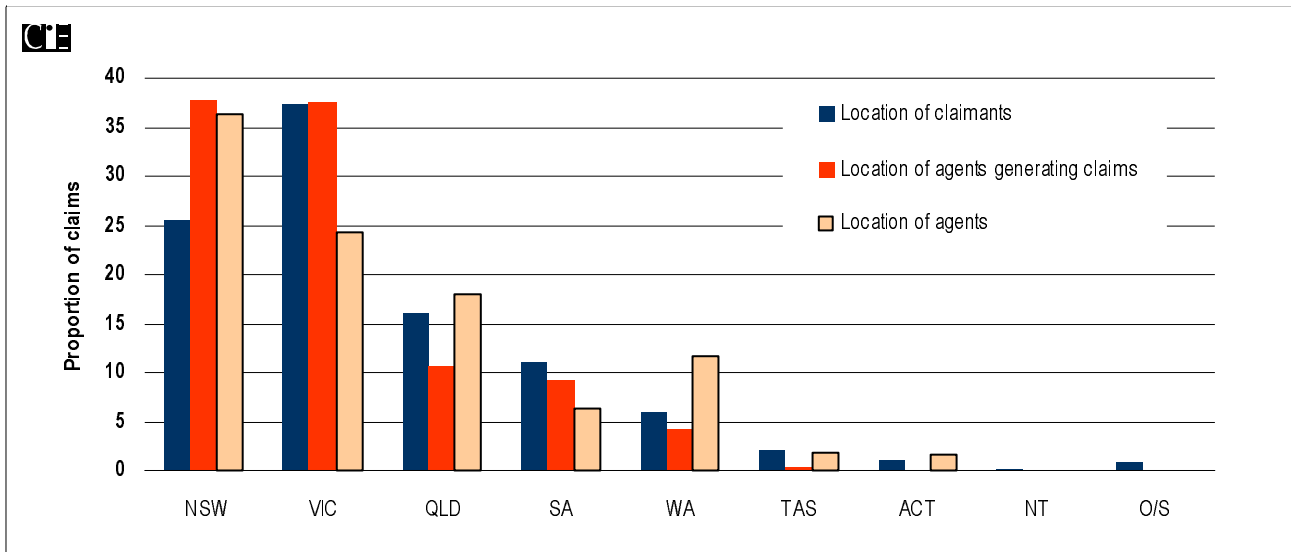
- most claims are generated by agents in New South Wales and Victoria;
- disproportionately more claims are generated in Victoria relative to the number of agents located in that state; and
- beneficiaries of claims were located right across Australia and included jurisdictions not currently within the National Scheme (Northern Territory and overseas consumers).

The TCF submitted that, on average, a travel agency failure generated 48 claims (which might involve more than one consumer) totalling \$75 000. In terms of claims actually paid, this figure is closer to \$62 000 per agency failure.

Chart 4.2 illustrates the claims paid by business sector and type. Clearly, most claims are paid as a result of failures of general travel agency

4 COSTS AND BENEFITS OF REGULATION

4.1 Distribution of claims by claimant and agent location Average 1993–98

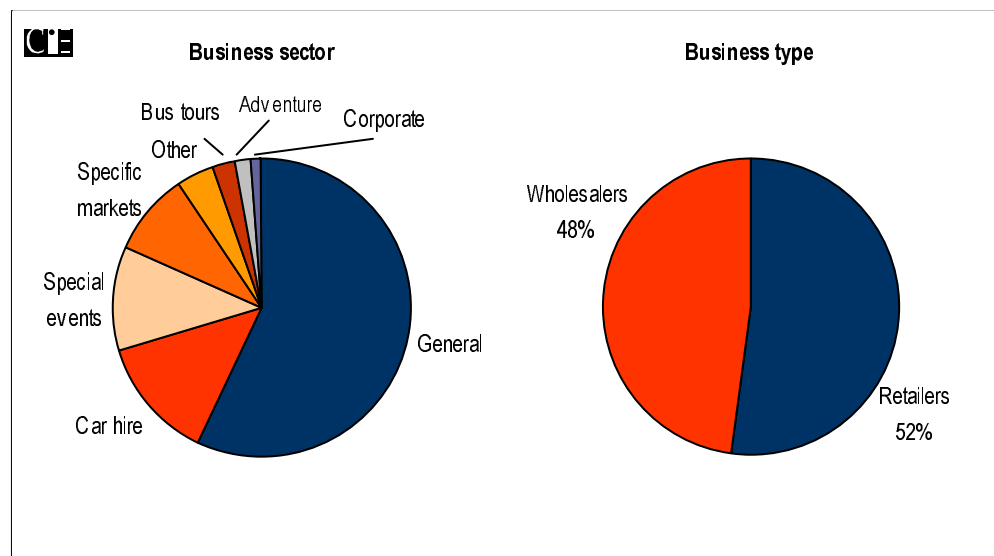


Data source: TCF database

businesses (retail and mixed business agents). However, wholesalers specialising in car hire, special events wholesalers and retailers, and specific market retailers also generate significant claims. In terms of the split between retail and wholesale businesses, the share of claims is relatively evenly split.

In addition to the direct benefits to consumers who lose money as a result of agent default, consumers more generally might place a benefit on dealing with agents in the knowledge that their monies are secure. How much consumers value this 'security' is difficult to say. The NSW

4.2 Claims paid by business type and sector



Data source: TCF supplementary submission, p. 20.

Department of Fair Trading, for example, considers that consumer confidence derives from the fact that it is not undermined by publicised cases of consumer losses, rather than consumers consciously dealing with agents because they realise their money is secure.

Significant losses incurred by a small number of consumers might not be viewed by the wider community as a particularly ‘fair’ or ‘equitable’ outcome. If this were the case, the community would gain from seeing these people compensated for their losses. (Although, under the current system, this compensation is funded from imposts on another small group — travel agents — some of whom might question whether this is fairer than if consumers were not to be compensated.)

A second possible benefit of the TCF is that its requirements for good management, including the encouragement of client and trust accounts, might prevent some agency failure. The benefits here would arise as a result of *avoided* consumer losses. According to the TCF, on average, 36 agents fail each year. By requiring agents to meet certain financial criteria, the argument is that the TCF is encouraging good management practices, thereby reducing the number of agents that fail each year. The question is whether in the absence of the TCF, the rate of agency failure would be higher and with it, consumer losses.

It is impossible to identify what the rate of failure of agents would be in the absence of regulation. Overseas, most jurisdictions have some form of regulation and so do not provide a good guide. However, in Alberta, Canada, there is no regulation (although the agents association there has initiated an industry run compensation fund). It is understood that the rate of failure is not too much different to the current situation in Australia (J. Way, ACTA Alberta, personal communication, 19 October 1999).

In the absence of a good estimate of the rate of failure of agents in the absence of regulation, this benefit is not quantified. However, possible scenarios for this rate are tested in the summary below.

Other travel businesses such as providers, consolidators and other wholesalers should also be regarded as beneficiaries from any reduced rate of agency failure. While these players do not generally risk their own funds in the hands of an agent, when an agency fails, these suppliers also face losses if business is not passed through. Any impact that the TCF has on the rate of agency failure could translate into reduced losses for these businesses. How these firms might alter their credit and risk management policies in the absence of the TCF is unclear. However, it seems likely that these operators might introduce stricter financial control over their

customers. The cost of these more stringent controls in the absence of the TCF should be seen as offsetting the compliance costs of the current arrangements that are identified below.

A third benefit of the TCF is its capacity to recover some of the consumer losses, benefiting other travel agents and, in the long run, consumers. The TCF does this by instituting legal proceedings against former proprietors and directors of failed agencies and sometimes accountants and auditors. The reported overall rate of recovery is 47 per cent of claims paid.

In the absence of the TCF, consumers could pursue the directors of a failed agency through the civil courts either individually or collectively to recover their funds. In this regard, the avoided costs of litigation as a result of the TCF doing this on their behalf should be regarded as a benefit of the current regulatory scheme.

In its most recent annual report, the TCF reported legal costs of \$526 000. It is difficult to gauge what the legal costs of consumers would be if they pursued legal action themselves. It is possible that because of its familiarity and experience in such proceedings, the TCF would be able to undertake this litigation more cheaply, however, it is impossible to estimate what these likely cost savings might be. In the absence of a better estimate, the review team estimates the benefit from avoided litigation at \$526 000 per year.

A fourth possible benefit is the enhanced demand arising from greater consumer confidence, which the TCF along with licensing might engender. Several submissions commented on this aspect of benefits.

The travel industry has benefited from the growth in consumer confidence which has come from the actions of the Travel Compensation Fund (even though travel agencies have overly financed the fund, consumers are unaware of its specific existence and consumers are not adequately encouraged to separate sound operators from unsound operators). (Harvey World Travel, p. 2)

All agents must participate in the TCF. The TCF is essential to protect consumers and to ensure confidence in travel agents...The current system of travel agent licensing, including mandatory membership of the Travel Compensation Fund (TCF) acts in the interest of consumers. (Board of Airline Representatives of Australia Inc. submission, p. 1)

Offsetting the benefit to consumer confidence attributable to the scheme is the low level of awareness of the TCF. The TCF for example found in a 1996 survey of claimants that only 25 per cent of consumers were aware of the TCF before making a claim.

A key question in helping to resolve the likely size of benefits from enhanced demand is 'how would consumers have reacted to uncertainty in the absence of regulation?' Only if the volume of transactions would have been much smaller, would there be any significant benefits in this regard. This in turn depends largely on what agents would have done in the absence of regulation in order to signal their financial soundness.

Possible scenarios for the industry in the absence of regulation are discussed more fully in chapter 5. However, without pre-empting that discussion, it seems likely that:

- voluntary private insurance would not be widespread;
- some form of industry sponsored compensation fund might emerge, although with less than complete coverage;
- there would be an increase in the use of credit cards for transactions;
- larger agency groups might establish their own consumer protection funds as part of their 'brand'; and/or
- providers including IATA would devote more resources to monitoring the competence of agents.

Outside of these measures, consumer funds would remain at risk. Faced with this risk, and in the face of difficulties in identifying 'risky' agents, consumers might channel their transactions toward safer, larger agencies with well established brands. What might emerge, then, rather than a reduction in the volume of transactions, is a more concentrated distribution of transactions skewed toward larger agencies. In this regard, the benefits of the TCF might lie not in terms of maintaining a particular volume of transactions, rather in maintaining a more diverse industry. Although even in a non-TCF world, some travellers would be attracted to small agencies where they can establish a personal relationship with the agent over time.

Direct costs of TCF membership

The main levies and compliance costs are incurred through the mandated membership of the TCF. The main charges arise from direct fees and contributions of:

- an initial payment on joining of \$7500 (with up to \$3000 rebatable, depending on the financial strength of the applicant) plus an initial \$600 application fee;
- branch application fee of \$1500 plus fees of \$375; and

- annual membership fees of \$200 for head offices and \$130 for each additional location.

Special levies also form the direct costs of mandated membership of the TCF, however, such levies have not applied since 1993. At that time these levies amounted to 30 cents per \$1000 of gross turnover.

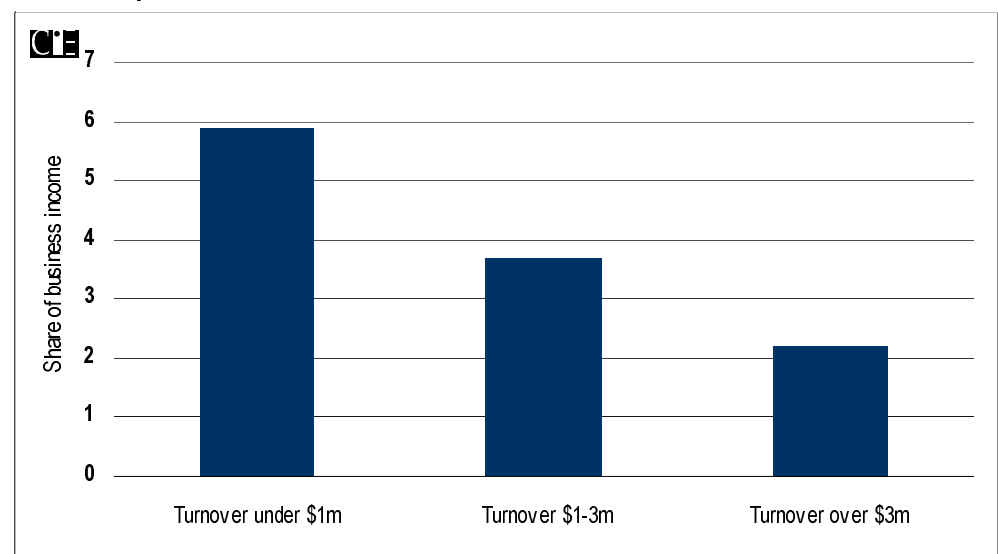
Other costs of TCF membership are likely to vary across agencies and to include:

- reporting costs;
- audit fees; and
- cash holding, whether by agency owner's funds, bank guarantee or insurance cover.

On the basis of information from travel agents contacted in the course of the review, to establish an agency, a budget of \$10 000 for the TCF component is required. Audit and interest fees are said to be in the order of \$3000 per annum. Moreover, these processes need to be repeated and establishment costs incurred again if agency ownership is restructured to the extent that the capital structure of the firm is affected. This means that the scope for an investor to build up a travel agency business and to sell that business at a price, which reflects that effort, is compromised.

Depending on turnover, TCF estimated agents' TCF compliance costs range between 2 and 6 per cent of business income. The larger the firm, the smaller the share of compliance costs as a ratio to turnover (chart 4.3). The costs identified by the TCF include audit and bank guarantee costs, along

4.3 Compliance costs for TCF members Per cent of average business income



Data source: TCF submission, 1999

with annual fees, but do not include time spent by the agent in processing material for the TCF. These costs vary from agency to agency and it is difficult to obtain a good estimate of these costs.

Views about whether meeting TCF reporting requirements was a benefit or a cost varied. Some people consider the requirements need little more than sound bookkeeping, while others regard them as onerous.

Most of the requirements of TCF are no more than a sound, well run agency should possess as a matter of course, with the exception of the capital requirement which can have the effect of penalising an agency for its success in expanding its business. While additional costs are minimal given the low annual fees being charged by the TCF, bank guarantees are onerous and, whilst the new insurance scheme is not as crippling, other alternatives need to be explored. (Harvey World Travel submission, p. 7)

Once the establishment fee has been paid, the tangible cost of TCF requirements for a well run agent is minimal. The only extra cost is the cost of the audit for non-IATA agents. The true cost is they encourage consumers to be careless. (Gerd Williams, Landmark Travel)

Other participants considered reporting requirements were unnecessary and imposed significant compliance costs.

The TCF requires all agents to prepare annual reports as if they are reporting entities, regardless of size. Under our corporate law, a business has to be fairly large before a company is required to prepare accounts on the reporting entity basis. I would suggest that 90 per cent of travel agents would not be large enough yet for TCF purposes, they are required to prepare reports that a large company is required to do, without the turnover and profits that a large company has to enable suitably qualified staff to prepare. (MacBride Hinton and Co. submission, p. 2)

Apart from the start up cost, it is estimated that the average annual compliance cost is in the vicinity of \$5000. (AFTA submission, p. 14)

In the case of TCF and the licensing authority, you basically have to have both an accountant and a solicitor to even decipher the forms in the first place. (Noeleen Neate, JWT NZ Pty Ltd submission, p. 3)

A number of other submissions contended that TCF requirements imposed especially arduous requirements when agencies were being established.

We believe the role of the TCF is well intentioned. The financial ratios it uses for evaluating the ongoing financial viability of a business are actually quite good and well founded. However, an agency trying to establish itself newly in the business could be forgiven for believing the role of the TCF is to protect the status quo and keep new entrants out of the market. It would be expected that any new agency coming from a start up situation would expect to lose money in its first year or two — this is where it will be heavily penalised by

the TCF, in that it will be expected to guarantee the losses (including non-cash costs which are already funded) by capital input or bank guarantee in the following year. This is a very heavy burden for a new agent and must contribute to the failure of some agencies to trade their way into profitability, or even to adopt poor financial management practices or misuse client funds. (National World Travel submission, Hornsby, New South Wales, p. 3)

Some participants were concerned about exposure to contingent costs in terms of the levies which would need to be imposed if several agencies were to fail together and the possible impact of levies actually causing more agencies to fail.

The TCF is, however, the worst possible policy approach if there is a risk of widespread travel agency failure because it makes it more likely that failures will domino throughout the industry. Like the impact of one bank failing bringing down other banks, so one agent failing risks a financial call on remaining TCF members which risks bringing down yet more TCF members. (Tourism Taskforce)

For several reasons there does appear to be scope for some ‘knock on’ effects. One reason is that in revisiting agents for levy contributions the system is structured so that weaker agents would be called on to pay more. While this has the desirable feature of rewarding sound agents (or agents who are sound according to TCF criteria) if the situation of levied firms is borderline they could be in trouble as a result of the levies. A second reason for concern is that bank guarantees only cover some 16 per cent of settlements and 47 per cent of payouts are recovered, less legal fees. This means that should an agency fail, there is a high probability that the claims will be settled out of the compensation pool rather than from a call on a bank guarantee.

The review team’s estimates of the cost of TCF participation

The review team has adjusted the TCF estimates of the cost of TCF membership to ensure that the estimates reflect the *incremental* cost of the current regulation over the base case of no regulation. Table 4.4 presents these estimates for the three size classes of TCF participants identified in chart 4.3 above. These estimates are based upon the following assumptions:

- annual renewal fees of \$200 per TCF head office and \$130 per TCF branch;
- an initial premium of \$7500 per head office and \$1875 per TCF branch, less a rebate of \$1500 (one half of the maximum payable);
- the initial premium annuitised over 10 years, equivalent to twice the current average age of TCF participants;

4.4 Estimated annual costs of mandated membership of the TCF

	<i>Less than \$1 m in turnover</i>	<i>\$1 m to \$3 m in turnover</i>	<i>Over \$3 m in turnover</i>	<i>All participants</i>
	\$m	\$m	\$m	\$m
Direct costs				
Annual TCF renewal fee	0.3	0.3	0.2	0.8
Audit costs	0.5	1.0	1.5	3.0
Opportunity cost of capital	0.3	1.4	3.2	4.9
Annuitised entry cost	1.1	1.4	0.7	3.2
Administration cost shortfall	0.1	0.1	0.1	0.3
Indirect cost				
Administration by agent	1.0	1.2	0.6	2.8
Total cost	3.3	5.4	6.3	15.0
<i>Cost per participant (\$)</i>	<i>2692</i>	<i>3762</i>	<i>8193</i>	<i>4367</i>

Source: CIE estimates, TCF submission

- an initial application fee of \$600;
- audit costs estimated at 75 per cent of total accounting and audit costs reported to the TCF;
- non-IATA firms would not undertake audits in the absence of the regulation and 50 per cent of firms would not be of sufficient size to warrant an audit;
- proprietor's capital no higher than would be the case in the absence of minimum capital requirements;
- capital requirements generate an opportunity cost equivalent to 7 per cent of the capital requirement — equivalent to the New South Wales Treasury's recommended discount rate for economic evaluation; and
- compliance and reporting tasks engage the equivalent of 5 days worth of the agents time.

Some of the above assumptions warrant further discussion. The annual renewal fee is set to recover the cost of administration of the TCF and so the costs of administrating the TCF should be reflected in this figure. However, last year, income from this and other charges was insufficient to cover the cost of administration and a subsidy of \$300 000 was required from the TCF's contribution account. This is equivalent to approximately \$90 per participant and should be included as a cost of the scheme.

IATA also accredits approximately 47 per cent of TCF participants. The IATA agents also face audit requirements and financial tests as part of the IATA accreditation process. The TCF has a commercial relationship with IATA whereby it collects and collates this information on IATA's behalf. This means in the absence of the current regulation only non-IATA members would be relieved of audit requirements.

Further, some participants in the TCF are of sufficient size to require an audit as part of sound business practices. An arbitrary 50 per cent of firms are assumed to be large enough to justify an annual audit.

Minimum capital requirements can be satisfied by either bank guarantees or through increases in the owner's equity in the business. These bank guarantees total approximately \$70 million (TCF Annual Report 1998), and this induced increase in owners' equity means that funds are tied up and so are not able to be applied to other more productive uses. This 'opportunity cost' is assumed to be 7 per cent. The estimates of the cost of minimum capital requirements are based on the assumption that all bank guarantees would be removed. In the interests of conservatism, it is assumed that no increase in owners equity is induced by regulation. That is, it is assumed that non-guarantee capital would be at its current level regardless of whether the current regulation were in place or not.

Finally, the time spent by agents in administration activities as a result of regulation also has an opportunity cost. The cost estimates in table 4.4 assume that 5 days of the agents time is taken up with such administration and, following FMRC Benchmarking (1999), this time is valued at \$20 per hour.

Estimated total incremental costs of mandated compulsory membership of the TCF are estimated at \$15 million annually. This is equivalent to around \$4400 per TCF participant. The key components of this total cost are the opportunity cost of capital, the annuitised entry cost and the cost of audits. Across the various size classes, it can be seen that the absolute cost per participant rises with the size of the firm, driven to a large extent by the opportunity cost of minimum capital requirements. Table 4.5 shows that the total cost estimate is relatively robust to assumptions about individual parameters.

In chapter 2, it was noted that the ABS found that retail travel agents were operating on a 8.1 per cent margin on income. This equates to approximately \$32 000 in gross profit per retail travel agent. Based on this estimate, the estimated cost per participant of \$4400 is equivalent to 14 per cent of the average profit of a retail travel agent.

Table 4.6 illustrates how compliance costs as a proportion of profits varies with firm size. Average turnover (as estimated by the TCF) for each class size and an estimate from the ABS data that business income represents around 11 per cent of turnover are used to calculate the implied business income. Estimated profit is based on two sources. Firstly, the ABS estimate of 8.1 per cent of business income and secondly, the FRMC Benchmarking

4.5 Sensitivity analysis

<i>Parameter</i>	<i>Total cost</i>
	\$m
Base case	15.0
Opportunity cost of capital	
4%	12.9
10%	17.1
Proportion of firms that require audit anyway	
25%	13.5
75%	16.5
Period over which upfront premium annuitised	
5 years	17.3
20 years	13.9
Audit fees as a percentage of accounting costs	
50%	14.0
100%	16.0
Compliance time for agents	
3 days	13.9
2 weeks	17.8

Source: CIE estimates.

(1999) estimates of profit margin for the small, medium and large firms of 15.3 per cent, 33.1 per cent and 46.6 per cent respectively. These figures are somewhat higher than the ABS estimates but, as previously discussed, the differences are the likely result of different sampling methodologies.

It is clear that while compliance costs are lowest in absolute terms for smaller enterprises, when considered relative to profits, these costs are substantial — equivalent to between 32 and 61 per cent of profits. While this share is lower for larger firms, as a proportion of profits these costs remain significant ranging between 2 to 9 per cent of profits. To the extent that agents are able to pass on some of these costs to consumers or providers the impact on profits would be that much less.

4.6 Compliance costs in perspective

	Unit	<i>Less than \$1 m in turnover</i>	<i>\$1 m to \$3 m in turnover</i>	<i>Over \$3 m in turnover</i>
Turnover	\$	480 000	1 759 000	9 537 000
Implied business income	\$	54 851	201 006	1 089 819
Estimated profit				
ABS	\$	4 443	16 281	88 275
FRMC	\$	8 387	66 452	507 311
Compliance costs	\$	2 692	3 762	8 193
As a share of profit				
ABS	%	61	23	9
FRMC	%	32	6	2
As a share of business income	%	5	2	1

Source: CIE estimates.

Weighing up the costs and benefits of compulsory TCF membership

On the cost side, the requirement of compulsory membership of the TCF is estimated to generate costs of around \$15.0 million annually. Balanced against this are identified consumer benefits of \$2.7 million comprising avoided consumer losses and avoided litigation costs. However, a key benefit that has not been quantifiable is the value of avoided consumer losses as a result of TCF financial criteria leading to a reduced rate of agency failure.

A useful means of gauging whether the cost exceeds the benefits of regulation is to ask how many agency failures would need to be avoided each year in order to yield consumer benefits that offset the cost of regulation. The difference in observed benefits and observed costs is approximately \$12 million. The average agency failure typically generates consumer losses totalling \$62 000. Assuming this rate of loss, a reduction in the number of agency failures of 200 *annually* would generate sufficient benefits (in terms of avoided consumer losses) to offset the identified cost of regulation, if this were the only other source of benefit.

This required level of avoided losses represents around 5.5 per cent of total TCF participants. Currently claims are generated by around 36 agency failures a year on average or around 1 per cent of TCF participants. While the TCF does report that, based upon its criteria, approximately 10 per cent of all travel agency businesses require remedial action each year, it is most unlikely that so many agents would fail each year in the absence of regulation. One possible guide is to look at the failure rates in the wider business sector.

There is very little official data on rates of failure of businesses generally and what there is available is generally only in experimental stages of development. This is an important point to bear in mind when considering the following discussion. The ABS (1997) reports data on business exit rates across all industries due to cessation (including business closure, liquidation and exits for unknown reasons). This rate is 5.9 per cent across all industries, and 4.2 per cent across 'transport and storage' businesses under which travel agents are classified. The data is patchy on causes of cessation, but does identify that liquidation/receivership causes only 0.2 per cent of all businesses to exit the industry. Data from the TCF on withdrawals and cancellations (table 4.7), indicates that the rate of failure (which is probably most closely aligned to the liquidation/receivership category utilised by the ABS) in the travel agents industry is higher than in the wider business sector. Failure statistics do not therefore offer a guide as

4.7 TCF participant withdrawals and cancellations 1996–1998

<i>Cause</i>	<i>Number</i>	<i>Per cent of total</i>
Failure	75	8.3
Non-compliance	117	12.9
Cessation	321	35.3
Business transfer	346	38.1
Other	50	5.5
Total	909	100

Source: TCF personal communications.

to what might happen to the rate of business failure in the absence of regulation.

Even if we arbitrarily assume that the number of agencies that fail to account for funds was say, tripled in the absence of regulation — which, if the ABS and TCF data can be believed, would be a very high rate of business failure — then consumer benefit would be approximately \$8.1 million. Other unquantified benefits would still need to be around \$7 million per year to ensure that the requirement for compulsory membership of the TCF generates positive net benefits. These other unquantified net benefits include:

- the value placed by consumers in knowing their transactions are secure;
- the benefits to other firms such as consolidators and wholesalers as a result of reduced agency failure; and
- the value placed by the community in avoiding losses for a subset of the community.

In the case of the value place by consumers of the security offered by the TCF, we can ask how much would they have to value this security in order for the current arrangements to generate net benefits. The net quantified costs are \$12.3 million annually, this represents around 0.15 per cent of industry turnover (of \$8503 million). So, on a ticket or package worth \$1500, the consumer would have to be prepared to pay an additional \$2.15 in order for the benefits to exceed the cost of current arrangements. Obviously, if the current arrangements were successful in reducing the number of failures, then the required willingness to pay would be lower. Alternatively, if there were other unidentified costs that the review has not been able to bring to light or quantify, the required amount would need to be higher.

Whatever, the net benefits of the current regulation might be, the cost of compliance is high, especially for smaller operators. This warrants a look at other options that might offer greater net benefits at a lower cost to the industry. These options are considered further in chapter 5.

Major benefits and cost of licensing and TCF membership are summarised in table 4.8.

Distribution of benefits and costs of licensing and TCF membership

There are other dimensions of benefits and costs, including whether they accrue equally to all types of travel agency services providers, particularly inbound tour operators, and bus and coach operators, for example. There are also questions of distribution including the impact on large versus small agents enforcement costs and the distribution of benefits and costs across consumers, agents and service providers.

The main questions about distribution effects are:

- how are benefits and costs of the regulatory arrangements shared between consumers, agents and providers;
- how do the arrangements impact on different kinds of agency structure — the so-called ‘one size fits all’ problem; and
- how significant are enforcement costs and who bears them?

4.8 Summary of benefits and costs

<i>Restriction</i>	<i>Key benefits</i>	<i>Groups affected by restriction</i>	<i>Who benefits</i>	<i>Level of benefit</i>	<i>Net cost (annual)</i>
<ul style="list-style-type: none"> ▪ Fit and proper person test 	<ul style="list-style-type: none"> ▪ Discourages some applications from potentially unsuitable people 	<ul style="list-style-type: none"> ▪ Travel agents ▪ Regulators 	<ul style="list-style-type: none"> ▪ Consumers ▪ Travel agent industry by reputation 	<ul style="list-style-type: none"> ▪ Would need to prevent agency failure once every five and half years to generate net benefit 	<ul style="list-style-type: none"> ▪ Unquantifiable
<ul style="list-style-type: none"> ▪ Training and experience requirements 	<ul style="list-style-type: none"> ▪ Provides a minimum set of competencies for certain travel agent tasks 	<ul style="list-style-type: none"> ▪ Travel agents ▪ Training providers ▪ Regulators 	<ul style="list-style-type: none"> ▪ Consumers ▪ Travel agent industry by reputation 	<ul style="list-style-type: none"> ▪ Low 	<ul style="list-style-type: none"> ▪ Unquantifiable
<ul style="list-style-type: none"> ▪ Compulsory membership of the TCF 	<ul style="list-style-type: none"> ▪ Provides confidence for consumers to deal with travel agents ▪ Community gains from seeing people compensated for their losses ▪ Encouragement of good business practices ▪ Possible avoided consumer losses and capacity to recover those that occur 	<ul style="list-style-type: none"> ▪ Travel agents ▪ TCF 	<ul style="list-style-type: none"> ▪ Consumers ▪ Travel agent industry by improving confidence ▪ Non travel agent travel businesses 	<ul style="list-style-type: none"> ▪ Mixed. High for some agents and very low for others. ▪ High for consumers 	<ul style="list-style-type: none"> ▪ \$13 million less unquantifiable benefits

Who pays and who benefits under the TCF–licensing scheme?

In the issues paper the review team referred to a perception among some travel agents that, because they make the payments to the licensing bodies and the TCF, and because of what they view as intensive competitive pressure within the industry, restrictive entry provisions notwithstanding, they bear all the costs. The review team considered then that consumers probably do bear at least some of the costs — perhaps by way of diminishing the scope for agents to compete by way of offering other services that would be feasible without regulatory cost burdens, or by reduced price discounting. Opinions vary on this matter. Submissions generally were not persuaded that consumers paid in some way for this protection.

While travel agents are, in theory, able to pass these costs on to consumers, in an industry where margins are tight and competitors are many, including the airlines themselves, this is not always possible. (Small Business Development Corporation, p. 4)

Travel agencies do not pass on the cost of Travel Compensation Fund membership to their customers. (Harvey World Travel submission)

However AFTA believes costs are passed on.

Any prudent travel agent must pass on all of these costs onto the consumer if that travel agent is to survive in a highly competitive market. (AFTA submission p.9)

In the review team’s opinion it is unlikely that costs are completely borne by any one party. Indeed principals recognise that they also benefit from the regulatory arrangements and contribute accordingly to the TCF.

Qantas and other carriers make self assessed contributions to the TCF. This in turn helps to keep down TCF costs to agents as a whole. (Qantas submission, p.6)

If, for example, the total annual cost of the scheme is \$15 million including direct and indirect costs, and say costs are shared equally between consumers, agents and providers, then consumers face annual costs of \$5 million. They presumably bear this bill by way of reduced service and higher airfares either directly or through reduced discounts. However, as a share of total ticket sales, which is over \$8.5 billion annually, this cost is relatively insignificant (0.06 per cent). To the extent that travel agents are able to pass compliance costs up and down the value chain, the impact of these compliance costs on travel agent profits will be mitigated.

A second aspect of this distributional question is the distribution of benefits and costs across different kinds of agents, consumers and providers. For

consumers, some submissions referred to an emerging consumer well aware of the existence of the TCF and who took risks accordingly. By this construction careful, prudent consumers would be covering the costs of such people. Despite the claims of some participants, there is little evidence that consumers deliberately take risks, secure in the knowledge that their deposits are safe — the low level of awareness of the TCF makes that unlikely and financial compensation is unlikely to offset the anxiety travellers face in losing their travel deposits. However, it is possible that some consumers are less diligent than they might otherwise be.

It is apparent from the TCF submission it is extremely difficult to predict the agencies who might fail and all consumers could be vulnerable on this score.

During meetings and roundtables as well as in formal submissions, people were concerned about the distribution of benefits and costs between well run and poorly run agencies, and between different sizes of agencies. Traveland referred to:

...the inequitable effect of the TCF. Under the scheme, financially viable industry participants are compelled to 'bail out' mismanaged agencies with a resultant 'domino effect', which places added financial pressure on competently managed agencies. (Wayne Walker (General Manager) Traveland submission, p. 1)

It would perhaps be more precise to say that surviving agencies are required to 'bail out' failed agencies. To the extent that there is a correlation between the TCF point score and a well run agency, 'well run' agencies bear less of the burden in any 'bail out' levy operation.

Implications of the 'one size fits all' nature of the Acts

The distribution of benefits and costs was drawn to the attention of the review, particularly with respect to firms caught up in the definition of the Act and for whom the obligations were either irrelevant, or they were overseas and the benefits seldom availed.

As pointed out in the issues paper, the regulatory arrangements evolved around a typical travel agent structure. However, traditional travel agents conduct travel agency services along with non-specialist providers who are all caught up in licensing and TCF requirements *because they provide agency services*.

It would appear that the regulatory net was cast far wider than was required to overcome a problem in one sector of the travel industry, pushing licensing

into areas that were the subject of few complaints. (Small Business Development Corporation submission, p. 3)

Included in these kinds of operations are inbound tour operators and bus and coach operators, which, like a number of other providers, offer travel agency services on a relatively small scale because it is related to their main business.

Inbound tour operators

Inbound tour operators (ITOs) deal with local suppliers of transport, accommodation and tour attractions (termed the Australian land content) to plan, cost and assemble tours for overseas travel companies who in turn sell to consumers in their country. ITOs typically sell on commission and are frequently not paid for services rendered until the consumer has departed their country of origin or until after the rendering of the service to the overseas consumer. So while they act as intermediaries, they do not normally receive payments until after the travel has occurred. Acknowledging that consumer funds are rarely at risk, the TCF makes allowance for ITOs in the financial viability assessment and levy calculations. But no consideration is given with regard to the initial premium.

It was put to the review by Tourism Queensland that the concerns or risks associated with ITOs are ‘entirely different from those which the Travel Agents Act 1988 Queensland is designed to address’ (Tourism Queensland submission, p. 4). This is because, by the time the ITO invoices the overseas travel agent or wholesaler, travel has been completed. If these parties become insolvent, neither the ITO nor the Australian supplier will be paid for services already provided. And, if the ITO becomes insolvent, overseas consumers and Australian suppliers will be disadvantaged, not Australian consumers.

Several participants — for example, Tourism Queensland and the Inbound Tour Operators Association (ITOA) — submitted that inbound tour operators are obliged to be licensed by virtue of the legal definition of ‘travel agent’ and therefore to participate in the TCF, but apart from the ‘marketing benefits’ of being licensed they receive little benefit. Despite the ‘fit and proper person’ requirements applied in the licensing process these participants nonetheless identified a number of undesirable industry practices and operators, and considered there is a pressing need for specific regulation or licensing of inbound tour operators. Tourism Queensland proposed options including specific licensing of inbound tour operators, industry accreditation programs and industry education, education of

international visitors and consideration of mandatory codes of conduct. In November 1999 the Commonwealth Department of Industry, Science and Resources initiated a review to investigate the relative merits of these options.

The main benefits of including inbound tour operators do appear to flow to the TCF and other members of the TCF as the clients of inbound tour operators are based overseas and in practice do not tend to make claims on the TCF. There seem to be few benefits in terms of consumer protection flowing from licensing provisions and costs incurred by inbound tour operators in meeting licensing and TCF requirements.

Bus and coach operators

Bus and coach operators frequently act as agents for destination points such as hotels. So do many other travel or tourism service providers, such as motels or backpacker hostel providers.

Team members met with members of the Australian Bus and Coach Association during the course of the review and the Association made a formal submission. The main points emerging from this material are as follows.

- Seventy per cent of those who run bus and coach services are outside the metropolitan area.
- Except for the larger operators, the system is onerous and expensive.
- It is also inflexible and breeds non-compliance.
- Large bus operators have less of a problem with compliance with the current system. However, a significant number of bus and coach operators are breaching the system altogether. Compliance costs for them are not a problem because they do not comply. But this only makes it more difficult for those operators that do comply.

The Australian Bus and Coach Association (ABCA) proposed an alternative model for operators with turnover of up to \$150 000 whereby ABCA would give the TCF a guarantee.

- ABCA would take out an insurance policy for \$5 million (up to \$150k per member).
- ABCA have identified an insurance broker (Inform Insurance Brokers) who would arrange this insurance.
- Insurance would be much cheaper than the TCF (\$1k for ABCA versus \$7k for TCF with audits).

- There would be no audit requirement as this is considered not necessary for businesses of this size and type.
- The insurance system would be funded through member premiums.

The ABCA system would bring in the bus and coach operators who currently do not comply with the legislation.

ABCA believes that after five years they would be able to take over the insurance management. They do not expect any payouts and see it as forced savings. Since they operate as a cooperative, members would see the benefits of increased funds in the kitty. ABCA would arrange for the insurance underwriters to give back a percentage of the money (less their commission) at that time.

The eventual ABCA running of the insurance system is not seen as a problem because each state branch has its own insurance arm, already offering green slips, third party etc. The ABCA also runs its own superannuation fund. This insurance arm is run commercially.

The ABCA also said that while if they took over the insurance scheme they would make money out of it, that would be an ancillary benefit and the prime objective would be to provide a better service to members.

The current licensing system is reported to be 'totally useless' to bus and coach operators, regardless of size. Licensing is regarded to provide nothing to the person doing less than \$150 000 of turnover.

The Department of Transport in each state already requires accreditation, the conditions attached to which are far more stringent than the travel agents licence including:

- safety of vehicle conditions;
- specifications as to what you can or can't do;
- fit and proper person tests; and
- driver certification (CNI).

While there might be incentives for coach operators to declare turnover of less than \$150 000 in order to circumvent the TCF scheme and join the cheaper ABCA scheme, group pressure flowing from the fact that operators know each other and have an incentive to make the scheme work would provide countervailing pressures.

Other operations caught in the Act

Other groups are also caught up by an Act, which appears to offer little but costs for them. These included conference organisers, hotels, houseboat operators and back packer hostels.

The following extract from a submission captures the essence of the problem.

Under any point of view it is clear that the requirements were intended to prevent retail agents from being inexperienced, never to prevent a tour operator who is purchasing via middlemen. It is diabolical that the Act goes so far; it limits supply of airfares to a ridiculous extent — it is beyond all reasoning. (Bruce Doig, Snowtime Tours submission, p.2)

The 'one size fits all' nature of the Act creates a dilemma for regulators. On the one hand it hurts ancillary providers of travel agent services but on the other hand these providers could in aggregate, provide significant competition to specialist agents carrying the burden of licensing and TCF costs.

The exemptions which apply in some states — as mentioned in chapter 2 are a rough and ready way around the problem and create incentives for special structuring of businesses to meet the exemption requirement. The TCF has sought to tackle the problem by designing assessment processes to meet the needs of industry categories — ITOs, bus and coach operators, airlines, consolidators and corporate travel agents.

The audit requirement is limited to certification of the level of payments received ahead of travel and a 150 per cent of this amount is secured by guarantee. This has the potential to reduce audit costs to these particular categories, which are viewed as presenting 'minimal risk'. (TCF submission, p. 59.)

It should be emphasised that these changes target ongoing compliance costs but do not provide for adjustment to the initial cost of entry.

The extent to which these arrangements have helped nonspecialist agencies is unclear and the weight of information provided in the review is that serious problems remain. There is no easy way of removing these difficulties.

Enforcement and duplication

In the course of the review and in formal submissions the following views were expressed about enforcement of licensing provisions.

- Enforcement is generally weak as state agencies do not have sufficient resources to regularly check whether appropriately qualified and experienced people are on the job.
- Enforcement agencies rely heavily on reports from agencies to report on the activities of unlicensed agencies or agencies that may not be meeting licensing requirements.
- The TCF is widely regarded as being a de facto enforcement agency for licensing provisions given its tendency to be the body identifying licensing breaches.
- Other functions that might be carried out by licensing bodies such as mediation tend to be done by AFTA.

AFTA considers that it has taken on mediation functions that might otherwise have been the responsibility of the fair trading departments.

Licensing itself has not gained added relevance over recent years because both the TCF and AFTA have assumed a high profile in settlements and dispute resolution. (AFTA submission, p. 5)

Although as the Victorian Department of Justice points out,

It is not a criticism of a licensing body or an agency responsible for supervising licensees that it leaves dispute resolution to an industry association. The function of a licensing system is discipline not dispute resolution'. (Victorian Department of Justice)

Some of the concerns expressed by certain agents about the apparent lack of enforcement by licensing agencies also reflects the limits of the licensing criteria.

... the 'qualification' aspects of licensing are not widely enforced and even when enforced does not guarantee a professional level of service. (Harvey World Travel submission, p. 9)

In the case of the TCF, notwithstanding its stringent audit requirements, several submissions contended that some TCF requirements did not have the effect of enforcing good performance.

Other submissions referred to the duplication of enforcement costs between regulatory agencies and suggested that there was considerable scope for saving.

Currently five types of consumer protection, that overlay and possibly duplicate; licence, TCF, IATA, travel insurance and general consumer protection legislation. (Thomas Cook Australia, submission, p. 4)

Bearing in mind the apparently very high costs of operating the National Scheme, especially the TCF, a key issue in the weighing up of alternatives will be to find ways of reducing any costs associated with duplication and/or enforcement difficulties, even if those costs are not high.

5

Alternative regulatory arrangements

THE OUTCOME OF THE COST-BENEFIT ANALYSIS in the previous chapter, which shows net costs of the TCF and limited benefits (and small costs) of licensing, suggests there is both scope and need for improving the current system of regulation governing travel agents. The next step for the review is to identify and evaluate alternative forms of regulation that might be less restrictive and more effective in meeting the objectives of regulation. Recapping from chapter 3, these objectives were identified as being:

- to protect consumers against financial loss arising from the failure of travel agents to account for monies deposited with them; and
- to ensure a minimum standard of service delivery in the travel agent industry.

The current regulation seeks to satisfy the first of these objectives primarily through the operation of the TCF while licensing requirements that agents be ‘fit and proper’ and meet certain educational/experience requirements primarily target the second objective.

Selecting options for regulation

Table 5.1 illustrates the alternatives that are available by way of modifying the existing two tier system of travel agent regulation.

Licensing options are identified down the left of the matrix and include:

- the removal of licensing;
- a registration system;
- a negative licensing model; and
- full *compulsory* licensing or accreditation (positive licensing), administered either by the government or an industry body.

5.1 Alternative options for the regulation of travel agents

	<i>Insurance</i>			
<i>Licensing</i>	No regulated insurance	Compulsory private insurance	Compulsory TCF or private insurance	Compulsory TCF insurance
The removal of licensing	Full deregulation			
A registration system				
A negative licensing model				
Full compulsory licensing or accreditation, administered by the government or an industry body				The National Scheme

Some of these options could be associated with a *voluntary* non-regulated industry accreditation scheme if consumers valued it and encouraged such a system to evolve. There is also scope for industry to voluntarily but collectively elect to develop a Code of Conduct, enforceable by the ACCC. Dispute resolution procedures could also be accommodated in this way.

Insurance/compensation fund membership options are listed along the top of the matrix and include:

- privately provided voluntary insurance (*no regulated* insurance);
- a privately provided compulsory national insurance scheme with either a private broker or sponsor or the TCF in a trustee role;
- a privately and publicly offered compulsory national insurance scheme (introducing competition for the TCF); and
- compulsory TCF insurance/consumer compensation.

The current National Scheme (full licensing by government and consumer compensation offered through the TCF) is situated in the lower right quadrant of the matrix. A completely deregulated market is identified in the top left quadrant of the matrix. As is shown, the current system is a 'strong' regulatory model by design.

Models to be explored

It is clear from the table that various insurance options interact with licensing options and vice versa, and these interactions must be reflected in the models to be considered. To some extent licensing options can stand on their own, or they can be combined with any of the insurance options to form a regulatory model. For this reason, licensing and accreditation options are considered before alternative regulatory models are discussed.

The combination of licensing and insurance options gives rise to the following four regulatory models that are discussed in turn:

- compulsory private insurance, supplemented by a licensing or equivalent system;
- compulsory TCF arrangements, with modifications, supplemented by a licensing or equivalent system;
- compulsory TCF *or* private insurance arrangements, supplemented by a licensing or equivalent system; and
- no industry-specific regulation, which is effectively no licensing or equivalent and no compulsory consumer insurance cover.

There are important issues regarding the scope and coverage of each model, depending on the chosen definition of a travel agent and the relative merits or costs of exemptions to regulatory requirements. These are discussed in the context of the models where relevant.

Implications of the existing institutional framework

All regulatory models exist within a wider institutional framework, elements of which are considered to be fixed, irrespective of the model chosen. This may affect the desirability of certain models, and the wider community benefits that can be expected to flow from them. The more important of these ‘fixed points’ include:

- IATA, with its separate (although linked in ways to the TCF) financial criteria for accreditation, which currently applies to approximately half the number of licensed travel agents;
- state and territory Fair Trading or equivalent departments, with existing travel agent and non-travel agent licensing responsibilities, and the consequent ability to derive economies of scope in occupational regulation; and
- the Australian Competition and Consumer Council (ACCC), with established methods for enforcing Codes of Conduct and responsibility for administering the *Trade Practices Act 1974* and the *Prices Surveillance Act 1983*.

The presence of IATA in particular has important implications for any expected cost savings that might be expected to flow from any change to existing TCF arrangements. At present the TCF requirement means that IATA accredited agents automatically collect and forward most of the IATA-required financial data to the TCF including audited financial

statements. Both TCF and IATA apply a points system — one to determine accreditation status, the other as a trigger for additional ‘safety measures’.

While TCF requirements are not quite as strong as IATA’s, they are comparable and it is reasonable to assume that there would be few additional costs to be borne for TCF members wanting to qualify for IATA accreditation *if they wanted it*. The fact that only around 1900 agents out of 3400 have accreditation reflects the limited demand among agents for accreditation to act as IATA affiliates’ agents. It also reflects the fact that many people caught by the Act are not ‘typical’ travel agents in the sense that they do not sell air travel.

Criteria for assessing alternatives

One key task in addressing alternatives is to assess how they would address various risk points in the nature of travel agency business that have been identified in previous chapters. Alternatives are assessed on the extent to which they influence:

- the size of the risks posed;
- the burden of risks in terms of who bears them and how; and
- the cost effectiveness of managing risks, and the interaction with competition.

This risk assessment and the interaction with competition will feed into the consideration of net community benefit which is the ultimate criterion for the assessment of alternatives. The other basis for assessment is on how cost effectively different regulatory models would contribute to the delivery of service standards that are relevant to consumers.

Ruling out *a priori* unlikely options

In framing the above options, the review team has knocked out a possible insurance option as being unrealistic, that being a *compulsory industry-run* compensation fund or bonding scheme.

A compulsory industry-run fund or equivalent is a co-regulatory approach which has been adopted in New Zealand and the United Kingdom. A crucial element of this approach is the identification of an industry body willing and able to run the scheme. In New Zealand, the scheme is run by the Travel Agents’ Association of New Zealand (TAANZ). In the UK, the Scheme is run by the Association of British Travel Agents.

AFTA would be an obvious candidate to operate such a scheme in Australia. AFTA has expressed a preparedness to run a compulsory accreditation system in place of licensing. However, it has not shown a willingness to undertake the management of a bonding scheme, preferring instead for the TCF to continue its role in this regard. Without AFTA as a 'sponsor' this option does not warrant further investigation as no other industry body indicated a willingness to operate an industry-run compensation fund or bonding scheme. In the absence of a willing candidate, the review team considers this option infeasible.

Moreover, it was suggested to the review that AFTA was not well placed in terms of experience and expertise to run an industry bonding scheme.

Currently, there is no industry association in Australia capable of operating a private bonding scheme. (Harvey World Travel, p. 12)

Re-insurance of the TCF scheme is also not considered a stand-alone option, because it is not fundamentally different from the current scheme and has been operated less than satisfactorily in the past.

The TCF reports that in 1989 and 1992 the Fund was underwritten by two different private insurers, but that following substantial claims the private insurers withdrew. The TCF further reports that subsequent attempts to reinsure the risk were unsuccessful 'at premium rates and with an excess acceptable to the TCF' ('Submission' in response to the Issues Paper, August 1999). This is not fundamentally different from the current scheme because all aspects of the Fund, including risk management, remain under the control of the TCF.

Failure to obtain reinsurance under these circumstances, and at a price 'acceptable to the TCF', is not proof that consumer insurance is not available from the market under any circumstances. Changes to the nature of the cover will affect the price of reinsurance. However, reinsurance of the TCF scheme will not necessarily deliver outcomes associated with a private scheme. Reinsurance is not fundamentally different from the current scheme because the underlying cover and risk management arrangements remain unchanged.

Licensing/accreditation options

Three categories of licensing/accreditation options are considered:

- compulsory registration;
- negative licensing; and

- compulsory licensing or accreditation, offered by the government or an industry body.

Registration

Compulsory registration would remove existing specifications for certain skills, qualifications and experience levels and provide only recognition of a business entity. There would be no compulsory insurance requirement, fit and proper person or other quality check, beyond that required by broader legal requirements affecting all businesses.

Registration usually involves the establishment of a registration board or similar registering body and statutory requirements to be satisfied before the issue of a registration certificate. Registration would be granted to any person able to provide evidence that the conditions of registration have been met. The type of registration envisaged here is for the provision of a public register of registered travel agents. Registration could also potentially be suspended or cancelled for misconduct. A registration system could apply nationally with a single national register of travel agents.

Evaluation of registration

A registration system would overcome the barriers to entry currently imposed by the travel agent licensing process. Given that the government would not be involved in imposing standards on an occupation, there would be no need for government departments to maintain their 'special knowledge' of a particular industry and its systems. This would fend off one common criticism of the current system which claims that licensing is ineffective because the responsible government departments do not possess the 'special knowledge' about the risk points in the chain of transactions involved in travel agency business that might indicate the suitability of a person to become a licensed travel agent. However, this is more a criticism of licensing criteria in determining the suitability of a licensee, rather than of the departments administering that criteria.

Registration would provide a mechanism for the recording of any offences or breaches of legal requirements under fair trading or other legislation and the keeping of records of industry participants for enforcement purposes. Hence the registration model preserves the benefit of providing a means by which other regulatory requirements (broader consumer protection and commerce laws) can be readily enforced through the easier identification of agents and their business location. While registration would remove the

need to monitor and enforce any imposed standards, this means there would be no implied regulation of standards, something that the existing licensing system seeks to achieve. Standards would be set by the market and the consumer decisions that drive it.

Finding

Registration has the benefit of providing a mechanism for tracing agents to better ensure compliance with business-wide legal requirements (not travel agent specific regulation). Registration does not provide any quality signals, and therefore does not bear the costs of implementing a quality control system.

However there is potential for consumers to confuse current licensing with any new registration system, creating an impression that registration implies some indicator of standards or consumer compensation when it does not.

Negative licensing

Negative licensing is a form of occupational regulation which typically involves a statutory requirement that provides for anyone to practice a particular occupation as long as that person does not breach legislative requirements associated with that activity. A licence is not required as a precondition to operate (no positive licence is needed), but certain individuals or companies could be prevented from practicing as agents (a negative licence).

In the case of travel agents, the negative licensing model could require agents to participate in a *compulsory* consumer compensation scheme, and non-participants could be disqualified from acting as an agent. It could also require agents to meet as many or as few quality standards as deemed appropriate, such as pass a fit and proper person test, adopt compulsory trust accounting or the like. Negative licensing does not involve the establishment of a registration board, the pre-assessment of eligibility to practice or the granting of a registration certificate or similar instrument.

Any person, other than those negatively licensed (prevented from practicing as an agent due to breaches of the licence), would be permitted to practice, and penalties may be provided in the legislation for negligence, failure to account for monies paid in advance, or other unsatisfactory conduct.

A negative licensing model would require national implementation to avoid the potential cost of prohibiting agents able to operate in one jurisdiction which only enforces negative licensing from operating in another where licensing or some form of registration is required.

Compliance could be by way of audit, inspection, or in response to complaints by consumers or other agents, and would probably require government agency involvement in determining what constitutes unsatisfactory conduct. This agency could be state or nationally based.

Evaluation of negative licensing

The advantage of a negative licensing model is that it provides an *in principle* mechanism for *prohibiting entry* into a market if certain conditions are not met, and *forcing exit* if conditions are breached. It has advantages in terms of reducing administrative costs for the travel agents industry and regulators alike. A negative licensing approach allows regulators to shift resources from administration to compliance. It does also shift some costs to consumers, upon whom more of the responsibility will fall in bringing non conforming agents to disqualification.

This places the onus on consumers to ensure that the agents they deal with meet the requirements of the negative licence. With many consumers and many agents, this is likely to lead to high transactions costs for consumers. Existing 'licensed travel agent' display material is likely to be familiar to consumers, and a negative licensing scheme would not be able to take advantage of this awareness among consumers. Problematic enforcement issues may arise if there are difficulties in closing down agencies in breach of licensing conditions, as critics of the current system claim is the case now.

If a requirement for practicing as a travel agent was participation in a compensation scheme, it would possibly fall to the provider of that scheme to ensure that all agents are members. Yet outside a registration or licensing framework there is no ready mechanism for insurance providers to identify and then penalise agents that are not members, particularly if insurance is offered by more than one provider. It may also be difficult to enforce other consumer protection legislation if a central register of agents is not available.

Negative licensing tends to work well when consumers are well informed with resources devoted by industry or government to advise consumers of complaints resolution procedures and of agents who have failed to meet standards (Commonwealth of Australia Government 1996). In the present

context, where there are concerns about the level of information that consumers have when making decisions about their choice of agents, it is questionable whether negative licensing would function effectively in the travel agents industry.

It has been suggested to the review that it could be possible to include a hybrid of registration and negative licensing under which registration could be suspended or cancelled for misconduct. This system could be administered by a national board, with state-based disciplinary systems. This would provide the negative licensing system with a 'trace-back' facility, and a means to obtain a national coordinated response to travel agent regulation. In the review team's opinion, this is not too dissimilar to a positive licensing approach, albeit somewhat altered from its current form, which is discussed further below.

The main difference would be the establishment of a national licensing or registration board with state based enforcement through current channels. While a national board has advantages in that it could reduce the scope for differences in application to occur across different jurisdictions, its establishment would generate additional resource costs for government and industry. Further, such an option would mean that travel agents would have to deal with three regulatory entities rather than the present two. It is doubtful that the benefits from greater uniformity across jurisdictions would justify the costs to agents of dealing with additional government agencies. Furthermore, with fewer licensing requirements (as recommended by the review) the scope for discrepancies across jurisdictions is also likely to be lower.

Finding

Under a negative licensing approach, consumers would bear the cost of bringing non conforming agents to disqualification. With no ready means for consumers of identifying conforming agents it is possible that there would be an increased risk to consumer funds. Enforcement of a negative licensing model may require additional government resources if a condition of the licence was compensation cover, which was wholly or partly provided by private insurance operators, who would probably be reluctant to monitor agents. Negative licensing would fit more comfortably if exclusive TCF arrangements were maintained, if the TCF assumed the required regulatory responsibilities (at a cost).

Positive licensing

A positive licensing system, by requiring agents to display their licence (or their licence number in advertisements), provides a simple means for consumers to identify agents that satisfy regulatory requirements. There is also greater opportunity for other industry participants to identify non-compliant operators. A positive licence also provides a convenient instrument for cost recovery of administration and compliance costs from industry.

There are two categories of positive licensing considered:

- compulsory industry accreditation administered by AFTA; and
- compulsory government-sponsored licensing, administered by either Fair Trading or equivalent departments, or the TCF.

Compulsory AFTA accreditation

AFTA has proposed an accreditation scheme to be run by AFTA. AFTA nominates itself to run the scheme because it has a strong vested interest and keen participation in the travel industry, national representation, industry knowledge and long experience in fulfilling industry functions. In its submission to the review, AFTA states:

AFTA advocates withdrawal by State Governments in specific industry intervention, and that licensing functions be maintained through a more cooperative partial self regulation approach which would deliver greater value to both industry and the consumer. (AFTA submission, p. 5)

The accreditation scheme is proposed in the presence of the TCF. As noted previously, AFTA has expressed no interest in running a compensation or bonding scheme but assume one to be in place and run by the TCF. The cooperative regulation approach to which AFTA refer, is cooperation between AFTA, the TCF and agents.

Characteristics of the AFTA proposal

The AFTA model for accreditation is envisaged to provide:

- scrutiny of new membership applications and qualifications (although no detail is provided on how applications and qualifications would differ from the current licensing system, if at all);
- registration and maintenance;
- de-listing and related appeal process;

- hearing of both consumer and industry based disputation and creation of arbitrated outcomes;
- promotion and encouragement of adherence to the conditions of the Accreditation code to raise industry standards;
- liaison with the TCF on issues of commercial viability at the enterprise level; and
- professional development, management training, information services and research to the industry (AFTA, p. 9).

Follow up discussions with AFTA revealed that there is no proposal to remove any of the existing licensing requirements, but to 'do it better'. The costs to the agent of the AFTA accreditation scheme are envisaged to be comparable to or cheaper than the current licensing system, but more cost effective because the scheme would be actively enforced. (*AFTA provided no costings of its proposed scheme in its submission*). Further discussions with AFTA revealed that the elements of the current licensing system would be 'core' aspects of the accreditation scheme with any additions available only to AFTA members, as a way of keeping the cost of running the system in line with the current licensing system.

One intention of the accreditation scheme is to screen out 'unsuitable' agents from the industry, inferring a greater barrier to entry for agents than the current system. AFTA contend that 'there can be a justified competition impediment caused by the need for industry qualifications and standards' (AFTA supplement, p. 1), and it is this impediment that AFTA is seeking to enforce.

AFTA does not propose its accreditation system on a voluntary basis due to the coverage problems it would expect to incur.

Sadly this [sufficient coverage] is unlikely to occur to a significant enough level because of this 'failed example' of mandatory Government licensing to deliver any value added to the business. Many travel sellers would now not join voluntarily because the values of state government schemes have not been realised...This will make it onerous for the promoter of an alternative accreditation scheme...to be universally embraced if voluntarily offered. (AFTA supplement, p. 2)

AFTA is not alone in promoting itself as the industry regulator with some agents promoting AFTA regulation as a first or second best option for regulation.

If the review...concludes that some form of regulation is required, then Thomas Cook considers an alternative option to our preferred [no industry

specific regulation] would be a licensing system...regulated through a nationally recognised travel industry body, ideally AFTA. (Thomas Cook, p.4)

Evaluation of mandatory accreditation

An advantage of the AFTA proposal is that the current objective to ensure a minimum level of competency in the travel industry would appear to be better satisfied by the promised combination of stronger enforcement of existing requirements and additional services available to AFTA members. AFTA has also shown a willingness to formalise its current role in dispute resolution through its running of the accreditation scheme. There was some support from travel agents for an industry-run system of regulation which could be expected to bring travel industry experience into regulation. Yet there is also the danger that independence in regulation would be lost.

A disadvantage of the AFTA model is that, by its own admission, a 'justified' barrier to entry would be created. While this may appear to be a way to raise industry standards, it would create distortions that may favour incumbents over new entrants or force out agents that do not meet standards that AFTA deems appropriate, potentially to consumers' detriment. The *compulsion* of the AFTA proposal eliminates the expected 'badge' value benefit of accreditation as a mechanism for consumers to select an agent on the basis of 'proven' competencies.

The review team considers that the cost of running an accreditation scheme of this kind is unlikely to be cheaper than the existing licensing system, given the costs of the infrastructure that would need to be put in place to deliver such a scheme. And with the suggestion that additional services would only be available to AFTA members, the question is raised 'why are not additional services offered to members now at the existing cost of AFTA membership?' What makes them an incremental benefit of a compulsory accreditation scheme unless there is an attempt to increase membership coverage to a greater share of the travel agent market? If this is the case, why should the government be involved in this?

Some industry stakeholders were also cautious about the desirability of AFTA playing a greater role in regulating the industry.

AFTA would need to totally rebuild itself to perform the task of regulator, this cost would bring annual membership up to \$1000 a year plus any annual levy to TCF or an insurer...AFTA does not have the track record, infrastructure or staffing to be the travel industry regulator, it should remain a trade association which is more vital at the moment. (Daniel, van Kempen and Tollis, pp. 1-2)

Finding

A mandatory accreditation system could be a way of better achieving one of the two objectives of the current legislation, but the review team is not convinced that it would do so in a cost effective way. It is questionable whether ‘regulating’ standards actually produces net community benefits. There is insufficient evidence that AFTA is an appropriate body to regulate the industry on a compulsory basis, and if it did, increased barriers to competition would likely result, raising prices for both consumers and agents.

Were the AFTA proposal effective as a non-compulsory scheme, it would be able to deliver the benefits without restricting competition, as well as provide ‘badge value’ to the accreditation process.

Government-sponsored positive licensing

Government licensing remains an option for travel agent regulation, which could be modified from its existing form to address some of the costs of the current system identified previously.

The effectiveness of government licensing has been criticised by some stakeholders in the industry due to the apparent lack of ‘proactive’ enforcement. Many stakeholders in the review commented on apparent enforcement problems.

The current licensing system has not been effective in maintaining quality, professional services because it is too easy to conduct business without a licence due to the totally inadequate level of enforcement...What is needed is a few prosecutions of suppliers who deal with unlicensed agents. (ITOA submission, pp 7-8)

The Tourism Task Force supports licensing of travel agents and seeks more effective enforcement of licensing rules on internet travel agents. (TTF submissions, p. 6)

Some proponents of government licensing seek more than better enforcement of existing criteria. Many, for instance, referred for the need for licensing to be competency based. Jetset, in its submission to the review commented,

Jetset supports licensing. It is fundamental to keeping standards high and preventing the entry of unqualified and undercapitalised businesses into the industry. The conditions to obtaining a licence should be tightened to include:

- All agents must have IATA accreditation...
- All agents must participate in the TCF...

- All agents must be members of AFTA in order to qualify for a travel agents licence. (Jetset, p. 1)

With regard to compulsory trust accounts, while this *could* be part of a positive licensing system, the review team does not consider that it would deliver net benefits for consumers, given the additional costs for agents and the lack of demonstrated causality between failure to keep trust accounts and agency failures. Moreover, there are potentially high costs and uncertain effectiveness of policing any trust accounting requirement. The pre TCF era provides an example whereby in NSW under the *Travel Agents Act 1973* trust accounts were mandatory. According to the TCF, the imposition of trust account requirements inhibit cash flow and investment of client funds and encourage nationally operating agents to channel client funds through other jurisdictions where trust accounting is not required. Even then, the Travel Agents Registration Board continued to find substantial problems with the financial viability of agents demonstrating that ‘trust accounts alone were not the answer to the protection of consumer deposits (TCF submission, pp. 10-11).

Finding

The net benefits of positive licensing depend on the criteria selected for licensing. Under a positive licensing model, a minimalist approach is preferred. This could be to require agents to be a member of any compulsory compensation system, if desired, without the costs of administering a system of complex standards, perhaps beyond that of the fit and proper person test. With this criteria, the quality of market participants would be market determined and consumers would have to judge the suitability (and risk) of agents themselves assisted by whatever ‘badging’ for quality agents might voluntarily acquire.

There are two broad sub-options concerning the government body that could be responsible for administering a positive licence, and the relative costs and benefits of each. Two such bodies include:

- Fair Trading or equivalent departments, currently charged with travel agent licensing responsibility; and
- the TCF.

Fair Trading departments as licensor

If licensing is to be maintained, obvious candidates for administering it are the existing licensing administrators. The main advantages are that there is already an existing licensing infrastructure with economies of scope that

can be derived from combining the various occupational licensing functions within the one organisation. This may be particularly so for travel agents, given that there may not be enough of them to fully employ a part of a government agency without the ability of that department to take on other occupational licensing responsibilities. This would hold with even greater force in smaller states and territories.

However, economics of scope count for little if licensing is not effective. Additional resources in some jurisdictions might be needed to ensure licensing is properly enforced without departments being reliant on complaints from other agents and the TCF to identify non-complying licensees. In the past, this has led to criticisms within the travel agent industry that some licensing departments do not know enough about instances of non-compliance to ensure licensing is effectively implemented.

One of the difficulties for Fair Trading departments is knowing when it is efficient for them to be 'proactive' in enforcing licensing requirements. It appears that by and large departments *react* to complaints made by other agents or concerns raised by the TCF before investigating the compliance of a licensee. And there appears to be no automatic requirement for spot checks at the time of licensing renewal.

An important point to make here is that a more proactive approach to regulation would entail a greater employment of resources. There would need to be a judgement about whether a more proactive approach to licensing is justified in terms of these additional resources requirements.

TCF as national licensor

Some licensing proponents have suggested to the review team that all travel agent regulation responsibilities should fall to the TCF.

The TCF covers 100 per cent of agents already, and has financial management experience and infrastructure in place. (Daniel, van Kempen, and Tollis, p. 1)

However there are only limited insurance options that would be compatible. For instance, it would be inappropriate for the TCF to be able to compete with other insurance providers if only it was privy to the risk information likely to be behind licensing details.

In instances where this is a live option, it is unlikely that the TCF would be able to manage licensing functions in its current form without duplication of infrastructure already placed in Fair Trading departments and their equivalents. TCF has submitted it would be capable of taking on a licensing

function only if licensing was reduced to a record keeping role. This perhaps sits better with a registration model rather than full licensing.

The TCF is clearly capable of managing the compensation function in a negative licensing scenario, but the potential costs savings to the industry would be reduced if a licensing function was to be continued. If the licensing function was limited to a record-keeping role, with no need for character and qualification...then the TCF could manage the function in a cost-effective way. (TCF submission, p.68)

Evaluation of the government licensing

While it may be the case that government licensing *in principle* helps to raise industry standards and achieve the first of the two objectives of existing regulation, complaints within the industry suggest licensing has not been successful in achieving this — either because of existing licensing criteria, the extent of enforcement, or both.

Examples were provided to the review of smaller agencies that appear to be competitively disadvantaged by current licensing requirements. And these disadvantages would not be overcome by the tightening of enforced standards. For instance, Snowtime Tours reported to the review that it is unable to offer domestic snow tours to consumers wanting a like-product in other countries because of the experience restrictions. The agency manager notes that,

It is unreasonable to deem that only people with two years experience 'selling or arranging international airfares' are competent with a computer and possesses common sense...The experience requirement was not intended to restrict my business. I am a tour operator. If the law is changed such that I can sell international air travel, then all the bookings will be via a consolidator or other middleman...My supplier would be making all the arrangements anyway, yet the law arrogantly insists I need experience...I have a tremendous amount of experience in overseas skiing. It is a detriment to the consumer that they cannot book an overseas ski holiday via Snowtime Tours. Instead it is acceptable that they book with agents who merely have experience with airfares. (Snowtime Tours p.2)

The issue then seems more with licensing criteria, which would need to be amended in any recommended positive licensing approach.

An advantage of a government licensing approach where existing licensing agencies maintain responsibility is that it would make use of existing licensing infrastructure and brand awareness among consumers of existing licensing materials such as window display and licence numbers. It is questionable whether the additional resources required for the TCF to take

over compliance activities could be justified in light of the presence of the existing licensing infrastructure and the economies of scope present in these activities.

Having appraised the feasible licensing options, we now turn to compensation and insurance options.

Compensation cover options: TCF as a ‘base case’

The existing statutory scheme effectively stops competition in the insurance market in that the TCF has a statutory monopoly in the provision of insurance. There is no benchmarking with the private sector, so there is no way of judging whether the cost of this insurance is efficient.

The TCF has only to a limited extent emulated practices that might be expected in a private insurance market where the cost of insurance is determined by risk and competitive alternatives exist. For example, the up-front charge prevents the TCF from adjusting premiums in line with risk factors that might change through time.

There could also be an issue with the time taken to resolve claims. The review team does not have relevant benchmarking data on the time taken and ‘like with like’ comparisons are always difficult when dealing with a monopoly. However, experience with comparable statutory schemes that have been subsequently privatised (eg. the home building insurance schemes in most States and Territories of Australia) is that private insurers have managed to substantially reduce waiting times.

The current TCF ratio of pay-outs to total cost is also lower than might be expected with private insurance. It is difficult to compare quantitatively the operation of the TCF with a typical private insurer because the TCF has a relatively large once-off entry charge, with the possibility of further levies. Leaving aside the question of levies, the estimated annual costs of the scheme are about \$15 million, and the payouts in 1998 were \$2.4 million. Some of the costs counted in this all-up estimation of TCF costs would be present in a private scheme, in addition to premium income, and so should be deducted for comparison purposes. The extent to which audit costs, and the opportunity cost of minimum capital requirements would be similar in a private scheme is uncertain, but costs are expected to be substantially reduced in a private scheme.

Making a number of conservative assumptions, including ignoring the possibility of levies, we would count (in 1998) only the annuitised entry

cost, the annual TCF renewal fee, and the administration cost shortfall as being comparable to the premium income of a private insurer — a total of \$4.3 million.

Under these conservative assumptions the 'payouts' in the TCF of \$2.4 million in 1998 were 56 per cent of the equivalent of premium income of \$4.3 million (estimated from annuitised entry cost, the annual TCF renewal fee, and other administration costs), compared to a typical private insurance payout rate of about 70 per cent). For example, payouts to total income by the Government-owned Tower Corporation in 1996/97 was about 70 per cent, and the target for 1999/2000 is 73 per cent. The opportunity cost of capital component is excluded for comparison purposes because these capital requirements (or bank guarantees) may be required by a private insurer instead of normal insurance premiums, just as they are in the current scheme. However comparing payouts to premiums does not capture any of the 'self insurance' costs that insurance companies insist on when providing cover.

There is a conflict between the TCF's capacity to prevent travel agents' access to the market and its responsibility to pay out on insurance claims. These responsibilities would not, ideally, reside with the one agency. The arrangement allows the TCF to (effectively) control the level of claims by tightening up access to the industry. From the TCF's point of view, this is prudent but it may not always operate in the best interest of consumers. It may be that the TCF's role in 'keeping the industry well capitalised' benefits incumbent travel agents, at the expense of travel agents that could do the job just as well but fail to meet the stringent financial criteria.

There is also an issue of consumer choice. One of the necessary costs of a consumer protection scheme is some consumers that may choose to trade off security for a lower price are prevented from doing so. By controlling entry, the TCF can prevent many consumers from making decisions about the kind of travel agent service that they require. That is, some consumers might accept the additional risk that may be associated with a cheaper service. Just how big this market segment is cannot be gauged directly. A 'cheap fare' segment has always been there but underwritten by the TCF.

The number of consumers that might accept this trade-off might be shown in a system where compensation cover was voluntary for consumers. However, this type of delivery mechanism for compensation insurance may be susceptible to fraud by agents purporting to take money for insurance without passing monies onto an insurance provider or concealing the fact that the supposed 'insurer' was the agency itself. Moreover, as suggested previously, price may not be a good indicator of

risk for consumers. In fact, consumers may have a limited amount of information available to discern risk when comparing two travel agents for ‘trustworthiness’. Also, we note that in an already highly competitive industry the savings to the consumer under these circumstances might be fairly modest. The relatively minor contribution that agency margins make to the typical total travel packages sets a limit to the potential gains from this expanded choice. When the ‘gains’ from lower costs of participating in the industry are spread over the volume of business transacted, the ticket price reductions are likely to be small.

Towards a modified TCF model

The current scheme’s compensation capacity rests on:

- risk screening of agents by way of capital requirements (or in lieu of these guarantees), financial statement and audit requirements;
- compensation ‘contribution pool’ funds derived from once off entry contributions falling on new comers and, only in the event of fund inadequacy, special raisings from established agents; and
- recoverable amounts including recoveries from bank guarantees and pursuit of funds through the courts.

While this approach has insurance-like aspects it departs significantly from a true insurance scheme. The ongoing charges renewal fees of \$200 and non refundable application fees — which in the latest year was cross subsidised from the Contribution Account — are applied to administering the scheme and do not contribute to available pool cover. The ‘premium’ payments are in the form of the initial \$7500 contributions by entrants which are reduced by a variable rebate which is intended to be roughly risk related through a points system based on first year performance only.

‘Premiums’ after the first year are zero. For those who have to maintain guarantees and bear the financing costs of these, these are still a premium-like cost to those agents considered by the TCF to present a higher risk. These are opportunity costs to the affected agents and do not generate premium income for the pool. Apart from this, whenever top up contributions are needed for the pool (an event which has not occurred since 1993) special levies will reflect the risk rating (point score) of individual agents. Top rated agents will never make a premium payment or levy after paying their entry fee. All agents will, however, bear the additional costs of maintaining a capital adequacy they might not otherwise have chosen, either involving guarantees or equity.

Bank guarantees

Approximately 25 per cent of firms are being asked for bank guarantees and the greater proportion of these are small firms, with turnover of \$3 million or less. As reported earlier, \$70 million is tied up in guarantees. Of the 858 out of 3 400 agencies required to put up guarantees, 216 have a turnover of less than \$1 million and a further 412 have a turnover of between \$1 million and \$3 million. The remainder are 'large'. Thus less than 20 per cent of very small agencies are asked for guarantees while close to 30 per cent of other agencies are required to provide them.

Guarantees provide relief on drawings from the fund. Successive annual reports of the TCF show that against a total of \$8.1 million in claims paid over the past five years reported (1994 to 1998) \$1.3 million or 16 percent had been recovered (by 1998) through guarantees. Bearing in mind the lack of synchronisation between claims paid and monies recovered, it seems safe to conclude that guarantees are providing less than 20 per cent of the cover against failing agencies. All agents will, however, bear the additional costs of maintaining a capital adequacy they might not otherwise have chosen, involving guarantees or equity, given TCF compliance conditions.

Data provided by the TCF on the turnover sizes for failed agents in 1996, 1997 and 1998, coupled with what is known about guarantee requirements, is instructive. There are 34 failed agencies for which the TCF has meaningful data on. Of these, 5 had turnover exceeding \$3 million, 19 fell in the range of \$1 million to \$3 million and a further 10 had turnovers of less than \$1 million. Twenty-nine of these 34 failing agencies were small. In the size distribution of agencies, 77 per cent have a turnover of \$3 million or less. Small firms are somewhat more prominent among this sample of failures, (85 per cent), but not strikingly.

For the failing firms analysed, only one of the 10 very small firms carried guarantees. Five of the nineteen agencies in the next size bracket did so, while two of the five 'larger' agencies carried them. Guarantees do not appear to 'track' failing firms any more closely than would be expected given the level of incidence of guarantees across the industry. Failures occur in just as great a proportion among firms whose capital structures did not trigger the need for guarantees, on the basis of this admittedly limited data.

In summary, despite the fact that guarantees apply to 25 per cent of agencies, they do not seem to target prospective failures. If they did, we might expect to see a disproportionately large ratio of funds recovered to

claims paid. They may induce more prudent behaviour by agents committed to them, but this cannot be established empirically.

The role of up-front premiums

The main cover for consumers provided by the pool fund itself is highly dependent on new entrants who provide inflow through their up front contribution. Income is also generated through the interest on funds accumulated (see table 5.2). Because there is no other significant source of 'premium' income, the fund is highly vulnerable to any sudden or sustained drop in entry numbers.

Because the annualised equivalent of the up front contribution to the pool varies with the longevity of the agency, 'old' agents amortise this cost and provided they keep their point score rating, they face virtually no

5.2 TCF income and expenditure Contributions for the year ended Dec 1998

	1998	1997
	\$	\$
<i>Income</i>		
Contributions	2 667 500	2 993 000
Contribution rebates	(1 198 000)	(1 577 500)
Interest	478 973	526 176
Recoveries — members	332 849	573 866
Recoveries — bank guarantees	311 630	448 062
Recoveries — legal fees	29 523	278 100
Sundry income	-	1 000
<i>Total income</i>	<i>2 622 439</i>	<i>3 242 704</i>
<i>Expenditure</i>		
Claims	2 352 396	1 404 797
Claims — personnel costs	141 957	149 060
Legal and consultancy fees	526 206	506 989
Payroll tax	2 393	1 004
Recovery costs	1 601	1 110
Staff recruitment	2 811	-
Subsidy — administration account	300 000	200 000
Telephone	8 748	7 543
Training	2 873	1 795
Travel and accommodation	4 636	416
Trustee costs	13 374	-
<i>Total expenditure</i>	<i>3 356 995</i>	<i>2 272 714</i>
<i>Contributions account</i>		
Contributions account at start year	6 956 663	5 986 673
Operating (deficit)/surplus	(734 556)	969 990
Balance at end year	6 222 107	6 956 663

Source: TCF Annual Report 1998, p. 39.

‘premium equivalent’ costs in later years. Yet they do represent some risk to the fund. The review team was not able to obtain a profile of the age distribution of defaulting agents that generated claims on the fund to determine whether agents of long standing represent a lower risk.

In its 1998 Annual Report, the TCF summarises the results of an investigation into the collapse of agencies in the two previous financial years. Twenty-one agency collapses were reviewed. The Annual Report attributes almost 75 per cent of the collapses to misappropriations by agents or staff or to ‘deceptive or misleading audited financial statements’ presented to enable continued trading despite insolvency.

These results illustrate the difficulties faced in managing risks through the points system. If the reported results are more widely representative, they suggest that while the TCF requirements may help to minimise the risk of collapse associated with any financial mismanagement which *is* open to scrutiny, they also mean that most collapses will involve deception and dishonesty. What the report does not reveal is the extent to which the misappropriations were in agencies which were previously identified as higher risk on the basis of their reporting to the TCF (or indeed to IATA if they were IATA accredited).

A further aspect of the current funding arrangements for the compensation fund breaks the link between monies at risk and contributions to the fund. Because the entry fee is fixed as an initial sum, it is the same for agencies regardless of their subsequent status as small or large agencies with possibly very different exposure of customers’ funds. Guarantees and capital adequacy tests are left to deal with these differences. Similarly, no account can be taken in this fee of the fact that an agency which is almost exclusively dealing with business accounts and credit card transactions holds few if any customer funds.

There is therefore no attempt to relate *pool contributions* to the ongoing, and possibly changing, differential risks to the fund posed by different agents or indeed classes of agents (wholesalers versus retailers, IATA accredited versus non accredited etc).

Limitations were imposed on earlier actuarial appraisals of TCF risks by the then short history of the scheme. It would now be possible to analyse the full population of agency collapses over the thirteen years of operation to establish whether there is a case for replacing the single uniform entry contribution (plus unknown levy) with a universal two part charging system with an ongoing premium component that related contributions to monies at risk for different sizes and classes of agency business.

Model 1: Privately provided compulsory national insurance

With this ‘base case’ in mind, it is now possible to consider the plausibility and desirability of various options for regulation. The first to be considered is the compulsory private insurance model. There are two options that comprise a privately provided, *but compulsory*, national insurance scheme depending on who would be the sponsor, or ‘trustee’ for consumers. For example, it could be designed with or without the TCF in this trustee role.

Both of these would involve some mechanism to provide compulsion on the behalf of agents and a registration or licensing system are considered in this context.

Model 1A: A private scheme with a private broker or sponsor

The first ‘private’ option considered involves one or more private sponsor or broker. There are indicative models for this type of scheme in the travel industry in the Northern Territory and in other consumer markets, such as the ‘builders’ warranty’ in the home building industry. The broker, a private entity, arranges the insurance, collects premiums from travel agents, and processes any claims against the policies (or bonds). Insurance would be provided only to a licensed or registered travel agent, so long as the travel agent passed the financial criteria set by the underwriter.

In such a model, there is no need for a TCF, but there would be a statutory requirement that travel agents obtain both a licence or registration and insurance.

The broker in the Northern Territory is a proponent of this option, and the review team was told by their representative that they would be interested in developing such a scheme Australia-wide. However, it would be different from the scheme established in the Northern Territory in one very important respect: private insurers would not be required to compete with the TCF as presently constituted.

There is also significant support in the submissions to this review for this model. For example, the Tourism Task Force said that the legislation needs to be reformed to ensure (that):

The Travel Compensation Fund is abolished in favour of a legislated requirement tied to annual licensing that all travel agents carry insurance sufficient to refund consumers in the event of failure.

...the better approach to industry regulation would be to require travel agents ... to obtain compulsory private insurance. The primary advantages flowing from [this] as opposed to compulsory TCF contributions are that:

- (i) a private insurer is better placed to assess the risk attaching to a particular agency resulting in a more accurate correlation between premium and risk;
- (ii) the independent assessment of risk by an insurer with a financial stake in the event of agency failure would prevent 'high risk' agencies from obtaining insurance and participating in the industry;
- (iii) there would be no 'domino effect' resulting from widespread agency failure in the case of insurance taken out with private insurers; and
- (iv) 'no-claim' bonuses and reductions in premiums would operate as a direct incentive to competent management of agencies, in contrast to the TCF, which provides no incentive to competent agencies. (TTF Submission)

Evaluation of Model 1A

Private insurers set premiums according to the risk involved, and this could bring about substantial change to the costs faced by travel agents at present. It could mean that the riskiest agents would fail to get insurance, although whether this would mean more or fewer travel agents is rather difficult to gauge. It is possible that a private risk-based approach might admit agents that currently fail to pass the TCF's financial criteria. If costs fall then more agents might enter. The outcome depends on the approach taken by the underwriters. Given that the Northern Territory insurance provider attempted to follow the same approach to criteria as the TCF, no precise working model for this cover exists at this stage we cannot be certain of the outcome.

The scheme for builders and other tradespersons operating in the home building industry in NSW, the 'builders' warranty' scheme, offers similar cover. In addition to cover for 'insolvency' risk, this scheme also provides cover relating to the quality of the builder's work. The insurance contract is based on a professional indemnity contract, with the consumer named as the beneficiary of the policy. Policies are effectively issued on a transaction by transaction basis. Two of the three underwriters work in conjunction with industry associations to help manage the risks, but the most recent entrant (Dexta, in association with Suncorp as the underwriter) has chosen to offer cover without this support from an industry association.

Discussion with brokers and underwriters suggests that insurers would tend to treat this business as a 'bonding' scheme, and that rather than undertake the detailed financial appraisal undertaken by the TCF, insurers would tend to rely on broad financial criteria for deciding whether or not to offer insurance bonds. The extensive investigations undertaken by the TCF would probably be considered unprofitable by the private market, and this view is borne out by our observations on the ratio of pay-outs to consumers

by the TCF in relation to total costs of the scheme. That is, private insurers typically incur much lower expenses as a percentage of pay-outs on policies than what we observe with the TCF.

Underwriters are likely to favour the continuation of licensing by the various Departments of Fair Trading, because of the contribution this could make to keeping risky agencies out of the industry. Any screening undertaken by licensing authorities would reduce the burden of responsibility that would otherwise rest with private underwriters (at no cost to the underwriters).

Insurers are also likely to be concerned about the volume of premium income, unless the cover can be readily subsumed within a similar line of business. The current professional indemnity policy taken out by travel agents does not cover risks such as insolvency, and the premiums paid in that market are no guide to what might be payable for a 'TCF'-like cover. In the case of 'builders warranty', a new line of business was created.

The cost of insurance under this model is also something of an unknown. Because under current arrangements the TCF is able to limit access to the market, and consequently limit claims, the fees set may not represent the full cost of premiums set by private underwriters in the absence of TCF controls. The travel agency market may be larger (or smaller) depending on the kind of criteria set by underwriters. A relatively low barrier may result in commensurately higher premiums. If a higher barrier were imposed, the premiums may be lower on average than the current fees. Experience in similar markets would suggest that competition would initially produce average premiums lower than average TCF fees, but that the claims would produce rapid adjustments to premiums, if claims experience was significantly different to that expected. Private insurance markets tend to introduce some volatility into premiums when compared with statutory schemes. Though in this case the contingent liability of levies means there is considerable volatility in existing arrangements.

Experience in the 'builders' warranty' market was much along these lines. Initial average premiums charged by private insurers were somewhat above those charged by the statutory authority that existed prior to privatisation. This was because private underwriters could not manipulate the premiums by raising the barriers to entry, and also because of the uncertainty arising from underwriting in an entirely new market. These upward pressures on premiums were tempered by intense competition when the market was first opened to private underwriters. More recently, premiums have been rising rapidly in response to adverse claims experience, as there has been a spate of insolvencies.

A key benefit of this private scheme model would be the introduction of risk-related premiums, so that well managed and low risk travel agents would not be unfairly penalised by a statutory scheme that has a 'one-size-fits-all' philosophy. A private scheme would also to some extent avoid the barrier imposed by, particularly for small agents, the up front 'premium'.

Another benefit is that the model can be administered with lower overheads, there could be significant savings over the costs of running the TCF. The 'builders warranties' schemes are run with a staff complement of usually one or at most two persons per broker in each State. This view on likely staff savings is endorsed by Zuellig Insurance Brokers, the broker administering the Northern Territory scheme.

A further benefit of the private scheme model is that the various travel agent groups that are not well served by the current arrangements because they do not fit the typical travel agent mould (eg. inbound tourism operators, bus and coach operators, corporate travel agents, etc.) are more likely to be accommodated by a private risk-based scheme.

A disadvantage in the model is that premiums could tend to be volatile, and this may cause problems for travel agents, particularly the small ones that may not have the same capacity to absorb unexpected fluctuations in the cost of doing business. But then with levies, premiums are volatile now.

Another issue is whether there is demand in the private sector to offer TCF-type compensation cover. There is potential private demand to offer such cover. The Review team notes that Zuellig Insurance Brokers offered the view that it could introduce such a scheme, although there are no written proposals from brokers for taking over the TCF cover.

Developments in IATA insurance arrangements suggest that private markets *do* exist for compensation cover — albeit on a larger scale than that currently offered by the TCF. The review is aware that IATA intends to transfer its insurance arrangements for accredited agencies (providing compensation for consumers in the event of default once an airline ticket has been issued) to a private provider. Approximately twelve international insurance companies have expressed an interest in running the IATA scheme. Insurance would cover airlines against agency collapse, agents against airline collapse, and consumers against both (where a ticket has been issued). A consumer-funded ticket levy of between US\$0.30 and US\$0.50 is expected to fund insurance, to be implemented by 1 January 2001. The IATA scheme would apply in areas where there is a BSP. While it is not mandatory, when a country joins, all agents and airlines involved in

scheduled air travel participate (Chris Gilbey, IATA, personal communication).

The ABCA has proposed an alternative model for bus and coach operators with turnover of up to \$150,000 whereby ABCA would give the TCF a guarantee. ABCA would take out an insurance policy for \$5 million (up to \$150k per member) and would not require audits, considered not necessary for businesses of this size and type. The insurance system is proposed to be funded through member premiums. This proposal would require an amendment to the TCF's Trust Deed, although according to the legislation in the *Travel Agents Acts*, the TCF may still be responsible for any claims. The TCF has not agreed to amend the Trust Deed for this proposal.

The ABCA proposal demonstrates the difficulties encountered by groups caught by Act who are not 'traditional' travel agents. The ABCA is keen to redress what it sees as an unbalanced system of regulation of coach operators — who have never led to a claim on the fund but who pay into the fund if their activities classify them as a travel agent under the Act. The TCF is keen to avoid being left with a legislative responsibility for a group of agents who haven't, but might make a claim on the fund and are waiting for a clear insurance indemnity from the ABCA (ABCA, personal communication). If there were choice between providers, operators who do not conform to a typical travel agent and who consequently have problems with contributing to the TCF scheme may be more readily accommodated under a competitive and private model. Similarly, a more risk-based approach to premiums by the TCF would help.

There are aspects of the terms on which private insurers would be likely to enter the market that cannot be clarified at this point in time, and this is why the review team necessarily resorts to discussing schemes operating in 'similar markets'. The builders' warranty scheme discussed above offers a useful model because it includes cover for the consumer in case of insolvency, in precisely the same way as the TCF provides cover for insolvency risk. The builders' warranty scheme covers the quality of the builders' work as well, and it would therefore seem to pose a greater challenge to find private underwriters than in the case of the travel agents' cover. This tends to counter suggestions that it would be too difficult to find private underwriters for the travel agents' scheme. The 'insolvency' cover does not, of course, protect the principal in case of failures due to the dishonesty or fraudulent behaviour of the principal. It does not cover the principal under any circumstances, because the cover is written in favour of the consumer.

It is also difficult to predict how restrictive a private scheme would be, although indications from the NT scheme were that the private scheme would admit agents that would have had difficulty being admitted by the TCF. From a government policy point of view, the main concern is that consumers are protected, and that the price for protection is not too high. A major advantage of a 'private' scheme would be the capacity to exclude those prospective agents that present the highest risk.

It is likely that that any private scheme substituted for the TCF would involve a screening of insurers by governments to ensure that the insurers were capable of providing the promised cover and would be likely to continue the cover in the medium to long term. This process is common to a range of compulsory consumer insurance schemes (eg. workers' compensation, and third-party transport accident insurance) in addition to the builders' warranty example presented in some detail here.

In moving to a private scheme there is likely to be some shifts in the distribution of costs (in particular) and benefits experienced in the current scheme, otherwise there would be little reason to move to a private scheme. Moving to risk-based premiums is likely to penalise the more risky agents, and reduce costs for the less risky agents, while the benefits for consumers should remain more or less the same.

How comparable the new scheme would be to the existing scheme depends in detail on the terms and conditions laid down by statute — that is, it is a matter of government policy. If governments wish to retain cover for consumers that deal with an unlicensed agent (but believe that they are dealing with an unlicensed agent), then there are ways of delivering this as an outcome under a statutory scheme with private underwriters. One option is for the governments to retain cover, in the form of *exc gratia* payments, for the very small number of cases of consumers that have been deliberately misled by unscrupulous (and unlicensed) agents.

Finding

There are attractive 'in principle' benefits of a compulsory private compensation scheme administered entirely by the private sector, mainly in the form of risk-based premiums and in lower overheads. Also, the various travel agent groups that are not well served by the current arrangements because they do not fit the typical travel agent mould are more likely to be accommodated by a private risk-based scheme. There is the disadvantage of possible volatility of premiums, and the effect this might have on the viability of very small agencies. There is also some

uncertainty about the initial level of average premiums in a private scheme compared to fees currently charged by the TCF.

The feasibility of this model in an Australian context has not yet been tested, although international events suggest that there is private demand to operate similar schemes. Given the net costs associated with existing TCF arrangements, the prior lack of ‘testing’ does not appear sufficient to rule out private insurance provision.

Model 1B: A private scheme with the TCF in a trustee/broker role

In this option the TCF could be transformed into a statutory agency with a purely trustee, or broker, role, rather than an insurer. It could also be the focus for consumer complaints, and custodian of the register of travel agents. Claims handling would still rest with the private underwriter, and the consumer could approach the insurer directly with a claim, rather than approach the TCF with a complaint. In this model, the TCF would be a purpose-built consumer protection agency for people dealing with travel agents. The underwriting decision, and the claims processing decision, would rest with the private insurer. The TCF could have an advisory risk assessment role in a scheme underwritten by the private sector, and this could make the business more attractive to underwriters.

There is still the issue of who pays for this revised TCF role, particularly given there would be a cost in the TCF reporting to insurers which is not present in the current system. If private insurance was consumer funded through a ticket levy, part of this could be apportioned to cover this TCF role. Otherwise registration or other like fees may need to be high enough for agents to fund this role. Otherwise all taxpayers — travelling and non-travelling — would bear the cost of government funding.

Evaluation of the private underwriter/TCF broker model

The advantages of this model flow from the maintenance of the experience that has been developed by the TCF. The advisory risk assessment role is something that might be welcomed by private underwriters, improving the feasibility of establishing a private insurance market. The cost of administering the scheme may be significantly higher than the model previously discussed, because of the continuing ‘risk assessment’ role for the TCF, but given the introduction of market based signals to the determination of premiums, and competition between underwriters, the total costs *to agents* are still likely to be lower than the current TCF system.

Finding

The advantages and disadvantage of this model are much the same as for Model 1A, however the continuing ‘risk assessment’ role for the TCF might make this more attractive for some private insurance industry players — at a regulatory cost. The additional advantage of increasing the likelihood of private underwriting may be offset somewhat by the retention of most of the information/ compliance costs associated with the TCF. This model also has the constraint that there is no evidence at this stage that private providers would emerge to carry the scheme in Australia.

Model 2: Compulsory insurance from (a modified) TCF

There are some changes that could be made to the way the TCF manages the compensation scheme, making a ‘modified’ TCF an alternative option for this review. These changes involve introducing flexibility in the risk assessment process. An important issue is whether there is a trade off between lower costs and higher risks, and if so, what combination of both produces net benefits for agents and consumers. This model would need to be considered in the context of a registration or licensing model.

As demonstrated earlier, as a proportion of profit, the TCF system places a significant cost impost on travel agents, representing between two and sixty-one per cent of profit depending on size and method of measurement. The burden is disproportionately higher for small firms, which continue to dominate the failure numbers. It is difficult to make piecemeal adjustments to the TCF arrangements in the quest for lower costs. Chapter 4 has demonstrated that the audit related costs comprise almost 40 per cent of the additional compliance cost generated by TCF requirements.

Scope for relaxing reporting and audit requirements

An important question is ‘could the capitalisation requirements be kept in place while relaxing the reporting and audit requirements?’

The TCF has argued these requirements are a minimum level of intervention and little more than what is required for sound business management. However, Stuart Robertson, of MacBride Hinton & Co, chartered accountants suggests that the ‘reporting entity’ requirements of the TCF place unreasonable burdens on small firms and on the small accounting firms that might typically act as their auditors. By forcing these ‘good management practices’ on an unknown number of firms who would

otherwise ignore them, the TCF is contributing to risk reduction. By how much is the difficult question.

Evaluation

TCF auditing and reporting requirement undoubtedly reduce risks to the fund from a large pool of agents. However there is insufficient evidence to conclude that it has a significant impact on reducing the risks for a majority of those agents that fail. This is because the reporting and auditing requirements probably do little to discourage fraudulent behaviour unless they avert financial crisis for individual firms that is often thought to precipitate it. This aversion cannot be quantified.

As mentioned previously, sample results showed that 75 per cent of collapses are currently due to misappropriations by agents or staff or to misleading audited financial statements presented to the TCF to enable continued trading despite insolvency. There is little that the TCF or other organisations might do to mitigate this risk — which is why compensation scheme are instituted in the first instance.

Finding

Strict reporting and auditing requirements are a good discipline for agents in helping them better manage their business for their own benefit and for consumers. However commercial pressures should already encourage this for many agents, whether in the style of TCF requirements or by some other less onerous means for less well resourced agents. It cannot be proven that enforcement of these practices has a significant effect on reducing claims on the fund. Therefore the current reporting and auditing requirements may be costly, in the presence of adherence to other financial requirements including adequate capitalisation levels.

If the TCF continues to insist on ‘adequate’ capitalisation levels, then a statement from directors and an auditor that minimum requirements have been met should be seriously considered, for smaller agents in particular.

Scope for trading off financial criteria for bank guarantees

Another relevant issue is whether it would be feasible to trade off financial criteria for a higher bank guarantee.

Evaluation

The review team's calculations show that, with average guarantees at \$81 000 and average 'funds at risk' of \$92 000, the option of setting minimum capital requirements (or guarantees) at a greater level (such as 150 per cent of funds at risk) and abolishing audits is not a cost effective path to follow.

Given the estimated costs imposed by financial reporting (\$2700 for the average firm in the \$1 million to \$3 million turnover bracket) for smaller firms there seems to be little scope for allowing such firms to opt out of this reporting requirement, replacing it with, say, acceptance of a higher guarantee, accompanied by a signed statement by directors and an auditor that 'funds at risk' are as stated. Any bank or insurance guarantee is likely to be based on audited figures.

The reason why this option would not be attractive is that \$2700 would only represent guarantee cover of approximately \$38 000, which would be inadequate for the average small firms, especially if this were to purport to cover 1.5 times funds at risk. However, while opting for a guarantee would seem to be considerably more costly than bearing the audit costs for typical small firms, there is no *in principle* reason why other, or even all firms should be excluded from choosing alternative means for satisfying the conditions of their risk assessment.

Adjusting the contribution scheme

This review has noted that the current contributions arrangement:

- is only loosely risk related;
- is not enough to generate a self-supporting fund (levies can be expected from time to time);
- may perpetuate exit costs: as exiting firms leave, their fee is sunk in the fund and newcomers taking over their business pay afresh; and
- represents a bigger cost burden for small firms.

An alternative is to restructure the contribution to incorporate an ongoing premium, while reducing the entry fee component. By introducing an annual contribution scaled to funds at risk, the fixed entry fee could be reduced.

Evaluation

This approach would reduce somewhat the dependence of the fund on entry of new firms and would help to reduce the cost burden on smaller firms in the longer term. Also, if the upfront fee is maintained, it could be varied according to size of risk. However, it would introduce an additional impost on all existing firms with monies at risk.

For those which belonged to the TCF for say five years or more, it could reasonably be argued that they have exhausted the client protection purchased through the up front fee. For those who ‘joined’ last year, this is not so, and the most recent entrants would be seen as ‘paying twice’ under this alternative. It may be necessary to consider compensation arrangements for agents under this option.

Finding for Model 2

Introducing flexibility into the way TCF manages the fund is considered desirable for agents, and unlikely to impose additional costs for consumers, depending on the types of flexibilities offered. Some are suggested here. At present, the only pressure for the TCF to alter its risk assessment procedures is the political discipline it operates under, having to satisfy the seven governments on whose continuing commitment it relies. However, with no direct comparison, it is impossible for governments to know with certainty whether TCF risk assessment procedures represent value for money. The TCF is unlikely to encounter sufficient pressure to alter its procedures if it is not confronted with the pressure of comparison through the introduction of competition.

Model 3: Opening the TCF up to competition

The model giving choice between compulsory membership of a public or private compensation or insurance scheme is in essence the model that was *intended* to be implemented in the NT (although because NT agents were ineligible to join the TCF, the model was never effectively implemented). Under this model agents could choose between taking on private insurance or joining a government-operated scheme.

Agents might be expected to choose between the schemes on the basis of the lowest premium that they can achieve. In a static sense, there is a danger that under this model, the government scheme might become a ‘fall back’ option if private — for profit — providers were able to attract agents that pose a lower risk to the fund. (In the Northern Territory system, the

private broker could in principle refuse to accept agents, although there was commercial pressure to include as many agents as possible to make the system work). Under these conditions, sustainability of such a scheme would be doubtful. However, in a dynamic sense there are important changes that competition between schemes could be expected to generate, changes that may not be achieved by any other method.

Characteristics of the model

This model involves removing the statutory monopoly on insurance and providing the pre-conditions for competition in the provision of insurance. *The requirement to join the TCF would be cancelled. Insurance would still be compulsory.* Licensing arrangements would probably need to be retained, because of the contribution this could make to keeping risky agencies out of the industry, and because this is likely to encourage the participation of private underwriters.

This model would probably involve one or more private sponsors or brokers, *but it would not remove TCF's insurance role.* Instead, the scheme would be designed to ensure that the TCF has no advantages over a private insurer, that is, the TCF would operate on a competitively neutral basis with respect to private insurers. All insurers would be required to provide the same cover.

All travel agents would be required to be insured, but they could 'shop around' among approved insurers to achieve the most effective insurance solution for them. To place all insurers on an equal footing, all information about travel agents currently residing with the TCF would need to be available to approved insurers at no cost.

Insurers would compete on an equal footing in relation to premiums. This means the TCF would be starting from scratch — all TCF funds would 'on paper' be returned to current agents in proportion to contributions made in the past (up to a level to be actuarially determined as necessary to cover the risks). In practice agents would be eligible for a 'refund' only if the new premium was less than the amount that would otherwise be refundable.

Currently under the terms of the Trust Deed, the balance of monies held in trust, after all liabilities have been paid, is payable to the State in proportions equivalent to the total number of participants in each State. However, if such a change to regulatory arrangements occurred as outlined here, it would seem sensible to revisit this part of the Trust Deed (it has gone through several revisions already). If a revision enabling funds to (on paper) be returned to agents was not possible, state/territory governments

could presumably make some offsetting payment to agents equivalent to the amount of agents funds that governments received from the TCF.

In relation to fund monies held to cover the risk of an agent's default, the TCF would be placed in a competitively neutral position with respect to private insurers. That is, the TCF would start operations with an actuarially determined share of the current fund commensurate with the insurance business it retains on commencement of the new scheme.

Implementation issues

A number of questions arise in relation to the private insurance option, relevant to both models one and three that are implementation issues. There are implementation matters that will bear on the advantages and disadvantages of the various schemes, and while this goes beyond the scope of the current report, the consulting team would not wish to recommend an option that has significant implementation difficulties. That is one reason why the preferred option if compulsory insurance is to be retained, is one that takes a conservative and careful path. One of the advantages of the preferred option is that it retains the flexibility of a more conservative path if the suggested advantages are not borne out in practice. The question of whether or not the TCF can co-exist with private insurers, or whether the private insurers might enter and subsequently leave needs to be considered in the light of experience of strategies for ensuring the successful introduction of competition to any market.

It is beyond the scope of the report to detail an implementation path, but we can point to examples of transition to a more competitive insurance market, and successful strategies that were employed. For example, in some cases of transition from a statutory monopoly insurance scheme to one that allowed competition, the market has been arbitrarily divided between the players for a specific number of years, and the market was made progressively more competitive over that period. This allowed for an orderly transition to a competitive insurance market, and it reduced uncertainty for private entrants to the new business environment. This strategy is likely to be employed where information on risk of individual agents is largely unknown because the statutory insurer has applied community-rated rather than risk-based premiums.

Evaluation of Model 3

This model has all of the advantages (and associated disadvantages) of Model 1A, but it does not involve the abolition of the TCF, and so if the

private market does not materialise, the continuing operation of the TCF offers a fall back position for governments. It ensures that consumers would not be left without insurance. Furthermore, this model may make it more likely that the suggested changes to the TCF in Model 2 would actually occur. Only by introducing competition can we be confident that the TCF will adopt more efficient and competitive practices which are more risk reflective. It is also likely to be easier to accommodate schemes such as that proposed by the Australian Bus and Coach Association (ABCA) under a competitive model.

This model does have the disadvantage that the continuing presence of the TCF may dissuade private insurers, regardless of government undertakings that the TCF would be required to operate on a competitively neutral basis with respect to private insurers.

Various measures may be required in the transition to a private insurance market to ensure competition. In some jurisdictions the market may be initially divided between approved insurers by the government — for a period of say three years — prior to open competition taking effect. In a new insurance market this allows insurers time to build up sufficient market intelligence to price the risks satisfactorily. It would also provide comfort to those that suspected that the TCF would not in practice be required to operate on a ‘level playing field’.

Such a scheme might raise concerns that the consumer protection scheme might collapse if the TCF was subjected to ‘predatory competition’. The likelihood of a *compulsory* insurance scheme collapsing is considered to be negligible. Private insurance markets exist in force across a range of goods and services where cover is optional. The prospect of private insurers dropping out of the scheme, or not finding it to their commercial advantage to continue in the field in the medium to long term, is unlikely so long as premium levels are not regulated by governments. The options considered here do not involve governments setting premium levels, so private insurers will be able to respond to any changes in the business environment to maintain a profitable margin. The likelihood of private insurers choosing to leave the field is even further diminished by the requirement for travel transactions to be covered by such insurance — the travelling public would be in a sense a captive market to the insurers.

There is a possibility that the TCF would collapse, however, if it did, it would be because the market tested the efficiency of the TCF and found against it. There could be an issue with regard to the size of the pool that the TCF would be able to secure. It is likely that private insurance providers will have a diversified insurance portfolio enabling them to bear

lower returns for a period for travel agent cover, although they could not combine pools. The TCF, if it offered a less attractive package for agents, would have its pool size reduced although the NT experience suggests smaller pool sizes can be sustained.

There may also be a concern that the TCF would be left as the ‘insurer of last resort’. There is no evidence to suggest that this would be the case. If anything the evidence in the TCF scheme suggests the reverse. The current experience is that the private sector provides a guarantee for those agents that do not meet the TCF’s guidelines. However, there is no particular commercial reason why the TCF should not target the highest risk agents for business. In a risk-based scheme there is a market for insurance to a very wide range of agency businesses, commensurate with the level of risk they pose to the insurer.

Finding

The possible disadvantage of a private insurance market failing to materialise is outweighed by the considerable advantage of being able to test the private sector’s capacity to fulfil the insurance role (as recommended by several significant stakeholders), and the advantage of simultaneously testing the cost-effectiveness of the TCF. The uncertainties of the private market lie more with possible levels of partial insurance that might emerge, or the collapse of the TCF when subject to competition, an outcome not considered likely by the review team.

Model 4: No industry-specific regulation

The no industry-specific regulation model stems from the ‘no licensing’ model or equivalent, which also removes the mechanism for compelling agents to be a member of a consumer compensation scheme. Some stakeholders see the removal of licensing as a real and viable alternative for regulation. The following quotes provide examples of some of the arguments presented to disband the current licensing system (not all of which intend to disband the compensation scheme).

We would like to see all licensing requirements abolished completely... Licensing has obviously failed to provide total protection to the customer. Indeed the protection to the client over the years of licensing has been shown to be worse than before licensing existed...Indeed I believe that the Northern Territory does not have consumer protection and customers would appear to have suffered less there than in the other states. (Flight Centre, p. 1)

The expertise of an experienced, well educated, well-travelled consultant is not needed by all members of the travelling public. In general, many clients are capable of assessing the level of knowledge and experience of the consultant with whom they are dealing and to make value judgements as a result. A regulatory body imposing requirements for qualifications (arguable of dubious worth) would create artificial and unnecessary barriers to entry into the industry. (Harvey World Travel, p. 13)

Neither agents nor consumers relate benefits (of regulation) to licensing. Most consumers are unaware of licensing benefits so agents see no added value to their association with it. (AFTA submission, p. 5)

Characteristics of the ‘no industry-specific regulation’ model

This is a ‘no statutory insurance scheme’ option, or ‘no compulsory insurance’ option, rather than a ‘no insurance’ or no accreditation option, because it is likely that in some instances, private insurance may develop through a voluntary fidelity fund, with or without the assistance or sponsorship of an industry association. It is not a ‘no regulation’ model because normal laws of commerce and consumer protection would apply as they do to many other businesses.

The no industry-specific regulation model assumes that a travel agent licence is not used by consumers to indicate quality of service, and that other methods are available for providing this signal, if it is so desired. In particular, it assumes:

- there is no need to regulate minimum standards using experience and/or qualification criteria because they are either:
 - not demanded by consumers; or
 - not considered an indication of competency or an effective means of delivering competency, and if competency is desired by consumers, the market will value, and consequently produce competency standards;
- there is no requirement to ensure that travel agents are managed by persons over 18 years old that they are of ‘fit and proper person’, either because:
 - licensing is not an effective way of ensuring these things;
 - it is not relevant to consumers whether an agent satisfies these criteria; or
 - if it does matter, there are non-regulatory means of ensuring agents’ suitability through the sorting process embedded in consumer decisions;

- the nature of travel agency transactions has changed with the emergence of web-based agents to the point that any regulation is ineffective in managing risks, making any attempt to do so costly;
- where risks are discernible, consumers are capable of identifying and assessing the risks involved and are willing to bear those risks; and
- in the event that funds paid in advance are not accounted for, consumers are able to be compensated through the channels that apply to most other goods and services — that travel agent services are not sufficiently distinct from others to warrant separate regulation. While this may not provide sufficiently timely recompense, the cost of funding *timely recompense* would be assumed to outweigh the benefits to those that receive them.

Clearly the no industry-specific regulation model shifts the burden of risks involved in travel agency transactions to the consumer. It has been suggested that this is of benefit to the industry.

There is no element of buyer beware [in the current system] which is essential in any competitive society. Consumers must take some responsibility for their choice of product and accept the risk of dealing with doubtful operators. (Flight Centre submission, p. 1)

Another possibility is that consumers could lay off their increased risk to insurance companies that might emerge to offer this type of insurance to consumers that wanted it.

Expected outcomes of a no industry specific regulation model

Under the no industry-specific regulation model it is possible that market based systems would emerge to fill any perceived gap left by the previous system of regulation. This may include:

- a voluntary industry-run fidelity fund offering the same type of consumer compensation as the TCF or similar; and/or
- a voluntary accreditation scheme that travel agents can elect to join.

Likelihood of voluntary private insurance arrangements emerging

The term ‘privately provided voluntary insurance’ means insurance that travel agents might, of their own volition, obtain for the benefit of their customers. The perceived advantage for travel agents would be that they could promote themselves on the basis of offering extra security to customers.

However, even if such insurance was available, there is some doubt that the market would respond readily to demand from an unspecified number of agents. It is compulsion that normally defines a consumer protection scheme.

While there are instances of businesses such as accountants self regulating, these examples are not on the whole promising models for travel agents. The educational hurdles for an accountant are so much greater than for a travel agent that we are not comparing like with like. Accountants as a group are likely to achieve a higher level of business competence than travel agents through their quite stringent educational requirements. Also, accountants have achieved significant branding through the accreditation process undertaken by two professional associations – the Australian Society of Certifying Practicing Accountants, and the Institute of Chartered Accountants. There is widespread acceptance of the capacity of these bodies to self-regulate the profession. These accounting bodies do not administer fidelity funds, and the incidence of loss by consumers is low.

Evaluation of the private voluntary insurance model

During the consultation process some travel agents said they would reject the idea of ‘insuring against their own insolvency’. While this is a misinterpretation of the nature of the insurance contract, given that the contract would be made out in favour of the consumer, it may suggest that a voluntary scheme is unlikely to produce a high level of coverage.

Even if that is the case, that outcome must be compared with:

- the current scheme that imposes large costs relative to benefits; and
- the option of cover offered by the TCF or competitors, where the costs of private insurers in a *compulsory* scheme are difficult to gauge.

In this context, the voluntary option must be seriously considered.

Scope for market-based schemes to offer quality signals to consumers

It is possible that a non-compulsory unregulated accreditation system would develop in a non-licensing environment to supplement those aspects of the current licensing system considered valuable by travel agents, whose responsibility it would be to pay for and comply with the accreditation process. Consumers could attribute value to those characteristics by choosing an accredited agent over a non-accredited agent.

An example of a non-compulsory accreditation scheme is that currently offered by the Tourism Council of Australia (TCA). This scheme offers three levels of accreditation to various tourism businesses based on Quality Assurance Principles. Registration fees between \$125 — \$1250 are payable to the TCA. This is followed by successful completion of the Accreditation process, a verification audit, then presentation of a Certificate and Logo for display at the business premises. The benefits for consumers are described by the TCA as providing a signal of reliability, consistency, comfort and confidence (TCA, 'National Tourism Accreditation Program').

The review team are not aware of any travel agents being members of the TCA Accreditation scheme, which is being piloted in some states before being rolled out nationally. In Tasmania, one of the pilot states, there are 265 accredited tourism businesses, representing 17 per cent of the local tourism market — the highest coverage of all pilot states. The state government wholesaler, Tourism Tasmania, has agreed to only deal with TCA accredited businesses after 2001, lending considerable weight to the potential coverage of the scheme in that state.

The TCA scheme is neither designed to include nor exclude travel agents *and does not pick up on any of the elements of the current travel agent licensing system.*

Evaluation

The TCA scheme could be considered a typical response to the kind of accreditation that would be available to travel agents under a 'no industry-specific regulation' model, that is, one based on accounting practices and skills development with no regard for formal qualifications, the history and character of the operator, and no requirement to take on various insurance coverage. As mentioned previously, some submissions doubted whether *voluntary* accreditation would receive sufficient coverage to achieve the minimum quality assurance objectives of the current legislation.

On the other hand, firms are joining the TCA scheme and if it provides value to travel agencies they may join also. If it does not they will not join and perhaps that is an appropriate test of accreditation schemes.

Scope for dispute resolution/Code of Conduct models

The licensing authorities currently have formal responsibility for dispute resolution involving travel agents. In practice the review team understands that a significant burden of this responsibility falls to AFTA, or in smaller jurisdictions such as Tasmania, the representative office of the TCA.

A possible outcome from the no industry-specific regulation model is that the industry could collectively decide to invoke a Code of Conduct and allied dispute resolution procedures under the auspices of the ACCC. Some agents have commended this approach as a means of ensuring suitable industry standards.

The review team sees 'no harm' in this outcome if it is industry driven, although it is acknowledged that the diverse travel agency industry may not agree on a set of standards that are 'strict' enough to satisfy the objectives of licensing.

Evaluation of the no industry specific regulation model

The advantages of a no industry-specific regulation model can be summarised as follows:

- travel agency businesses would face the same market driven environment with no agents able to gain an advantage by avoiding and being exempt from regulation;
- travel agency businesses would face the same market driven environment as other tourism businesses not subject to industry specific regulation, who are increasingly emerging as their competitors, such as hotels, airlines and coach operators not currently licensed as a travel agent; and
- financial costs of regulation for agents would be removed, potentially improving profit margins.

The major disadvantages of the no regulation model include:

- there is no mechanism for requiring agents to be covered by a compensation scheme for consumers who lose their deposits if/when travel agencies fail to account for funds paid in advance. In the event that this occurs, consumers would be unable to receive timely recompense at best and will have to rely on more congested segments of the legal system;
- consumer confidence in using a travel agent could be reduced, with potential adverse effects for the wider tourism market;
- there is no process for screening out 'unsuitable' agents from the travel agency industry; and
- there is no process for ensuring agents have minimum qualifications and experience before providing travelling advice to consumers.

Implications for IATA and non-IATA members

If there were no industry specific regulation, IATA conditions would still exist. Presumably the demand for IATA accreditation by those who already hold it would not be diminished, although it would affect the costs of that accreditation. In the absence of the TCF, the lower entry barriers implied would presumably see increased entry (and exit) and some entrants seeking IATA accreditation. If IATA, or the airlines, saw themselves as bearing increased risks as a result, they would seek to shift that risk by some means which might include a strengthening of their current financial requirements and/or some additional screening to compensate for the absence of licensing.

If IATA bargaining power is stronger than individual agents', the latter would bear any costs of these changes. If IATA financial requirements are seen as *stronger* than those of the TCF, then, licensing issues aside, there would seem to be little change in the risk position of the airlines and little change to any existing entry barriers for those prospective entrants for whom IATA accreditation is part of their business plan. The main change would be the efficiency costs of establishing IATA compliance and the burden of these costs. IATA presently pays TCF for their services.

Under a scenario where little changed by way of entry barriers for intending IATA members, changes in risks created by a system without licensing or the TCF could be different for IATA and non-IATA accredited agents. The expected financial loss faced by consumers is made up of the probability of agency default times funds at risk less compensation payable. Without the fund, compensation payable would depend on the insured position of agents. For IATA agents, the probability of agency default would have changed little but the prospect of compensation given failure would depend on agents' choices. The outcome for non-IATA agents who deal with consolidators would depend on the requirements of consolidators. A hard line by consolidators might still involve significant capital adequacy costs being borne by agents with whom they deal.

At present IATA 'badging' has little value over and above the (admittedly important) value of the rights to IATA ticketing. However, in a completely deregulated regime, the financial viability requirements imposed by IATA would presumably acquire their own value. The IATA accredited agencies would, if they could successfully communicate the fact, be able to trade on their accreditation as a risk discriminator. Those without accreditation would have an incentive either to seek it or find some other mechanism to signal their viability to consumers. However, unless a fidelity fund arrangement can be established at a lower cost per agency than the TCF

arrangements, consumers' overall risk exposure is likely to rise. In return, they receive some *possible* expected decrease in the cost of a travel package, the maximum amount being set by the effect on the agents' margin.

Finding

While the objectives of the legislation might not be met without industry specific regulation, the costs and risks associated with other options suggest that achieving those objectives do not necessarily produce net benefits for the community. Hence it is possible that in line with the National Competition Policy test, the 'no compulsory insurance' model may emerge as the preferred option.

6

Conclusions and recommendations

BY ANY MEASURE, AUSTRALIAN TRAVEL AGENTS are extensively regulated. In the case of about half of them, TCF membership requirements as specified in the Travel Agents Act (TAA) are largely duplicated by IATA arrangements. Though this means that all reporting and compliance costs should not be attributed to licensing and TCF membership, the TAA imposes significant costs particularly during the start up period of an agency.

Do these strong regulations achieve the objectives set for them? Are there other arrangements which would do that more effectively and in a less restrictive manner? Before concluding on these core NCP questions, it is appropriate to address the question of the contemporary relevance of the objectives themselves.

These objectives are aimed at protecting consumers and their funds from agency failure and maintaining at least a minimum standard of service. The TCF is aimed at the first mentioned and licensing at the last, although to the extent that licensing involves 'fit and proper person' tests it is also aimed at the prevention of consumers being hurt by agency failure.

Objectives for regulation

Current regulations for travel agents were introduced against a background of high profile agency collapses and emerging pressures to control 'rogue' agents in the industry.

AFTA submitted that the arrangements under the TAA were 'influenced by exaggerated media response to small isolated cases of unacceptable abuse'. On the other hand, the pressures on governments to 'do something' in circumstances of agency collapse can be quite strong. This is particularly the case where Australians are stranded overseas and where they, and their family, are articulate and their stories newsworthy. The existing arrangements provide an established mechanism for handling these pressures in a way which is paid for by travel agents and providers. The

review team needs to report on why there might be a need for regulation to achieve the objectives of the regulation and whether the existing regulatory arrangements achieve them in a way whereby the benefits exceed the costs.

Against this background, two objectives may be inferred for the arrangements:

- to protect consumers from financial loss arising from the failure of travel agents to account for monies deposited with them; and
- to ensure minimum standards of service by travel agents.

The need to protect consumers from financial loss

The following factors have significantly decreased both the necessity and the opportunity to hold large sums of other peoples' money since the introduction of National Scheme:

- emergence of credit card and corporate sales;
- adoption of a weekly settlement period;
- tendency of consumers to book close to time of departure; and
- growth of sales on a fee rather than exclusively commission basis.

In some cases, travel agents are now owed money on a regular basis by consolidators, airlines and corporate clients.

However, travel agents continue to hold a large amount of other peoples' money. The TCF reported that 'the potential risk to consumers is demonstrated by the 1998 audited returns to the TCF which show that \$316 million of consumers 'funds are held at one point in time'. In other words, on average, travel agents hold about \$90 000 of other peoples' money at any point in time.

So, while the environment has changed and the contemporary relevance of the objectives somewhat diminished, travel agencies, like many other small businesses, do fail and when they do some of the people doing business with them are hurt. Consumers are exposed to the potential for financial loss, the question is — *are the requirements that travel agents be licensed and be a member of the TCF effective ways of handling this feature of the market?*

The need to ensure minimum standards

Since the introduction of the National Scheme, there have been significant increases in the number of Australians travelling both domestically and

internationally. With increased travelling experience brings a greater awareness of acceptable standards of service among Australian consumers. While it is not possible to objectively measure such awareness, a reasonable conclusion is that consumers are in a better position to judge what is an acceptable minimum level of service from a travel agent.

On the supply side, information about fares, routes and travel options, which only 15 years ago may have required considerable experience and training to attain, is now largely stored and managed in computer systems. This means system skills are now as important as direct travel industry knowledge and skills specified in licensing requirements.

In light of these developments, the questions to be addressed include:

- is there a continuing need to use industry specific regulation to achieve minimum standards?
- are the existing regulations effective?

Findings and recommended approach

Qualification and experience requirements

The current regulation seeks to ensure that agents have had some form of training or experience as a travel agent. The existing qualification and experience requirements are not relevant indicators of competence across of types of agencies. Moreover, the requirements do not ensure that the person dealing with the traveller possesses the requirements anyway. These requirements are likely to be more relevant for those wishing to set up as conventional travel agents, but they may prevent other businesses, who may have sufficient competency but lack the relevant paper credentials, from performing the functions of a travel agent. It is these groups for whom the cost of education and experience requirements are greatest.

The relevance of the existing qualification and experience requirements is also tempered by technological change with computers performing many of the functions that, in the past, were performed manually by travel agents. These developments mean that in many agencies skill requirements are now much different.

There are strong competitive pressures in the market place for travel agencies to hire well-trained, competent staff who may obtain relevant training from a variety of training establishments. It is doubtful that these

same competitive pressures do not apply to the travel agents themselves. It therefore seems likely that market pressures will drive competency standards above the minimum levels implicit in present regulation.

Thus, for many travel agents, existing regulations of minimum standards by way of qualifications and experience requirements are either unnecessary, irrelevant or both. Such standards are likely to be achieved by competitive accreditation and competition to establish a reputation and client base. Incompetent people might enter the industry, but they do now and their main current opponent is loss of clients to competent competitors.

The review team considers that the benefits from government attempting to regulate minimum standards in the travel agents industry do not justify the costs created for industry participants.

Qualification and experience requirements are not a sufficient indicator of competence and create unjustified burdens on various categories of agents. It is likely that competition in the market for travel agent services and better informed consumers mean that the objective of ensuring a minimum standard of service in the travel agents industry could be met without explicit government regulation. It is recommended that requirements for travel agents to meet qualification and experience criteria be removed.

AFTA proposed a compulsory model whereby the responsibility for licensing would be delegated from the state to AFTA. That organisation would be responsible for implementing minimum standards for travel agents as well as providing optional further accreditation for its members. While the AFTA model could lead to higher industry standards, it would do so at some cost to industry. Further, as discussed above, the review team does not consider that there is an effective role *for mandated* minimum standards in the travel agent industry. On the other hand, AFTA might be one of a number of groups seeking to attract consumers by warranting the standards of their members.

Fit and proper person test

The travel agency industry has experienced 'repeat offenders' causing ongoing problems. The fit and proper person test is a screen that is intended to prevent what might be considered 'high risk' applicants from entering the travel agent industry and is intended to protect consumer funds held by agents.

The cost of providing the fit and proper person test is relatively small, estimated to be in the order of \$11 000 annually plus administration.

Since it is not possible to screen for criminal intent, the fit and proper person test will necessarily be an imperfect test. As such, the test may unnecessarily prevent otherwise appropriately qualified applicants from entering the industry. The test therefore generates a further, unquantifiable cost for these applicants. Licence approval which rely on such tests suffer from the fact that they deny people a 'fresh start'. While there is a cost to these unsuccessful applicants, the size of the travel agents industry is such that it is unlikely that their exclusion generates significant costs for consumers in the form of higher prices or reduced choice from any reduction in competition. Thus even though the efficiency of the fit and proper person tests are not persuasively demonstrated, the cost are so low that even if the test only prevented one agency failure every few years, it would be justified.

A possible advantage of retaining the fit and proper person test is that it might generate additional benefits when combined with various insurance models which may be improved by the most modest of quality checks.

Models for licensing and registration

The review team considered both positive and negative licensing models. The choice of licensing system would also depend on decisions about the appropriateness of the compulsory insurance requirement. The fit and proper person test and any requirements for compulsory insurance could be implemented through either a positive or negative licensing model.

A negative licensing system would have advantages in terms of reducing administration costs for travel agents and regulators alike. It would shift some of the costs to consumers, upon whom more of the responsibility would fall in bringing non-conforming agents to disqualification. Such a scheme would place the onus on consumers to ensure that the agents they are dealing with meet the requirements of the negative licensing regime. With many consumers and many agents, this is likely to lead to higher transaction costs for consumers. Existing 'licensed travel agent' display material is likely to be familiar to consumers, a negative licensing scheme would not be able to take advantage of this awareness among consumers.

A positive licensing system such as that currently in place, by requiring agents to display their licence (or their licence number in advertisements) provides a simple means for consumers to identify agents that satisfy regulatory requirements. There is also greater opportunity for other

industry participants to identify noncompliant operators. A positive licence also provides a convenient instrument for cost recovery of administration and compliance costs from industry. A positive license might range from little more than registration of a business name to licensing with various conditions attached.

The review team considered whether it would be desirable to administer licensing nationally through a national licensing or registration board with state-based compliance and disciplinary system. While a national board would have advantages in that it could reduce the scope for differences in application to occur across different jurisdictions, its establishment would generate additional resource costs for government and industry. Further, such an option would mean that travel agents would have to deal with three regulatory entities rather than the present two. It is doubtful that the benefits from greater uniformity across jurisdictions would justify the costs to agents of dealing with additional government agencies. With fewer licensing requirements, the scope for discrepancies across jurisdictions is likely to be lower. The review team recommends that licensing, or registration, functions should remain with the current state agencies but that licensing criteria should be changed.

The review team considers that a positive licensing system has advantages over a negative licensing system in terms of reducing risk to consumer funds. Further, the review team considers that a national licensing or registration body would not generate sufficient benefits to offset the additional costs to government and industry of the establishment and operation of third agency to regulate travel agents. The review team recommends that the current positive licensing framework remain and that it be administered by the present state licensing authorities. Licensing functions should be limited to a fit and proper person test and a check that any compulsory insurance requirements are satisfied. If there were no compulsory insurance, the arguments for a fit and proper person test would be weaker and registration systems providing a basis for monitoring trace back and sanctions would be sufficient.

Compulsory TCF membership

The cost benefit analysis in chapter 4 estimated that compulsory membership of the TCF and the requirements of that membership generate costs of around \$15 million annually. Costs are generated by both direct imposts on agents such as administration charges and contributions to the

fund, and compliance costs such as annual financial reporting requirements and minimum equity requirements.

Benefits of the compulsory TCF membership requirement are more difficult to quantify. There is a direct benefit to consumers in the form of compensation received from the TCF. This is in the order of \$2.2 million annually. A further benefit is in the form of avoided litigation costs. In the absence of a better estimate, the review team has assumed these to be in line with those of the TCF, bringing the total quantified benefits of the TCF to \$2.7 million annually. Thus to the extent that the review team has been able to measure effects, the result is that the costs outweigh the benefits.

According to the National Competition Policy (NCP) test applied to the regulations under service, these regulations should not restrict competition unless it can be shown the:

- benefits of the restrictions to the community as a whole outweigh the costs (of the restriction) and;
- objections of the legislation can only be achieved by restricting competition (Clause 5 (I) of the Competition Principles Agreement).

On the first point, based on the evidence to hand, the estimated benefits do not exceed the costs and the arrangements for mandatory membership of the TCF should be removed. To put it another way, if there were no regulation, the results of this review would not provide grounds for introducing the arrangements which exist today.

This strong conclusion needs to be tempered by the many difficulties arising in estimating benefits and costs of existing arrangements. Many of these possible benefits and costs have been impossible to measure and a fuller accounting might turn the finding around or indicate that the difference between benefits and costs is even greater. However, the NCP test is that the benefits be shown to exceed the costs and the review has not done that.

To put some perspective on relative magnitudes, the review team notes the following:

- Given an average loss of \$62 000 per agency failure, the present arrangements would have to prevent approximately 200 agency failures a year in order to generate net positive benefits.
- Net costs of the TCF arrangements could represent as much as 60 per cent of travel agent profits. The extent to which these are passed through to consumers is unclear.

- As a proportion of a total turnover in the industry of \$8503 million, the net costs of \$15 million represent 0.15 per cent. On a ticket or package worth say, \$1500, consumers would have to be prepared to pay an additional \$2.15 in order for the benefits to exceed the cost of the current arrangement.

Alternative arrangements

Whatever the net costs or benefits of current arrangements, the NCP protocol requires that other options be examined for ways of meeting the objectives of regulation at a lower cost. The review team considered a number of alternative models:

- compulsory insurance provided entirely by the private sector;
- compulsory and privately provided insurance with the TCF retained in a risk assessment role only;
- retention of the current monopoly for a 'modified' TCF;
- compulsory insurance with no monopoly for the TCF; and
- voluntary insurance — no specific regulation.

The review team consider that the legislative objectives could be met at a lower cost if private insurance companies were allowed to enter the market for insurance. The benefits of private involvement are likely to come in the form of more risk-based premiums, greater flexibility for different groups and lower overheads. Possible disadvantages of private involvement include the possibility of more volatile premiums and uncertainty about the initial level of average premiums.

At this stage the market for privately provided insurance similar to that provided by the TCF is untested, although the review team is aware that the market is being tested internationally by IATA.

Another approach would be to allow private insurance companies to compete with the TCF for the provision of insurance cover to agents. Insurance would remain compulsory. An advantage of this 'competition for the TCF' model is that should interested private insurers fail to emerge, consumer funds would remain protected under present arrangements.

Competition, or the threat of competition, would place greater pressure on the TCF to make changes to its operation that reduce costs to its members. If private competition were to emerge, then under this model, those agents that are lower risks and who are not adequately catered for under present arrangements, are likely to be able to identify lower cost insurance options.

Such agents include bus and coach operators, inbound tour operators, corporate travel agents and some internet based agents.

A further advantage of this approach is that by ‘testing the market’, these competitive arrangements would provide information for future evaluations of options for travel agents including the government withdrawing altogether from the market for insurance and the feasibility of voluntary insurance.

There are, potentially, some concerns that might be raised with this model. One such concern is that competition might be such that the TCF is forced to withdraw from the industry but that over the longer term, private insurers might not find the market attractive and exit the market leaving consumer funds unprotected. However, the likelihood of a *compulsory* insurance scheme collapsing is negligible, so long as the level of premiums is unregulated. Moreover, private insurance markets exist in force across a range of goods and services where cover is optional.

Another concern might be that the presence of the TCF could also dissuade private entrants from entering the market if they suspect that the TCF was not competing on ‘competitively neutral’ terms. Various measures might be required in the transition to private competition. These are largely implementation issues, but could include an arbitrary allocation of set shares of the market to insurers for say the first three years. Such arrangements are a feature of accident compensation schemes in a number of North American jurisdictions.

There may also be a concern that the TCF would be left as the ‘insurer of the last resort’ — covering those, perhaps higher risk agents, that cannot obtain insurance elsewhere. However, even if this did happen, the TCF would presumably build on its current relationships with private companies for the provision of bank guarantees or bonding arrangements. The benefit of a competitive approach is that the TCF and finance firms could charge agents premiums commensurate with their (higher) risk.

While this approach is likely to lower the costs of meeting the objective for regulation, it has not been demonstrated that the benefits of the compulsory insurance requirement would outweigh the cost (as required under the NCP protocol if the restriction to competition is to remain). This would depend upon the extent to which competition would reduce administration and compliance costs on industry from current levels. As any such reduction has not been demonstrated in this review, the move to private insurance with competition in supply with the TCF would need to

be justified on the grounds that it would be a basis for ‘testing the market’ including testing how a voluntary private system might work.

Allowing private insurance providers to compete with the TCF is considered the best of the available *regulatory* options. This approach is:

- ***practical*, because it keeps — for a period — the corporate memory and administrative structure of the TCF but forces it to respond to competitive pressures;**
- ***preferred to existing arrangements*, because diverse groups of agents are likely to be better satisfied and premiums are likely to be more risk related; and**
- ***desirable*, because it would provide information on likely outcomes of a fully private, voluntary model of regulation for travel agents and might be a transition mechanism to such a voluntary system.**

Given the inability to demonstrate that either current arrangements or compulsory competitive arrangements with the TCF and private providers produce net benefits, a ‘voluntary’ or ‘no legislated requirements’ model with no mandatory membership of the TCF or prescriptive licensing is the long term recommendation for the regulation of travel agents.

Changes to the TCF

The National Scheme covers a wide variety of travel agent businesses, each posing different levels of risk to consumer funds and consequently to the TCF. The TCF has recognised these differences across different agency types and has introduced a range of measures related to its financial reporting and minimum equity requirements in an attempt to accommodate these differences.

However, contributions to the TCF are in the nature of a single upfront charge upon commencement of membership of the fund. There is a partial rebate depending on the financial strength of an applicant in the first year of operation only. Given the diverse nature of the TCF’s membership, the review team shares the concern of many participants that the present structure of the TCF contribution arrangements does not adequately reflect the risk that a participant poses to consumer funds and the TCF. The ‘one size fits all’ nature of premium structure is generating unnecessary costs for those that do not have the conventional structure of a travel agency.

The review team recommends that the TCF investigate the feasibility of introducing:

- annual premiums for participants
- further differentiate premiums across different types of agents.

This might require an actuarial study to evaluate the sustainable level of future premiums.

Additional regulatory matters

The definition of a travel agent — the scope of the National Scheme

The current definition of a travel agent under the legislation is based upon *function*, defining those covered under the Act by the functions they perform. A number of submissions suggested that the coverage of the definition was too broad, drawing in businesses that were never intended to be covered when the legislation was introduced.

The current definition draws in a wide range of business types. However, these businesses do, to varying degrees, take and hold consumers funds on behalf of other principals. The problem with the definition flows from the strong regulation which is applied to agents meeting that definition. There is no easy way around the problem so long as the regulatory arrangements remain in place. The main alternative, identifying specific occupations or business types, poses administrative difficulties in terms of settling on an appropriate definition, especially as many firms in the travel industry are vertically and horizontally integrated. Further, such an approach would offer greater scope for avoidance if firms were able to arrange their business activities in such a way as to fall outside the definition of particular definition of a travel agent business.

Given these constraints, the current function-based definition of a travel agent remains the most appropriate approach to defining who falls in the regulatory net, so long as regulatory arrangements remain in place.

Several participants to the review raised concerns about enforcement of regulation of activity based on the internet. Where it can be established that an operator is based in Australia, there is no reason that such operators should not be subject to the same provisions as those with physical sales points, although this would not be necessary under a ‘no industry specific’ regulation regime.

There are varying opinions about what impact the internet will have on the shape of the industry. However, it seems likely that domestic operators will face increased competition from overseas operators, who may or may not

be regulated in their own jurisdictions, utilising the internet as a distribution system.

Whether consumers access to providers and unregulated agents through the internet will be a competition for, or complement to, traditional travel agents remains to be seen. However, to the extent that the internet emerges as a means of access to unregulated agent services, it will be no longer practical to compensate all consumers suffering from agent failure. In this sense, consumer protection will, by default, become voluntary as consumers will be able to opt for no insurance by purchasing over the internet.

In order to be able to compete, traditional regulators will need to either offer compensation cover at a low price or to have the option of selling product without any cover at all.

Exemptions

Turnover threshold

Currently, persons or businesses are exempt from regulation if the rights to travel sold by that person do not exceed \$30 000 in any one year. This exemption does not apply if international travel is involved. According to the TCF, the intent of the exemption was to facilitate occasional or one-off dealings by coach operators, social groups or clubs, etc.

Exemptions are reported to create difficulties of enforcement and the emergence of fringe area agents able to operate at lower cost structures. Travel agents see potential low cost competition from these services and small suppliers such as schools, backpacking hostels and bus operators, see themselves being asked to meet onerous obligation for a small activity. A voluntary insurance scheme with no industry specific regulation would clear up these problems. In the absence of a voluntary systems, exemptions probably do more good than harm.

It is probably true that the kinds of activities which are likely to be covered by the exemption are generally low risk, both in terms of the value of transactions and also in terms of the nature of the transactions. Given the nature of social groups and clubs, the consumers of such services are likely to be in a better position to assess the 'riskiness' of the transaction than would a customer of a traditional retail travel agent. Also, the nature of transactions with bus and coach operators whereby payments are often made close to the time of departure and in which the agent often

accompanies the travelling party (as the driver) also mitigate against the risk of major loss of consumer funds.

For these reasons, if existing arrangements remain in place, the exemption based upon turnover is the best practical way of coping with these matters.

In discussions with stakeholders, it was suggested that the interpretation of turnover varied across jurisdictions. In some states the total turnover of the business is taken as the relevant measure, in others, it is only the value of sales of rights to *other* principals' transport or accommodation (that is, only the 'agency' income) that is taken into account.

Given that the focus of regulation is on travel agency services, the review team considers that only agency-related income should be considered in the calculation of turnover for exemption purposes.

The South Australian Office of Consumer and Business Affairs submitted that 'the amount of \$30 000 was set in 1986 and has not been altered since'. In real terms, the value of this threshold has fallen since the introduction in legislation in 1986. The exemption threshold could be adjusted to keep it constant in real terms. Two indexes, which might be appropriate are sub-components of the CPI focusing on transport and recreation. Both these indexes show about a 3.5 per cent annual change in prices on average since 1986. Scaling the threshold of \$30 000 by this annual increment yields a revised threshold of approximately \$50 000.

The threshold should be raised to \$50 000 of agency-related income.

Exemptions for the Crown

Government owned businesses actively compete with travel agents for business. The principle of competitive neutrality dictates that these businesses should face the same regulatory environment, including taxes and other charges, as private sector competitors. In this regard the review team can see no basis for sustaining an exemption for Crown-owned firms.

The review team recommends that any exemptions for Crown-owned firms be removed from regulation.

Appendices

A

Terms of reference

1. Object of review

All States and Territories except the Northern Territory are party to the National Co-operative Scheme for the Regulation of Travel Agents.

The essence of the Scheme is the imposition of legislative requirements that travel agents be licensed according to specified criteria in the jurisdictions in which they operate and that they be contributing members of the national Travel Compensation Fund.

In accordance with each State and Territory's obligations under the National Competition Policy Package and consistent with the provisions of "The Participation Agreement", this review will examine the case for reform of legislative and regulatory restrictions made under or in relation to the National Co-operative Scheme.

The guiding principle of the review shall be that legislation or regulation should not restrict competition unless it can be demonstrated that the benefits of the restriction to the community as a whole, outweigh the costs and that the objectives of the Scheme can only be achieved by restricting competition.

2. Competition policy issues to be addressed

The review will, in its report:

- clarify the objectives of the National Scheme and legislation;
- identify the nature of any restrictions on competition;
- analyse the likely effect of any restrictions on competition and on the economy in general;
- assess and balance the costs and benefits of each restriction;
- consider alternative means of achieving the same result including non-legislative approaches; and

- consider whether the legislation giving effect to the National Scheme contravenes the competitive conduct rules in Part IV of the Trade Practices Act 1974 (Cth) and the Competition Codes of each jurisdiction.

3. Other considerations

As part of the National Review, the review will consider the sphere of activity relevant to the objectives of the National Scheme and:

- (a) Review existing definitions and exemptions contained in legislation to determine whether they appropriately specify that sphere of activity.
- (b) Assess the need for the National Scheme, and in particular the need for licensing and the Travel Compensation Fund, having regard to the following *Fair Trading* outcomes:
 - access to appropriate information to enable informed decisions to be made by participants;
 - security of monies paid in advance for travel services;
 - supply of travel services with due care and skill;
 - appropriate post contractual protection for consumers;
 - access to rapid, inexpensive dispute resolution facilities;
 - minimal misleading, deceptive or unconscionable conduct by market participants; and
 - minimal compliance costs for business.
- (c) Consider future strategies which might influence those regulated by the National Scheme towards improved performance against *Fair Trading* outcomes.
- (d) Consider the extent to which industry self-regulation or co-regulation (industry in partnership with government) might contribute to the objectives of the National Scheme.

4. General methodology and funding

Broadly the review is to be carried out in a way that is consistent with the Council of Australian Governments Principles and Guidelines for National Standard Setting and Regulatory Action. Where the review relates specifically to clause 5(9) of the Competition Principles Agreement it is to draw on the Western Australian Legislation Review Guidelines and the

Guidelines to Review of Legislative Restrictions on Competition published by the Government of Victoria (see appendix).

The review will be conducted by an independent consultant, steered by a Working Party comprised of representatives from each interested jurisdiction. More than one representative from each jurisdiction may attend and participate in Working Party meetings. The Working Party shall operate by establishing a consensus wherever possible.

The Ministry of Fair Trading Western Australia, as lead agency, will be responsible for all administrative matters relating to the appointment of a consultant subject to:

- I. prior approval of the tender brief by the Working Party;
- II. provision to the Working Party of a written report and recommendation on the tender and the approval of the recommended consultant and consultancy fees by the Working Party.

The budget for the review shall be as approved by the Working Party. The Ministry of Fair Trading Western Australia shall submit a proposed budget, including consultancy fees and incidental costs, to the Working Party as soon as possible after the consultant is appointed. The budget costs are to be borne by Consumer Affairs agencies from each jurisdiction and shared proportionately according to the population of each State and Territory.

The consultant will be required to engage in a process of public consultation. All of the views of contributing parties should be acknowledged in the review. Where the report's conclusions differ from the views expressed by contributing parties a rationale for the report's conclusions should be given.

5. Timing

The review will commence on the date on which the independent consultant is appointed.

Within 12 months of the commencement of the review, the Working Party will present the report and recommendations of the consultant to the Ministerial Council on Consumer Affairs (and to Central Agencies in those jurisdictions where required), for consideration of the appropriate government response in each jurisdiction.

6. Intellectual property

The data and analysis resulting from this review will become the property of the Crown in the right of each participating jurisdiction

B *Details of consultation*

Interviews, meetings and round table discussions

B.1 Details of interviews, meetings and round table discussions involving review team

<i>Organisation</i>	<i>Key contact(s)</i>	<i>Place</i>
Queensland Department of Fair Trading		Brisbane
NCP Unit, Queensland Treasury		Brisbane
AFTA, South Australia	Mr Errol Murray, State Manager	Adelaide
Tourism Council of Australia (SA Branch)	Mr Grant Goodall	Adelaide
Office of Consumer and Business Affairs	Mr Matt Bubb & others including Mr Hamish Gilmore, Commissioner	Adelaide
Tourism Training South Australia	Ms Elizabeth Newcombe, Training and Development consultant	Adelaide
SA Bus and Coach Association	Mr John Cureton	Mile End, SA
South Australian Tourism Commission	Mr John Evens	Adelaide
Adelaide Convention and Tourism Authority	Ms Leanne Richards, Marketing Manager	Adelaide
Tourism Council of Australia (WA Branch)	Mr Brian Hearne	Burswood, WA
WA Tourism Commission	Mr Rick Thomas, General Manager International Sales & Marketing	Perth
AFTA (WA)	Mr Mike Henderson	Claremont, WA
Feature Tours	Menny Papadoulous	Perth
Darwin Regional Tourism Association	Mr Rod Plaister	Darwin
Attorney Generals Department, Department of Industries and Business Fair Trading Group	Mr Gareth James,	Darwin
Zuellig Insurance Brokers	Mr Mark Porteous, Provider of insurance arrangements in NT	Darwin
NT Tourism Commission	Mr Tony Mayell, Chief Executive Officer	Darwin
Tourism Council of Australia	Mr Paul Styles	Darwin
AFTA (NT)	Mr John Roberts, President of ATFA, NT	Darwin
Department of Justice	Mr Phil Marriott	Hobart

Continued on next page

B DETAILS OF CONSULTATION

B.1 Details of interviews, meetings and round table discussions involving review team (Continued)

<i>Organisation</i>	<i>Key contact(s)</i>	<i>Place</i>
Tourism Tasmania	Mr Frank Hussey	Hobart
Tourism Council of Australia	Mr Michael Roberts	Hobart
TIC (from Avis)	Mr Russell Butler	Sydney
Inbound Tourism Organisation of Australia	Ms Rhonda Highett and Mr Peter Shelley	Sydney
Australian Council of Travel Wholesalers (ACTW)	Ms Janet Davey, President	Sydney
Thomas Cook	Mr Peter Hansen	Sydney
Access Corporate Pty Ltd	Mr Graham Ross-Smith	Sydney
Australian Hotels Association	Mr Justin Owen, Manager, NSW Accommodation Division	Sydney
Accor Asia Pacific	Mr George Bedwanic	Sydney
IATA	Mr Peter Keogh	Sydney
AFTA (national)	Mr Mike Hatton	Sydney
TCF	Mr Carlo Brattoni	Sydney
Australian Society of Certified Practising Accountants (ASCPA)	Mr Colin Parker, National Director of Accounting and Audit	Melbourne
NCP Unit of Treasury and Finance	Mr Michael James	Melbourne
Department of Fair Trading	Mr Brian Beecham, Mr Warren Eggleshaw, Ms Melina Fung	Melbourne
Concord International Travel	Peter Greening, National Credit Manager	Sydney
AFTA round table discussions		Melbourne, Sydney, Brisbane, Perth and Adelaide, Darwin
HIH	Mr Greg Brown	
Benfield Greig	Mr Ray Carless	
QBE Trade Indemnity	Ms Julie Gething	
NSW Department of Fair Trading	Mr Terry Downing	Sydney
Insurance Council of Australia	Mr Dallas Booth	

Submissions in response to Issues Paper

B.2 Geographical summary of submissions

<i>State</i>	<i>No. of submissions</i>
ACT	3
NSW	17
QLD	1
SA	3
TAS	3
VIC	10
WA	7
Unknown	1
TOTAL	45

B.3 List of submissions to the Review of the National Cooperative Scheme for the Regulation of Travel Agents

<i>Company</i>	<i>Contact person</i>	<i>Title</i>	<i>Location</i>
Government regulators			
1. Office of Consumer and Business Affairs	Matt Bubb	A/Commissioner for Consumer Affairs	Adelaide, SA
2. Travel Compensation Fund	Carlo C. Brattoni	Chief Executive	Sydney, NSW
Other government/regulators			
3. Australian Tourism and Training Review Panel, WA Branch, and Hospitality and Tourism Industry Training Council, WA Branch	Margo Keating/ Anthea Kilminster	State Secretary/ Executive Officer	West Perth, WA
4. Tourism Queensland	Terry Jackman	Chairman	Brisbane, QLD
5. Tourism Tasmania	Rod Giason	Chief Executive	Hobart, TAS
6. Western Australian Tourism Commission	Shane Crockett	Chief Executive	Perth, WA
7. Small Business Development Corporation	Shanthi Nadaraj	Sector Policy Development Officer	Perth, WA
8. Consumers Association of Western Australia	Genette Keating		Serpentine, WA
Airlines			
9. Board of Airline Representatives of Australia	Warren Bennett	Executive Director	Sydney, NSW
10. Qantas Airways Limited	Neville Kitto	Manager, Government Affairs	Sydney, NSW
Industry Associations			
11. AFTA	Graham Ross Smith	Consultant	Sydney, NSW
12. ITOA	Peter Shelley	Chief Executive Officer	Sydney, NSW
13. Australian Bus & Coach Association	Ian MacDonald	Coordinator	Sydney, NSW
14. Bus & Coach Association, SA	John Cureton	Executive Director	Adelaide, SA
15. Tourism Council of Australia	Stephen Albin	National Policy Manager	Sydney, NSW
16. Tourism Task Force	Hon. John Brown, AO	Chairman	Sydney, NSW
17. Flinders Island Tourism Association	Lindsay Luddington	President	Whitemark, TAS

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B DETAILS OF CONSULTATION

B.3 List of submissions to the Review of the National Cooperative Scheme for the Regulation of Travel Agents (continued)

<i>Company</i>	<i>Contact person</i>	<i>Title</i>	<i>Location</i>
Multi travel agents			
18. Flight Centre	Graham Turner	Chief Executive Officer	Melbourne, VIC
19. Harvey World Travel	Barry Mayo	Director, Operations & Development	Sydney, NSW
20. Jetset Travel & Technology Holding Pty Ltd	Peter A. Lacaze	Chief Executive Officer	Melbourne, VIC
21. National World Travel, Australia	Caroline Edginton	Managing Director/CEO	Sydney, NSW
22. National World Travel, Hornsby	Norman Cain	Director	Hornsby, NSW
23. STA Travel	Wendy Hansen	Manager	Carlton, VIC
24. Traveland (Head office)	Wayne Walker	General Manager	Sydney, NSW
25. Traveland, Heidelberg	John Always	Managing Director	Heidelberg, VIC
26. Traveland, Yarralumla	Dr John Donovan	Director	Yarralumla, ACT
27. Thomas Cook	Peter Hansen	Communications Manager	Ultimo, NSW
Independent travel agents			
28. Canadian Bay Travel	Hans Went	Manager	Mt. Eliza, VIC
29. Craig & Kay's Australia	Craig Blanch	Owner	Corrimal, NSW
30. Joint submission from Skimart/Magic Carpet Tours and Travel/Orba Travel Brokers	John Tollis/ Noel Daniel/ Richard van Kempen	Owners	Perth, WA
31. Landmark Travel	Gerd Wilmer		Mona Vale, NSW
32. Magic Carpet Tours & Travel Pty Ltd	Noel Daniel	Managing Director	Perth, WA
33. Ski Kaos/Snowtime Tours	Bruce Doig	Owner/Director	North Sydney, NSW
34. Travel Connections Pty Limited	Andy Allen	Managing Director	North Melbourne, VIC
35. Travel Mart / Ski Mart	John Tollis	Director/Manager	Leederville, WA
36. Trent Travel	Mike Sellars		Curtin, ACT
37. Valley Travel	Walter De Angeli	Director	Canberra, ACT
38. WebJet	David Clarke	Managing Director	Melbourne, VIC
39. Kirra Tours Ltd	Richard Hubber	Managing Director	Adelaide, SA
40. Unaligned, independent travel agency	Peter W Colliver	Owner	Wheelers Hill, VIC
Accountants			
41. Australian Society of Certified Practising Accountants with the Institute of Chartered Accountants in Australia	P. J. Ponting/ R. Atkinson	National President President	Melbourne, VIC Sydney, NSW
42. Macbridge Hinton & Co.	Stuart Robertson	Partner	Sydney, NSW
Wholesaler			
43. JWT NZ Pty Limited trading as JWT NZ	Noeleen Neate	Owner	—
Other/unknown			
44. KPA Investments Pty Limited	Kees & Irene Wierenga		Kingston, TAS
Bus Operators			
45. Eastern Roadlines	Vince O'Connor		VIC

C

Comparison of regulation across state

THE FOLLOWING TABLES provide a comparison of regulation across the various jurisdictions comprising the National Scheme. Only those states and territories participating in the National Scheme have been canvassed in order to assess the validity of comments by some stakeholders that discrepancies exist in regulatory arrangements between those jurisdictions *participating in the National Scheme*. The exclusion of the Northern Territory from the table represents their exclusion from the National Scheme, not from this review. Arrangements in the Northern Territory are explored as appropriate throughout the body of this report.

C.1 Key characteristics of regulation across jurisdictions within the ‘National Scheme’

	NSW	VIC	QLD	SA	WA	Tas	ACT
Licence requirements	<ul style="list-style-type: none"> ▪ Licence required 	<ul style="list-style-type: none"> ▪ Licence required 	<ul style="list-style-type: none"> ▪ Licence required 	<ul style="list-style-type: none"> ▪ Licence required 	<ul style="list-style-type: none"> ▪ Licence required 	<ul style="list-style-type: none"> ▪ Licence required 	<ul style="list-style-type: none"> ▪ Licence required
Licence conditions	<ul style="list-style-type: none"> ▪ Licensee must be participant of the compensation scheme ▪ Applicant must be over 18 years old and be denied if not of fit and proper person ▪ If licence is in partnership, cannot carry on business without partner ▪ Penalty for trading without a licence is \$55k 	<ul style="list-style-type: none"> ▪ Licensee must be participant of the compensation scheme ▪ Applicant must be over 18 years old and be denied if not of fit and proper person ▪ If business is partnership, all partners must be licensed ▪ Penalty for un-licensed trading is \$50k and/or 12 months' imprisonment 	<ul style="list-style-type: none"> ▪ Licensee must be participant of the compensation scheme ▪ Applicant must be over 18 years old and be of fit and proper person 	<ul style="list-style-type: none"> ▪ Licensee must be participant of the compensation scheme ▪ Licence is subject to conditions imposed by regulation and by the Commissioner ▪ Applicant must be over 18 years old and be of fit and proper person ▪ Penalty for trading without a licence is \$50k 	<ul style="list-style-type: none"> ▪ Licensee must be participant of the compensation scheme ▪ Applicant must be over 18 years old and denied if not of fit and proper person ▪ Penalty for trading without a licence is \$50k and/or 12 months imprisonment, including for partnerships where one partner is not licensed 	<ul style="list-style-type: none"> ▪ Licensee must be participant of the compensation scheme ▪ Applicant must be over 18 years old and denied if not of fit and proper person 	<ul style="list-style-type: none"> ▪ Licensee must be participant of the compensation scheme ▪ Applicant must be over 18 years old and denied if not of fit and proper person
Exemptions	<ul style="list-style-type: none"> ▪ Same day travel (assuming surface travel only eg. day trips, excursions, sightseeing, not air travel such as interstate and back the same day) ▪ Arranging domestic travel where gross turnover is not greater than \$30k 	<ul style="list-style-type: none"> ▪ Same day travel ▪ Camping accommodation where the accommodation is carried with a conveyance of which the accommodation provider is the proprietor ▪ Arranging domestic travel where turnover for current and previous financial year is less than \$30k ▪ Specified government businesses, any government department and any statutory corporation representing the Crown 	<ul style="list-style-type: none"> ▪ Same day travel ▪ For travel provided in categories 3 and 4 ▪ Brisbane City Council public transport tickets ▪ Queensland Raid city train tickets ▪ Turnover for previous 12 months not greater than \$30k ▪ Queensland Tourism Travel Corporation 	<ul style="list-style-type: none"> ▪ Same day travel ▪ If only domestic travel is sold and gross turnover for past 12 months not greater than \$30k ▪ Travel in own vehicle or place of accommodation ▪ Transport in vehicle used to provide regular passenger service within the meaning of the <i>Passenger Transport Act 1994</i> ▪ For the Crown 	<ul style="list-style-type: none"> ▪ Exemption for the Crown and any statutory corporation representing the Crown ▪ Ability to grant exemptions 	<ul style="list-style-type: none"> ▪ Exemption of public statutory authorities ▪ Same day travel 	<ul style="list-style-type: none"> ▪ Exemptions granted from the definition of a travel agent for same day travel

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C.1 Key characteristics of regulation across jurisdictions within the ‘National Scheme’ (continued)

	<i>NSW</i>	<i>VIC</i>	<i>QLD</i>	<i>SA</i>	<i>WA</i>	<i>Tas</i>	<i>ACT</i>
Annual statement	▪ Required to be lodged	▪ Required to be lodged	▪ Required to be lodged	▪ Required to be lodged	▪ Required to be lodged	▪ Required to be lodged	▪ Not addressed
Application fee	▪ \$60	▪ \$250	▪ \$43	▪ \$150 — plus \$230 for individuals and \$550 for companies	▪ Individuals, \$666 for 3 years in respect of the principal office and \$144 per branch up to a maximum of 10 ▪ Company/unincorporated bodies, \$1 000 for three years and \$144 per branch office up to a maximum of 19 ▪ Partnerships of natural persons only, the fee as per individuals. For partnerships including a body corporate and natural persons, fees are as per companies	▪ \$25 plus \$110 for issues of licence for each office	▪ Appropriate fees to be paid set by the Registrar
Annual licence fee	▪ \$290 and \$290 for each additional place of business	▪ \$240, and \$240 for each place of business in addition to principal	▪ \$175 for an individual and \$420 for a company, plus \$70 for each additional business site	▪ \$230 for individuals and \$550 for companies plus \$95 for each additional business site up to a maximum of 10	▪ Not addressed	▪ \$110 for each office	▪ An appropriate fee set by the Registrar to be paid before the financial year
Late fee for annual fees	▪ \$40	▪ \$200	▪ Not addressed	▪ Not addressed	▪ Not addressed	▪ \$30	▪ Not addressed
Penalty for default of fees	▪ Non-response to notice results in licence cancelled	▪ Not addressed	▪ \$43	▪ \$205	▪ Not addressed	▪ Not addressed	▪ Not addressed
Duplicate fee	▪ \$20	▪ Not addressed	▪ \$43	▪ Not addressed	▪ Not addressed	▪ \$20	▪ Not addressed
Fees for new or additional address	▪ \$290	▪ \$240	▪ Not addressed	▪ Not addressed	▪ Not addressed	▪ \$25	▪ Not addressed

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C.1 Key characteristics of regulation across jurisdictions within the ‘National Scheme’ (continued)

	<i>NSW</i>	<i>VIC</i>	<i>QLD</i>	<i>SA</i>	<i>WA</i>	<i>Tas</i>	<i>ACT</i>
Cancellation fee	<ul style="list-style-type: none"> Not addressed 	<ul style="list-style-type: none"> Not addressed 	<ul style="list-style-type: none"> Not addressed 	<ul style="list-style-type: none"> Not addressed 	<ul style="list-style-type: none"> Not addressed 	<ul style="list-style-type: none"> \$25 for each business address 	<ul style="list-style-type: none"> Not addressed
Qualifications for Category 1	<ul style="list-style-type: none"> Five years experience; or Two years experience plus approved qualifications 	<ul style="list-style-type: none"> Five years experience; or Two years experience plus ATTRP or Class L membership of AITT 	<ul style="list-style-type: none"> Five years experience on type of business for licence or; Two years experience plus approved qualifications or qualification the Commission considers is equivalent 	<ul style="list-style-type: none"> Not applicable 	<ul style="list-style-type: none"> Five years experience in the 10 years preceding the application or employment, in selling international air tickets; or Two years experience selling such tickets and the successful completion of approved qualifications or qualification the Commission considers is equivalent 	<ul style="list-style-type: none"> Five years experience in the 10 years preceding the application or employment, in selling international air tickets; or Two years experience selling such tickets and the successful completion of approved qualifications 	<ul style="list-style-type: none"> Agent to be over 18 years old To be of fame and good character To have three years experience in carrying on business as a travel agent or as an employee of a travel agent Has approved qualifications
Qualifications for Category 2	<ul style="list-style-type: none"> As per Category 1 or 2 years experience 	<ul style="list-style-type: none"> Two years experience or prescribed qualifications as for Category 1 	<ul style="list-style-type: none"> Two years experience in type of business for licence or approved qualifications or qualification the Commission considers is equivalent 	<ul style="list-style-type: none"> Not applicable 	<ul style="list-style-type: none"> Two years experience selling tickets entitling persons to travel outside Australia or tickets for travel by air between places within Australia 	<ul style="list-style-type: none"> Two years experience selling tickets entitling persons to travel outside Australia or tickets for travel by air between places within Australia 	<ul style="list-style-type: none"> As above
Qualifications for Category 3	<ul style="list-style-type: none"> As per Category 1 or 2 or 1 years experience 	<ul style="list-style-type: none"> One year's experience in any type of air ticket or prescribed qualifications as for Category 1 	<ul style="list-style-type: none"> One year's experience in category 1, 2 or 3 or approved qualifications or qualification the Commission considers is equivalent 	<ul style="list-style-type: none"> Not applicable 	<ul style="list-style-type: none"> One year's experience in selling tickets entitling persons to travel internationally, or domestically by air 	<ul style="list-style-type: none"> One year's experience in selling tickets entitling persons to travel within Australia 	<ul style="list-style-type: none"> As above
Qualifications for Category 4	<ul style="list-style-type: none"> Not addressed 	<ul style="list-style-type: none"> Not addressed 	<ul style="list-style-type: none"> No qualifications prescribed 	<ul style="list-style-type: none"> Not applicable 	<ul style="list-style-type: none"> No qualifications 	<ul style="list-style-type: none"> Not addressed 	<ul style="list-style-type: none"> As above

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C.1 Key characteristics of regulation across jurisdictions within the ‘National Scheme’ (continued)

	<i>NSW</i>	<i>VIC</i>	<i>QLD</i>	<i>SA</i>	<i>WA</i>	<i>Tas</i>	<i>ACT</i>
Notice in premises	<ul style="list-style-type: none"> ▪ Notice to contain prescribed particulars and clearly visible 	<ul style="list-style-type: none"> ▪ Notice to be clearly displayed 	<ul style="list-style-type: none"> ▪ Licence to be clearly displayed with name of licensee 	<ul style="list-style-type: none"> ▪ Licence to be clearly displayed showing the licence number of the licensed travel agent 	<ul style="list-style-type: none"> ▪ Licence to be clearly displayed 	<ul style="list-style-type: none"> ▪ Licence to be clearly displayed. Size specifications provided. 	<ul style="list-style-type: none"> ▪ Not addressed
Presence of licensee	<ul style="list-style-type: none"> ▪ The holder of the licence cannot carry on business unless there is present and in charge of day-to-day business, a person with prescribed qualifications, whether or not they are the licence holder. ▪ Penalty for non-compliance is \$1,100 	<ul style="list-style-type: none"> ▪ Person with above qualifications to be present at each location 	<ul style="list-style-type: none"> ▪ Business to be managed and supervised by person with the prescribed particulars 	<ul style="list-style-type: none"> ▪ Business must be managed and supervised by person with qualifications approved by the Commissioner, whether or not they are the licensed travel agent. Penalty for non-compliance \$20k. 	<ul style="list-style-type: none"> ▪ If licensee is not present, he/she/they are to employ someone with requisite qualifications to be present. Penalty for non-compliance \$1k. 	<ul style="list-style-type: none"> ▪ The holder of the licence cannot carry on business unless there is present and in charge of day-to-day business, a person with prescribed qualifications, whether or not they are the licence holder. 	<ul style="list-style-type: none"> ▪ A travel agent shall not carry on business at any place unless the agent, or another person who would be entitled to a licence if they so applied, is present and in charge of the day-to-day running of business at that place.
Advertising	<ul style="list-style-type: none"> ▪ Licence number and name of licensee to appear on the advertisement 	<ul style="list-style-type: none"> ▪ Licence number and name of licensee to appear on the advertisement 	<ul style="list-style-type: none"> ▪ Not addressed 	<ul style="list-style-type: none"> ▪ Licence number to appear in any advertisement, letter, statement, invoice, cheque, receipt or other document pertaining to travel agent business 	<ul style="list-style-type: none"> ▪ Advertisements to display the name of licensee and licence number. Penalty for non-compliance \$1k. 	<ul style="list-style-type: none"> ▪ Advertisements to display the business name and the licence number 	<ul style="list-style-type: none"> ▪ Advertisement to specify that he/she is a licensed agent and to include the address of the place where he/she carries on business

References

- ABS (Australian Bureau of Statistics) 1997, *Small Business*, Cat. no. 1321.0, ABS, Canberra.
- — 1998, *Travel Agency Services Industry 1996-97*, Cat. no. 8653.0, ABS, Canberra.
- AFTA (Australian Federation of Travel Agents) 1999, *About AFTA*, downloaded from the Internet at <http://www.afta.com.au/about.html>
- FMRC 1999, *Small Business Profile for Travel Agencies*, The FMRC Benchmarking Team Pty Ltd.
- Commonwealth of Australia Government 1996, *Review of the Migration Agents Registration Scheme, Exposure Draft*. December.
- Harris, R. and Howard, J. (eds), *The Australian Travel Agency, Second Edition*, Irwin, Sydney, Chicago, Bogota, Boston, Buenos Aires, Caracas, London, Mexico City, Toronto.
- State Government of Victoria 1997, *Review of Legislative Restrictions on Competition, National Competition Policy Guidelines*, Melbourne.
- Travel Agents Act 1986* (New South Wales), Assembly, Second reading.
- Travel Agents Act 1986* (Victoria), Assembly, Second reading.
- Travel Compensation Fund 1999, *Annual Report 1998*.