

**PROPOSED REGULATION OF
TOURISM SERVICES IN
QUEENSLAND**

PUBLIC BENEFIT TEST REPORT

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1.0 Introduction

1.1 Legislation

This Report outlines the results of the National Competition Policy Review in relation to the proposed regulation of tourism services in Queensland.

1.2 Reasons for Review

In April 1995, the Commonwealth, State and Territory Governments signed a set of agreements to implement a National Competition Policy (NCP). Under NCP, each participating jurisdiction committed to implementing a series of competition reforms, including the review and reform, where necessary, of all legislation which contained provisions restricting competition. Each jurisdiction also agreed to subject all new legislative proposals that contained measures restricting competition to a public benefit test (PBT).

This review was undertaken to meet Queensland's NCP obligations in relation to the proposed new legislation (both primary and subordinate) and the PBT was conducted in accordance with the Queensland Government's *Public Benefit Test Guidelines* (PBT Guidelines).

1.3 Conduct of the Review

The guiding principle for the NCP review of legislation, as contained in Clause 5(1) of the Competition Principles Agreement, is that legislation 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
- the objectives of the legislation can only be achieved by restricting competition.

Refer to Appendix A for the Terms of Reference of the NCP review.

In accordance with the PBT Guidelines, the review should also take account of the Government's Priority Outcomes for Queensland, as follows:

- More Jobs for Queensland - Skills and Innovation - The Smart State;
- Safer and More Supportive Communities;
- Community Engagement and a Better Quality of Life;
- Valuing the Environment;
- Building Queensland's Regions.

1.4 Consultation

A draft PBT Report/Regulatory Impact Statement (RIS) (and policy proposal) was released for public comment in August 2002 seeking stakeholder comments on the preliminary finding of the PBT. The availability of the draft documents were publicised extensively through a media release, advertising in *The Courier Mail*, *The Australian* and regional Queensland newspapers, a gazettal notice, advertising through Tourism Queensland and Queensland Regional Tourist Organisation communication channels

and advertising on the Queensland Office of Fair Trading website. Approximately 270 stakeholders received a targeted notice of the availability of the draft PBT Report/RIS (and policy proposal).

A total of 31 responses to the draft document were received. Several stakeholders provided support for the development of the proposed new Act. Key concerns with the proposal included: the level and type of enforcement activities required; the need for the inclusion of a licensing system for tour guides; broadening the definition of an ITO; registration fees; and the need for a national approach to this legislation. These submissions have been further assessed and a number of changes to the policy proposal have been made including broadening the definition of an ITO and exempting licensed travel agents from paying the registration fees. Some submissions supported further regulation of tour guides. Any comments raised in relation to specific issues have been highlighted throughout this Report.

Refer to Appendix B for a list of stakeholders who provided input on the draft PBT Report/RIS and policy proposal.

2.0 Industry overview

2.1 Tourism industry

Tourism is a major industry for Queensland, contributing significantly to job creation, export earnings and regional development. It also makes an important contribution to the development of the small business sector and the conservation of Queensland's unique natural and cultural heritage.

For the year ended June 2001, Queensland received 15.9 million domestic visitors (who generated 73.6 million visitor nights), which represented 21.5 per cent of all domestic visitors (and 25.3% of all domestic visitor nights) to Australia¹.

International visitors to Queensland totaled 1.97 million for the year to June 2000². Japan is the dominant source market, representing 24 per cent of total international visitors to Queensland. New Zealand (13%), the United Kingdom (13%), United States of America (9%) and Taiwan (4%) follow. Visitors from the United Kingdom and China increased significantly from the year ended June 1999 to the year ended June 2000 (27% and 14% respectively). Queensland ranks highly in terms of international visitor market share. In the year to June 2000, Queensland accounted for 21.5 per cent of all Australian international visitor nights. This ranked second, behind New South Wales, which had 37.6 per cent market share, and ahead of Victoria with 18.4 per cent.

In 1999, the total expenditure by visitors to Queensland was \$14.0 billion. This consisted of \$9.4 billion in domestic overnight visitor expenditure, \$2.3 billion in day visitor expenditure and \$2.4 billion by international visitors to Queensland³. Shopping expenditure accounted for \$2.2 billion, or 15 per cent of total visitor expenditure in Queensland in 1998-99⁴.

Tourism contributes \$6.1 billion to the Queensland economy, and accounts for 6.2 per cent of Queensland's Gross State Product⁵. Tourism's contribution is comparable to that of two of Queensland's most traditional industries, that is, agriculture, forestry and fishing,⁶ and mining⁷. Tourism generates \$2.4 billion annually as an export earner, and accounts for 11 per cent of total Queensland exports overseas. As such, tourism is Queensland's second largest export earner⁸.

Tourism employs almost 150,000 Queenslanders, or 9% of all persons employed. One job is created in Queensland for every 167 domestic visitors or 65 international visitors⁹.

¹ National Visitor Survey.

² International Visitor Survey.

³ Queensland Treasury, year to June 1999.

⁴ Queensland Treasury, year to June 1999.

⁵ or 5.5 per cent at factor cost. Source: Qld Treasury, year to June 1999.

⁶ Agriculture, forestry and fishing contributed 4.7 per cent of Gross State Product at factor cost.

⁷ Mining contributed 5.6 per cent of Gross State Product at factor cost.

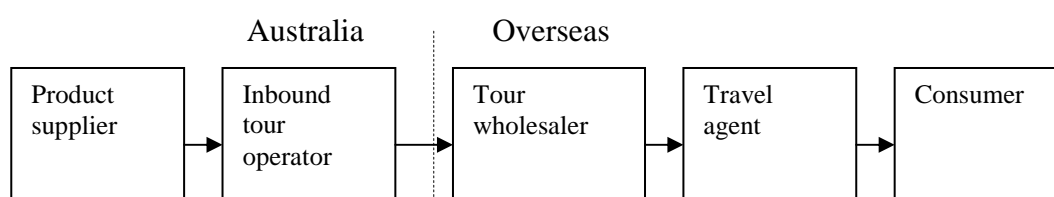
⁸ Queensland Treasury, year to December 1999.

⁹ Queensland Treasury, year to June 1999.

The most recent tourism forecast data was published by the Tourism Forecasting Council (TFC) in April 2002. At this time, the TFC reported that Australia's inbound tourism appeared to have passed through the worst of the Ansett/September 11 events, with increasingly positive signs for recovery and suggestions that tourism was returning to earlier long term growth trends. At this time, the TFC expected inbound visitor arrivals to continue to recover during 2002 and 2003 (with a return to positive growth of 4.7 per cent forecast for 2002), which was broadly in line with international tourism estimates. Total visitor arrivals to Australia are forecast to grow by an average annual rate of 7.3% over the period of 2001 - 2012, to reach 10.4 million visitors by 2012. However, the latest Australian Bureau of Statistics international arrivals figures show a decline of 7.4% on August 2001, with the fall in arrivals being experienced across most inbound markets¹⁰. While the outlook for 2003 remains positive, it appears that current international uncertainties are dampening interest in long-haul travel in a number of markets for Australia¹¹.

2.2 Inbound Tour Operators

Inbound Tour Operators (ITOs) are an important part of the inbound tourism product distribution system. The traditional product distribution system can be illustrated as follows¹⁴:



ITOs are located between product suppliers (such as accommodation establishments, local tour operators and local transportation) and foreign tour wholesalers. They range from large, long established firms with many offices to small, lightly capitalised firms operating with not much more than a telephone.

ITOs are generally based in Australia (although there are reportedly many cases where a foreign wholesaler will conduct business direct with Australian-based suppliers, without being based in Australia) and their primary business is “packaging” tours and selling them, mainly to overseas-based tour wholesalers or retailers. “Packaging” tours involves contracting with local product suppliers for the supply of transport, accommodation, tour guiding, tourist attractions and restaurant services, planning an itinerary and selling the resultant package to an overseas-based entity.

In addition to their primary business of packaging tours, ITOs also act as brokers for overseas-based travel companies in providing a range of services including product advice, coordination of travel arrangements and collection of payment, provision of tour

¹⁰ Commonwealth Department of Industry, Tourism and Resources, September 2002.

¹¹ Commonwealth Department of Industry, Tourism and Resources, September 2002.

¹⁴ Centre for International Economics, 2000

guides and translators. Some ITOs also provide on-ground support for tours (such as a 24 hour contact number for visitors).

ITOs operate on a commission basis with margins in the order of 25 to 30 per cent on most services that they sell. Generally, ITOs and their suppliers are not paid for services rendered until the consumer has departed Australia.

An Australian Bureau of Statistics survey in 1995/96 found that more than two-thirds of the 2.4 million people who came to Australia in 1995-1996 used services operated and coordinated through ITOs, and spent more than \$1.38 billion on those services. The same survey found that ITOs handled 82 per cent of all Asian visitors.

The national industry association representing the tourism export industry is the Australian Tourism Export Council (ATEC). As at March 2002, 150 ITOs operating in Australia were members of ATEC, which represents at least 50% of the ITO market. 31 of these ATEC members are Queensland based. ATEC provides leadership, representation and advice to its members and the tourism export industry at large.

In 1996/97, an Australian Bureau of Statistics study found that there were 170 inbound tour operators in Australia. However, ATEC estimates that there could currently be as many as 300 ITOs in operation, Australia-wide.

Many ITOs are currently required to be licensed under the *Travel Agents Act 1988* (TAA) due to the very wide definition of 'travel agent' under that Act. It is unclear what proportion of ITOs operating in Australia are licensed under the TAA. Some reports suggest that only half of all ITOs are currently licensed under the TAA. This could be due to the fact that some ITOs fall outside the functional definition of a travel agent within the TAA while others might be exempted through the minimum turnover threshold. Others may simply be flouting the law.

2.3 Tour Guides

Tour guides are individuals who accompany visitors on tours and guide within a specific country, region, area, city or site. The tour guide's main role is to interpret and deliver information in the language of the visitor. This information could be general or specialised in matters relating to such things as history, archaeology, monuments and works of art, the environment, culture and natural and built attractions.

There is a huge diversity in the activities associated with guiding. Tour guides may provide a range of services that could include offering arrival and departure assistance at the destination and co-ordinating prearranged touring details. They may perform dual functions such as driving, operating vessels and outdoor recreational equipment. Tour guides may recommend products and sell optional tours to the visitor and may receive commissions on any sales generated.

Tour guides are generally employed in four ways: as employees; as independent freelance contractors; as owner/operators; or as volunteers.

According to the 1996 Australian Bureau of Statistics Census data, there were a total of 5,757 tour guides employed in Australia, and a total of 1,863 tour guides employed in Queensland. It is unknown how many non-Queensland resident tour guides operate in Queensland per year.

The main tour guide professional associations are the Institute of Australian Tourist Guides (ITAG), the Professional Tour Guide Association of Australia and the Tour Guides Association of Western Australia. These three associations, together with a few other organisations that have linkages to the occupation of tour guiding, represent approximately 8.5% of all tour guides working in Australia. Guiding Organisations Australia (GOA), a not-for-profit umbrella organization of tour guide associations and other stakeholder organisations, has recently been established, and is preparing to create a national tour guide registration scheme. The scheme has recently been successful in attracting funding support from the Australian Standing Committee on Tourism.

Industry-approved competency standards for tour guides have existed for many years, and have recently been reviewed to ensure accuracy and currency. The tour guiding community in Queensland and other tourism operators have been actively involved in this process.

Apart from general consumer legislation such as the *Fair Trading Act 1989* (“FTA”) and *Trade Practices Act 1974*, tour guides are not specifically regulated in Queensland or any other State or Territory of Australia.

Consultation on the draft policy proposal and draft PBT Report/RIS produced strong support from stakeholders for the introduction of a tour guide licensing/accreditation/authorisation system, and/or a mandatory code of conduct for tour guides.

2.4 Regulation in other States/Territories and in other countries

Many ITOs are currently required to be licensed as travel agents in all states and territories of Australia (except the Northern Territory), and the requirements for holding a licence are similar in all jurisdictions. There is no specific legislation regulating tour guides in other jurisdictions.

The problems facing the tourism industry with respect to ‘mischief’ are not unique to Queensland and Australia. Many countries have experienced problems within the tourism industry relating to consumer dissatisfaction resulting from poor service, misrepresentation of travel components, pricing variations, inconsistent quality, exertion of influence and business failure. Refer to Appendix C for a brief outline of the legislative provisions governing travel in other countries.

3.0 Policy objectives

3.1 Industry problems

The success of the Australian tourism export industry depends on the delivery of quality services that fully meet the needs and expectations of international visitors. International visitor arrivals to Australia expand annually, with new markets emerging rapidly. The future expansion of tourism exports depends on all types of tourism export operators conducting their businesses in a fair, honest, ethical and professional manner. Visitor and repeat visitor numbers will grow with the enhanced reputation of the industry.

Concerns have been voiced about the conduct of some ITOs and tour guides in the inbound tourism sector and in the domestic or mixed inbound tourism/domestic sectors by a wide range of interested parties, including tourism industry associations, tourism operators, retailers, government bodies and tourists. Tourism Queensland has conducted extensive consultation with these stakeholders, which has identified a number of problems related to the provision of tourism services which can be categorised under the following five headings:

3.1.1 Controlled shopping

ITOs and tour guides accept fees and secret commissions from traders as an inducement to, or reward for, taking tourists to the trader's premises and for the tourists purchasing the trader's goods and services. Shopping commissions in the range of 30 to 40 per cent have been cited, with some stakeholders suggesting that commissions are as high as 50 per cent in some markets¹⁵. Shopping as part of an itinerary or tour and receipt of commissions by tour guides are generally regarded as acceptable commercial behaviour by industry and by tourists.

However, this practice becomes unacceptable when the particular vulnerabilities of tourists (such as race, language and culture) are played on. Some ITOs and tour guides prevent tourists from shopping freely anywhere else apart from the premises of traders designated by the ITO or tour guide. Some tactics engaged in by ITOs and tour guides to control shopping, include the following:

- physically impeding tourists from shopping at non-preferred traders by blocking doorways and visual access to advertising signs;
- taking tourists to a designated trader and directing them that they must not leave without the tour guide and then hiding or disappearing until there is no time left for tourists to visit other traders of their choice;
- taking tourists' wallets, credit card, passports and travel documents under the pretence that it is not safe for tourists to carry them, with the effect that the tourist is unable to make any purchases (or at least any duty-free purchases) without the guide being present;

¹⁵ Prideaux and Kim (1999)

-
- misleading groups by advising that a non-preferred trader's environment is unsafe, a non-preferred trader is supplying products that would be confiscated by Customs, that only designated traders accept travelers cheques or that only designated traders are "Government approved"; and
 - constructing itineraries that allow no free time.

Prices are generally considerably higher at the premises of designated traders, thus tourists are particularly disadvantaged by exposure to only these premises.

Uncompetitive or restricted shopping arrangements are primarily driven by the desire to capture a greater share of the tourist's shopping budget. The need to do this might flow from the sale of the package at cost or less than cost, with the expectation that the ITO will recover a commercial return through the tourist's spending.

Some ITOs, in a bid to capture market share, discount prices to the point where the Australian ground component is offered below cost. This practice has been identified as a significant feature of the Korean market¹⁶. Initial losses are recouped through highly organised tour itineraries that limit tour participants to certain shops and restaurants. The shops and restaurants are often Korean owned. Price discounting has also been reported to be a common feature in the Taiwanese market¹⁷. Some stakeholders contend that similar price discounting practices are emerging in the fledgling Chinese market. In these cases, shopping commissions are a vital source of profit for operators.

Through consultations on the draft PBT Report/RIS, industry stakeholders confirmed the continued existence of these practices, and further reinforced the element of unacceptable pressure being exerted over visitors by the rogue operators.

3.1.2 Defamatory remarks/misrepresentations

This behaviour may be seen as an extension of controlled shopping, but is considered serious enough in itself to be considered as a distinct problem. Some ITOs and tour guides make defamatory remarks or misrepresentations in the native language of the tour group about traders with whom they have no commission arrangement. This deters tourists from shopping with these traders and makes it easier for the tour guide or ITO to direct the tourists to their own preferred traders. For example:

- defamatory remarks may include statements regarding the poor quality of goods or services provided by other traders; and
- misrepresentations may include statements that another trader's environment is unsafe, that only designated traders accept travellers' cheques and that only designated traders are "Government approved".

¹⁶ Kim and Prideaux (1999) and Ravinder and Ko (1997)

¹⁷ Huang, Yung and Huang (1996)

There have also been reports of misrepresentation of travel components and quality of accommodation and hidden charges and fees. False or misleading representations by or on behalf of ITOs, such as misrepresenting the quality of accommodation, aim to increase the profits of the ITO at the expense of the unwary tourist. Such conduct might happen where tourists are not well informed and where business profitability does not rely on repeat business. Tourism products may be vulnerable to this type of conduct as tourists are generally unable to examine the product prior to purchase.

3.1.3 Overcharging for goods and services

Some ITOs and tour guides, either alone or in cooperation with others, inflate the price of goods and services (such as tickets to tourist attractions and restaurant menus) for tour groups. Consultation with industry has revealed that some sightseeing packages are being sold to overseas-based tourists at double or triple local prices. Industry stakeholders have also reported that commissions paid by suppliers to tour guides are passed onto the visitor, thus inflating the cost of their products and services.

A distinct, but related type of mischief involves ITOs, their agents, and tour guides charging for goods and services that are available at no cost to the general public.

3.1.4 Low standards

Other problems reported to Tourism Queensland were lack of authentic Australian products, low quality packages, poor business practices and low professional standards.

The main drivers of low quality service and itineraries are not clear. In some less mature markets such as Korea or Taiwan, stakeholders suggest that strong competition on price has often come at the expense of quality. Packages are downgraded by ITOs (for example, through substitution of lower quality accommodation) in order to match lower prices offered by competitors. Other stakeholders suggest a second driver of low quality is the desire of operators to maximise shopping and other commissions. These practices have been identified as occurring in the Korean market where time to be spent at advertised attractions is minimised in order to increase the time available for shopping¹⁸. A third suggested driver of low standards is inadequate training of ITOs and tour guides. Low skill levels were raised with the Queensland Inbound Tourism Taskforce (QITTF) as a problem in the industry.

3.1.5 Other unprofessional or unconscionable conduct

In addition to the above, other conduct of ITOs and tour guides, which may be described as unprofessional or unconscionable and which may lower the quality of a tour include:

¹⁸ Kim and Prideaux (1999)

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- Coercing traders to pay excessive commissions by threatening to exert influence over their tour groups not to use that trader.
 - Changing itineraries to reduce or eliminate free time or tour time, and to increase the amount of shopping time, including circumstances where itineraries are altered without notice or consultation. This is done mainly by:
 - curtailing a tour activity to allow for more time to be spent in retail outlets. For example, where a major tourist attraction would require tourists to spend three hours to enjoy a thorough visit, guides may pull the tourists away after forty minutes in order to make more time for shopping; and
 - where tourists' itineraries allow for free time, advising tourists only on what retail shopping is available and failing to provide advice on other leisure options, including day tours and visits to tourist attractions.

From the consultation on the draft PBT Report/RIS stakeholders identified the following additional examples of other unprofessional/unconscionable/illegal practices:

- Influencing hosting companies (such as port authorities and other agents) to restrict the availability of information (post arrival) regarding the 'real' prices and availability of the same or similar products for comparison or for purchasing if the tourist has not purchased the same product prior to arrival.
- Illegal taxation practices – Stakeholders report that many tour guides (particularly on student visas) are being paid in cash, and are therefore unlikely to pay tax.
- Inappropriate/illegal industrial relations practices – Stakeholders report that many tour guides being employed on working student visas are no longer studying, and do not have the required permits. Further, they are not paid appropriate rates, and are reportedly 'fined' if the ITO believes that they have not performed adequately.

Discussions with stakeholders have suggested that while the practices described above in sections 3.1.1-3.1.5 occur across all markets, they are most prevalent in less mature markets such as South Korea, Taiwan and China, and potentially in other emerging markets such as India. Such undesirable practices are more likely to survive in markets where:

- there are a high number of organised group and package holiday makers;
- markets are relatively young, where tourists have little experience of Australia as a destination; and
- tourists have little experience in travel and limited access to independent advice on the destination.

The undesirable conduct towards tourists is most prevalent in the high tourism states of Queensland, New South Wales and Victoria.

Visitor satisfaction studies¹⁹ have found that Korean visitors to Australia have been dissatisfied with poor quality service, lack of service providers skilled in the Korean language, inclusion of excessive shopping tours and stops in itineraries, insufficient cultural and wildlife content in itineraries, restriction of tours to the Gold Coast and Sydney, trading hours of shops, and cost of goods.

¹⁹ Cho (1988), Ravinder and Ko (1997)

The Australian Tourist Commission has also conducted a series of overseas visitor satisfaction studies on a wide range of measures. One study, for example, found that of the Malaysians who were asked about the quality of their tour guide service, 20 per cent were not satisfied. Another study found that 32 per cent of visitors from Hong Kong were dissatisfied with the service from their tour guide, as were 38 per cent of visitors from Taiwan.

International tourism experts are presently attributing close to 70 per cent of foreign tourism visitation decisions as being based on “word of mouth” recommendations from family, friends and acquaintances²⁰. Current tourism studies have also identified the experiential aspect of the holiday as the most powerful and abiding consideration for the consumer, and the dimension most likely to influence subsequent word of mouth recommendations. In this context, a poor holiday experience as a result of unscrupulous practices in the inbound tourism sector will have a potentially significant influence on the destination choices of other intending visitors and will in turn impact on this estimated growth in the number of foreign visitors.

3.2 Reasons for Government intervention

In general, the main reason for governments to intervene in markets is to address the failure by markets to operate efficiently or deliver outcomes that reflect community standards. The main forms of market failure relevant to tourism services are based on:

- the propensity for information problems, usually referred to as information asymmetries; and
- the likelihood of adverse third party effects, often referred to as negative externalities.

In this instance, information asymmetries arise because tourists are often at a severe information disadvantage compared with those who effectively control the delivery of tourism services - ITOs and tour guides. The scope of the information problem is even greater when tourists are first time purchasers or from non-English speaking markets. The third party effects arise because inappropriate behaviour can impact adversely on responsible ITOs, tourism service providers, tourism industry employees, government, the general community and Queensland’s overall share of the international tourism market.

The nature of the problem is such that it is too costly for individual tourists to overcome the information problems and third party effects without some form of government intervention. Most tourists, and in particular international tourists, are likely to have difficulty in assessing in advance the quality of the prospective travel experience and the tourism services to be delivered. The very nature of international tourism arrangements means:

- it is only possible to effectively evaluate the quality of the purchase after payment has been made;
- returning the purchase and seeking a refund is usually not feasible; and
- international tourists who encounter problems are away from their normal support bases and heavily dependent on tour organisers and guides.

²⁰ ATEC Symposium (2000)

It could be argued that as long as tourists are aware of potential risks and their implications, they should be free to choose whether to assume the risk or take action to reduce the risks accordingly. However, the very reason many tourists choose packaged tours is to minimise this risk by employing more informed individuals who are conversant with the potential risks and remedies. Relying on individual tourists assessing the risks and taking individual action in response also ignores the often-substantial transaction costs associated with overcoming the information problem relative to the efficiency of some form of government intervention. That is, the transaction costs of identifying quality and rectifying problems can reduce the effectiveness of market mechanisms and provide an important argument for some form of regulation to improve efficiency.

Although a strong economic argument can be made for some form of regulation of ITOs and tour guides, determining the most appropriate form of regulation is more difficult. In this respect, intervention should focus on addressing the market failure while minimising any spillover effects, and minimise administrative and regulatory costs consistent with meeting the objectives of the regulation.

The industry problems identified in section 3.1 impact directly on the quality of services received by tourists and the demand for services provided by other sectors of the Australian economy. These problems have resulted in:

- negative impacts on the quality of international visitors' Australian experiences and subsequently Australia's image overseas;
- negative economic impacts (e.g. loss of revenue to Australian taxpayers from cash economy; increased costs of enforcement; defaulting on payments to suppliers);
- closure of Australian businesses and the development of shopping ghettos;
- potential for development of overseas monopolies (e.g. a greater share of visitor expenditure being captured by foreign owned businesses as a result of uncompetitive shopping arrangements);
- criminal offences and breaches of laws (e.g. transport, immigration, consumer and/or taxation); and
- negative social impacts.

To the extent that such problems exist and adversely impact on the demand for tourism services, they are likely to affect:

- profitability of tourism related businesses;
- employment potential of tourism related businesses;
- the reputation of the Queensland tourism industry; and
- revenue generation of the State via taxation of tourism related businesses.

In some instances there are a number of immediate results with longer-term flow-on effects in the industry and subsequent flow-on effects throughout the rest of the economy.

The Tourism Forecasting Council forecasts that by 2008, over 1.7 million visitors to Australia could be from emerging and growth markets such as China, South Korea, Taiwan and 'other Asian nations'. The Centre for International Economics has indicated that the potential losses in expenditures from these markets depend on the degree to which potential tourists are discouraged by advice received from dissatisfied

tourists to Australia. The potential losses are based on the assumption that 25% of potential tourists seek advice from family and friends who have visited a destination before deciding to travel. If the potential tourists are discouraged by the advice they may decide not to visit Australia. The potential losses range from \$7 million annually if 1% of tourists are discouraged from visiting Australia to \$66 million annually if 10% of tourists are discouraged²¹.

A recent study found that Korean visitors to Australia were spending US\$50 per person less than Korean visitors to all other destinations. If this amount were representative of under spending that arises because of current shopping practices, then Australia could be foregoing around \$45 million on average over the next 10 years (or \$290 million in present value terms)²².

While there has been no comprehensive collection of data on ITO business failures, there have been some very significant collapses in the past with losses in the order of \$6.5 million. Product suppliers interviewed during a recent study reported losses of around \$100 000 following recent collapses²³.

Undeclared cash-in-hand dealings reduce the available tax base for government. The Australian Tax Office estimated that cash-in-hand dealings in 1997 on the Gold Coast alone were in the order of \$20 million annually. Australia-wide, depending on the proportion of undeclared income and the average rate of commission on shopping expenditures, this figure could be as much as \$47 million annually²⁴.

3.3 Policy development process

In 1997, two reviews of the inbound tourism sector in Queensland and New South Wales identified certain practices that had the potential to impede tourism growth and adversely affect Australian businesses. In response to, and in recognition of, the importance of the issues raised in these reviews, the Tourism Ministers Council (TMC) decided in 1999 to support a national approach to the regulation of, or improvement in standards for, ITOs.

The TMC commissioned a report on regulatory options for ITOs, which was completed by the Centre for International Economics (CIE) in March 2000. The CIE was asked to review the following four options and examine the costs, benefits, practicality and effectiveness of each option in addressing problems within the inbound tourism industry:

- amendments to the TAA;
- prescribed codes of conduct (PCC) under the *Trade Practices Act 1974* (TPA);
- prescribed codes of conduct under state/territory fair trading legislation; and
- voluntary inbound tourism industry accreditation.

The CIE was also asked to identify and examine other viable options.

²¹ Centre for International Economics, 2000

²² Centre for International Economics, 2000

²³ Centre for International Economics, 2000

²⁴ Centre for International Economics, 2000

The CIE Report recognised the occurrence of undesirable practices in the industry and their potential to do substantial harm. The report concluded that:

- the TAA is unlikely to be a suitable vehicle for attempting to regulate all ITOs;
- a separate ITO-specific, state-based regulation would offer greater flexibility to target provisions to directly address problems in the ITO sector;
- a PCC under the TPA does not appear to be feasible at this point in time and there is further doubt whether the enforcement mechanisms under a PCC are appropriate for the ITO sector;
- experience with PCCs under state fair trading legislation suggests that such regulation would not be feasible;
- a voluntary code of conduct/accreditation scheme, by itself, is unlikely to be able to address problems created by any rogue element of the industry who would tend to operate outside a voluntary scheme; and
- a co-regulatory approach would provide for a greater industry role in regulation and would be a first step in allowing industry to move to full self-regulation over the longer term. However, preconditions for success for such schemes – a cohesive industry and an industry body that is broadly representative of the industry - are unlikely to be met in the present context.

In July 2000, the TMC endorsed the CIE report and its public release. The TMC also resolved that Commonwealth and State Governments should work with ATEC to develop an industry-based Code of Conduct. A National Inbound Tourism Task Force was formed. As a result of the work of the National Inbound Tourism Task Force and ATEC, a number of initiatives are being progressed at state and national levels in an attempt to curtail inappropriate conduct. Initiatives include:

- Voluntary industry Tourism Export Code of Conduct
 - This Code has been developed and is currently undergoing trial implementation.
 - This Code will be open to all Australian-based operators in the inbound tourism industry, both ATEC members and non-ATEC members.
 - It will be delivered through an independent body with outsourcing of auditing.
 - It has been designed to raise, and regulate, the standards of practice and services in the inbound tourism industry.
 - It has been drafted as a voluntary, stand-alone, industry regulatory process, but will be appropriate to operate in tandem with legislative measures.
 - Standards cover a comprehensive range of practices, including Marketplace standards/Product planning standards/Product delivery standards/Human resource standards/Operational standards/Duty of care standards/Business to business standards.
- Consumer education of overseas visitors
 - Production and distribution of a national *Shopping around in Australia* brochure, which will incorporate a national 1300 number for visitor complaints.
 - Customs initiatives (include consumer information with Customs material promoting GST Refund Scheme at airports and hotels and mail outs to overseas travel agents).
 - Advertorial in Sydney Guide and Brisbane Guide.
 - Inclusion of consumer education information on key websites in several languages.

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- Research
 - Inclusion of new tour group visitor satisfaction questions on the International Visitor Survey.
 - Proposal for a Cooperative Research Centre for Sustainable Tourism study re impacts of unethical practices.
 - Possible quality related initiatives with origin countries.
 - Existing legislation

Immigration:

- The introduction of minimum skills and salary requirements, which will discourage the importation of tour guides, except where labour market testing indicates that there is a shortage of guides.
- Improve monitoring of visa conditions, and will act upon information from external sources regarding breaches of codes or legislation.

Taxation:

- ATO liaison with NZTO re tax avoidance and ATO mapping of points in the distribution chain for preventative strategies.

Transport:

- Interstate Bus Industry Regulators Group to progress initiatives identified by the national taskforce e.g. common driver licensing standards for tour/coach operators, authorisation and vehicle maintenance standards (minimum 2 yrs Australian driving experience, OA and DA displayed).
- Increased surveillance in tourism precincts and regular compliance audits and education of industry operators.

Fair trading/Consumer protection:

- Collection and collation of tourism related complaints.
- Case studies of specific complaints as basis for practical investigation procedures for the inbound sector.
- Education of industry operators.

3.4 Objectives of Government intervention

The policy objectives of the proposed Government intervention in the tourism services industry is to ensure fair trading practices and enhance consumer protection within the industry. In particular there is an objective to protect tourists and tourism related businesses from the unconscionable and unprofessional conduct of some ITOs and tour guides. This protection will deter rogue operators in the industry and send a clear message to source countries of our inbound tourists that Queensland is determined to ensure that tourists are treated fairly.

4.0 Policy Options

The following four policy options have been identified and assessed in relation to their ability to address the identified problems in the tourism industry:

1. do nothing (i.e. maintain the status quo);
2. the deregulation/self-regulation model;
3. co-regulation under the Queensland *Fair Trading Act 1989* (FTA); and
4. co-regulation and registration under a new, separate Act.

The key groups affected by the policy options are:

1. ITOs and new entrants to the ITO market;
2. tourists;
3. tourism related businesses; and
4. government.

This section of the report analyses the costs/disadvantages and benefits/advantages of each option, in relation to each key group.

4.1 Do nothing (i.e. maintain the status quo)

This option involves maintenance of the status quo. ITOs would continue to be required to be licensed under the TAA (and thus contribute to the Travel Compensation Fund (TCF)). No new legislation would be introduced. Government would continue to support and assist the development and implementation of the voluntary Tourism Export Code of Conduct.

The costs/disadvantages and benefits/advantages of this option, in relation to each key group, are outlined in the sections below.

4.1.1 Costs/Disadvantages

ITOs/new entrants

Under this option, all ITOs that operate in Queensland would continue to be registered under the TAA and will thus be required to pay registration fees under the TAA in addition to being required to contribute to the TCF. These fees are outlined as follows:

Fee Type	Amount (\$) as at 28 June 2002
Licensing under the <i>Travel Agents Act 1988</i> in Queensland	
Application fee	45.90
Annual license fee – individual	186.00
Annual license fee – corporation	447.00
Branch fee (for each additional place of business)	74.50
Travel Compensation Fund	
Application contribution – principal location	8,893.50
Application contribution – branch location	2,079.00
Annual renewal fee (head office or sole location)	239.80

Annual renewal fee (each additional location)	157.85
Total fees for business with one location	
Total fees for new market entrant – individual	9,125.40
Total fees for new market entrant – corporation	9,386.40
Total annual fees for existing operator – individual	425.80
Total annual fees for existing operator – corporation	686.80

The current market structure is as follows:

- It is estimated that 170²⁵ – 300²⁶ ITOs currently operate in Australia.
- 150 ITOs Australia-wide are currently members of ATEC, 31 of which are Queensland based²⁷.
- Both Queensland based and non-Queensland based ITOs operate in Queensland. For example, ITOs may be physically based interstate (or overseas) yet still include Queensland destinations and products in the packages they arrange. It is unclear exactly how many non-Queensland based ITOs operate in Queensland, however, potentially all ITOs that operate in Australia (or overseas) could operate in Queensland.
- ITOs must be licensed under the TAA in order to be a member of ATEC.

Some reports suggest that only half of all ITOs operating in Australia are licensed. This could be due to the fact that some ITOs fall outside the functional definition of a travel agent within the TAA while others might be exempted through the minimum turnover threshold. Others may simply be flouting the law. The current system is therefore inequitable to ITOs that are currently licensed under the TAA or its equivalents, and is not a ‘level playing field’.

One of the key objectives of the TAA is to protect consumer funds from financial loss arising from the failure of travel agencies to account for monies deposited with them. This is achieved through compulsory membership of the TCF for licensed travel agents. The problems of ITO participation in the TCF have been a long-standing issue for the ITO sector and have been raised in many forums. The nature of transactions in the ITO sector are such that consumer monies are rarely put at risk of loss through the failure of an ITO, meaning there are relatively few claims on the TCF as a result of ITO failures. This is because, as outlined earlier, ITOs and their suppliers generally are not paid for services rendered until the consumer has departed Australia. Submissions to the NCP review of the *Travel Agents Act 1988* in 2000 reported that ITOs are obliged to be licensed by virtue of the legal definition of ‘travel agent’, and are therefore required to participate in the TCF, but apart from the marketing benefits of being licensed they receive little benefit. In addition, there seem to be few benefits in terms of consumer protection flowing from licensing provisions and costs incurred by ITOs in meeting licensing and TCF requirements.

The TAA is not an appropriate vehicle for regulating ITOs and tour guides, as it does not address the specific conduct, or activities, of those persons. It is therefore likely that, under this option, ITOs would continue to express concern about the

²⁵ Australian Bureau of Statistics, 1996/97

²⁶ ATEC estimate

²⁷ ATEC member database

ineffectiveness of the TAA in addressing ITO issues and the inappropriateness of the requirement for ITOs to contribute to the TCF.

Under this option, it is likely that rogue ITOs and tour guides would continue their current undesirable conduct, which impacts on tourism related businesses, Queensland's international image as a tourist destination, repeat visitation rates and referred visitation rates.

Tourists

It is likely that some tourists would continue to experience the undesirable practices by rogue ITOs, such as controlled shopping, defamatory remarks/misrepresentation, overcharging for goods and services and other unprofessional and unconscionable conduct.

The provisions of the FTA do provide consumer protection, however enforcement action is hampered due to the general nature of the provisions, which do not create specific standards or address specific problems in the tourism services industry.

The FTA prohibits a person from engaging in misleading and deceptive conduct (section 38) and from making false or misleading representations in relation to goods and services supplied to consumers (section 40). In most situations, ITOs do not make travel/tour arrangements directly with tourists. The travel agent in the tourist's home country will most likely make representations about tour quality and content. An aggrieved tourist would need to take action against the travel agent in their home country.

The Office of Fair Trading ("OFT") may take action on behalf of a tourist if a tour guide or local trader engages in misleading or deceptive conduct. However, few complaints have been received from tourists, which are attributed to the fact that these tourists may lack knowledge and understanding of the general consumer protection available to them, and that quite often they are only in Australia for a short period of time.

The low number of tourist complaints can also be attributed to the fact that tourists may not be aware that they have been misled or deceived. For example, a tour guide may indicate that only designated retailers are 'Government approved' and tourists may believe this statement. The majority of complaints received to date have been from traders affected by an ITO or tour guide's conduct, for example, a trader who witnesses an ITO or tour guide pointing out to tourists that their shop is not Government approved. However, under the FTA an action for damages based on misleading or deceptive conduct can only be taken if the loss suffered is by a "consumer". These traders do not fall within the definition of a "consumer" under the FTA.

Tourism related businesses

It is likely that rogue ITOs would continue undesirable practices, which impacts on the demand for the goods and services of tourism related businesses. For example, retailers could continue to be denied business due to defamatory remarks/misrepresentations or refusal to pay excessive commissions.

Continuation of the undesirable practices may lead to decreased confidence of tourism related businesses in the international tourism distribution channel.

Government

It is likely that rogue ITOs would continue undesirable practices, which impact on tourism and the Queensland economy. The wider impacts of the undesirable practices include fewer repeat visits by tourists, lower rate of recommendation to other potential tourists and lack of tourist confidence. Queensland's image as a tourist destination may be tarnished by such conduct. Over time, this could create an impediment to tourism growth and impact negatively on employment. Other wider impacts for government include direction of tourism earnings to non-Australian owned businesses and lower State revenue from tourism related businesses.

The licensing of ITOs was included in the 'New Directions statement, 1998' as a Labor election commitment, thus raising industry and community expectations that Government will act to address the problems.

4.1.2 Benefits/Advantages

ITOs/new entrants

Current initiatives that are being conducted as part of the integrated strategy for regulation of the inbound tourism industry may help address problems that the industry faces. These initiatives, including the voluntary Tourism Export Code of Conduct, consumer education of overseas visitors, additional research, and initiatives involving existing legislation, impinge on the ability of poor quality ITOs to operate in the industry, and, if successful, might reduce the need for ITO specific regulation.

The voluntary Tourism Export Code of Conduct could result in a general increase in the quality of tourism services, which may lead to increased demand for the services of ITOs that subscribe to the code. The extent to which this benefit is realized will depend upon the number of ITOs that subscribe to the Code and adhere to its provisions.

A voluntary industry accreditation/Code of Conduct could be an effective means of raising standards among those subscribing to it, and of raising standards to higher levels than might be achievable through government regulation. A voluntary industry accreditation approach has the added attraction that it would be unlikely to impose unjustifiable compliance costs on industry.

Tourists

The voluntary Tourism Export Code of Conduct may result in a general increase in the quality of tourism services to tourists. The extent to which this benefit is realized will depend upon the number of ITOs that subscribe to the Code and adhere to its provisions.

Tourism related businesses

The voluntary Tourism Export Code of Conduct may result in a general increase in the quality of tourism services, which may lead to increased demand for the goods and services of tourism related businesses. The extent to which this benefit is realised will depend upon the number of ITOs that subscribe to the Code and adhere to its provisions.

Under the current system, tourism related businesses (particularly travel agents) benefit from the fact that, as ITOs are required to contribute to the Travel Compensation Fund they are, in effect, cross-subsidising other tourism related businesses (i.e. travel agents) that contribute to the fund.

Government

Current initiatives that are being conducted as part of the integrated strategy for regulation of the inbound tourism industry may help address many of the problems that the industry faces. These initiatives, including the voluntary industry Tourism Export Code of Conduct, consumer education of overseas visitors, additional research, and initiatives involving existing legislation, impinge on the ability of poor quality ITOs to operate in the industry, and, if successful, might reduce the need for ITO specific regulation.

The voluntary Tourism Export Code of Conduct may result in an increase in the quality of tourism services, which may lead to an increase in tourism and tourism-related revenue for Government. The extent to which this benefit is realized will depend upon the number of ITOs that subscribe to the Code and adhere to its provisions.

No new regulation results in less short-term financial impact on Government. For instance, no additional compliance costs will be incurred.

4.1.3 Summary

Doing nothing is unlikely to achieve the policy objectives, as the existing provisions under the TAA and FTA are unlikely to deter rogue operators from indulging in the various undesirable practices outlined earlier in this report. While there may be some improvement in performance through the development of the voluntary Tourism Export Code of Conduct, the extent to which this benefit is realised will depend upon the number of ITOs that subscribe to the Code and adhere to its provisions.

4.2 Deregulation/self-regulation model

This option proposes that the government takes no active part in regulating the tourism services industry. The current licensing requirement for Queensland based ITOs under the TAA would therefore be removed. Government would continue to support and assist the development and implementation of the voluntary Tourism Export Code of Conduct.

The costs/disadvantages and benefits/advantages of this option, in relation to each key group, are outlined in the sections below.

4.2.1 Costs/Disadvantages

ITOs and new entrants to the ITO market

It is unlikely that the voluntary Tourism Export Code of Conduct will, by itself, address the problems created by any rogue element of the industry, as these operators would tend to operate outside of a voluntary scheme. Under this option it is therefore likely that rogue ITOs would continue their current undesirable conduct, which impacts on tourism related businesses, Queensland's international image as a tourism destination, repeat visitation rates and referred visitation rates.

The sanctioning powers of a voluntary accreditation scheme are limited – if sanctions are too harsh, the operator has the option to opt out of the scheme.

Removal of market entry requirements would leave no process for screening out 'unsuitable' ITOs from this industry sector.

Tourists

It is likely that some tourists would be impacted on due to the continuation of undesirable practices by rogue ITOs, such as controlled shopping, defamatory remarks/misrepresentation, overcharging for goods and services and other unprofessional and unconscionable conduct.

The provisions of the FTA do provide consumer protection, however enforcement action is hampered due to the general nature of the provisions, which do not create specific standards or address specific problems in the tourism services industry.

The FTA prohibits a person from engaging in misleading and deceptive conduct (section 38) and from making false or misleading representations in relation to goods and services supplied to consumers (section 40). In most situations, ITOs do not make travel/tour arrangements directly with tourists. The travel agent in the tourist's home country will most likely make representations about tour quality and content. An aggrieved tourist would need to take action against the travel agent in their home country.

The OFT may take action on behalf of a tourist if a tour guide or local trader engages in misleading or deceptive conduct. However, few complaints have been received from tourists, which are linked to the fact that they may have a lack of knowledge and understanding of the general consumer protection available to them and that quite often they are only in Australia for a short period of time.

The low number of tourist complaints can also be attributed to the fact that tourists may not be aware that they have been misled or deceived. For example, a tour guide may indicate that only designated retailers are ‘Government approved’ and tourists may believe this statement. The majority of complaints received to date have been from traders affected by an ITO or tour guide’s conduct, for example, a trader who witnesses an ITO or tour guide pointing out to tourists that their shop is not Government approved. However, under the FTA an action for damages based on misleading or deceptive conduct can only be taken if the loss suffered is by a “consumer”. These traders do not fall within the definition of a “consumer” under the FTA.

Tourism related businesses

It is likely that rogue ITOs would continue undesirable practices, which impacts on the demand for the goods and services of tourism related businesses. For example, retailers could continue to be denied business due to defamatory remarks/misrepresentations or refusal to pay excessive commissions.

Continuation of the undesirable practices may lead to decreased confidence of tourism related businesses in the international tourism distribution channel.

Government

It is likely that rogue ITOs would continue undesirable practices, which impact on tourism and the Queensland economy. The wider impacts of the undesirable practices include fewer repeat visits by tourists, lower rate of recommendation to other potential tourists and lack of tourist confidence. Queensland’s image as a tourism destination may be tarnished by such conduct. Over time, this could create an impediment to tourism growth and impact negatively on employment. Other wider impacts for government include direction of tourism earnings to non-Australian owned businesses and lower State revenue from tourism related businesses.

4.2.2 Benefits/Advantages

ITOs and new entrants to the ITO market

Deregulation of the ITO market in Queensland would result in Queensland based ITOs being alleviated of the requirements to pay licensing fees under the TAA and contributions to the TCF, thus potentially improving profit margins of these operators. As outlined in the table in section 4.1.1, these fees in total currently range from approximately \$426 for an existing operator (an individual) to \$9,387 for a new market entrant (a corporation) with one business location.

Queensland based ITOs would benefit from the removal of the administrative requirements under the Travel Compensation Fund, which would also decrease barriers to entry for those ITOs seeking to locate operations in Queensland. Participation in the TCF brings with it a number of obligations, including the initial significant financial contribution and an ongoing annual renewal fee, 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. Audit and interest fees are reported to be in the order of

\$3,000 per annum. At least 31²⁸ ITOs would benefit from the removal of these financial and other requirements.

However, the strict reporting and auditing requirements under the TCF potentially prevent some business failures by encouraging good business and financial management, therefore removal of such requirements may prove detrimental to ITOs who no longer undertake such stringent financial management.

Deregulating the ITO sector in Queensland will decrease market entry requirements for new market entrants, which may increase the attractiveness of the ITO market in Queensland and thus increase competition.

The voluntary Tourism Export Code of Conduct may result in a general increase in the quality of tourism services, which may lead to increased demand for the services of ITOs that subscribe to the code. The extent to which this benefit is realised will depend upon the number of ITOs that subscribe to the Code and adhere to its provisions.

The voluntary Tourism Export Code of Conduct may be an effective means of raising standards among those subscribing to it, and of raising standards to higher levels than might be achievable through government regulation.

Tourists

The voluntary Tourism Export Code of Conduct may result in a general increase in the quality of tourism services to tourists. The extent to which this benefit is realised will depend upon the number of ITOs that subscribe to the Code and adhere to its provisions.

Tourism related businesses

The voluntary Tourism Export Code of Conduct may result in a general increase in the quality of tourism services, which may lead to increased demand for the goods and services of tourism related businesses. The extent to which this benefit is realised will depend upon the number of ITOs that subscribe to the Code and adhere to its provisions.

Government

The voluntary Tourism Export Code of Conduct may result in an increase in the quality of tourism services, which may lead to an increase in tourism and tourism-generated revenue for Government. The extent to which this benefit is realised will depend upon the number of ITOs that subscribe to the Code and adhere to its provisions.

Removing all regulatory requirements for ITOs would produce short-term cost savings for government, as it would no longer incur the administrative and enforcement costs of licensing ITOs under the TAA.

²⁸ Queensland-based ITOs, ATEC member database

4.2.3 Summary

Deregulation would be unlikely to achieve the policy objectives of the proposed Government intervention. Problems reported to date have arisen because of the presence of a ‘rogue’ element in the industry. By itself, a voluntary approach is unlikely to meet the objectives of the proposed Government intervention, as it is unlikely to control the behavior of the ‘rogue’ element of the industry. Further, the extent to which there is any reduction in undesirable practices under a voluntary Code of Conduct will depend upon the number of ITOs that subscribe to the Code and adhere to its provisions.

Under this option, however, there would be some benefit to Queensland-based ITOs from the removal of the requirement to be licensed under the TAA and contribute to the TCF.

4.3 Co-regulation under the Queensland *Fair Trading Act 1989*

Under this option a mandatory code of conduct (“the Code”) would be prescribed and enforced under the Queensland *Fair Trading Act 1989* (FTA), with the enforcement and compliance costs resting with the OFT. The code would complement the industry’s voluntary Tourism Export Code of Conduct and would contain the provisions detailed in the draft mandatory code in the Policy Proposal (see “Policy Proposal” in Appendix D)

The costs/disadvantages and benefits/advantages of this option, in relation to each key group, are outlined in the sections below.

4.3.1 Costs/Disadvantages

ITOs/new entrants

ITOs may incur costs in adhering to the standards in the Code. The majority of provisions in the Code are not onerous and reflect good business practice such as an ITO must act honestly, fairly and professionally in providing services to tourists. There would be a small compliance cost related to the requirements for ITOs to provide more information in quotes, maintain records and to have an internal complaint handling procedure. The other costs for ITOs would be related to training staff on the requirements of the Code and implementing compliance programs. However, it is estimated that the overall compliance cost would be small.

Tourists

ITOs and new market entrants may pass on any increases in costs to tourists. The extent to which this occurs would depend on factors such as the competition in the market and the responsiveness of supply and demand to changes in price. However, the compliance costs of the Code are estimated to be small and therefore the impact on tourists is expected to be low.

Tourism related businesses

ITOs may pass on any increases in costs to tourism related businesses with which they contract, thus imposing additional costs on these businesses. The extent to which any increases in cost would be passed on would depend on factors such as the competition in the market and the responsiveness of supply and demand to changes in price. However, the compliance costs of the Code are estimated to be small and therefore the impact on tourism related businesses is expected to be low.

Government

There would be a cost to Government in developing and administering the Code. As there is no licensing or registration system, there would be no cost recovery from industry and Government would carry the full cost.

One disadvantage with this proposal is that it does not provide a mechanism to identify all ITOs in the marketplace. This could hamper the dissemination of educational material and may make compliance programs more difficult to administer.

A further disadvantage with this option is that penalties for a breach of a code, which is prescribed as subordinate regulation, are generally limited to not more than 20 penalty units,²⁹ which currently equates to \$1,500. It is unlikely that this would be a sufficient deterrent for the rogue element of the industry. However, action could be taken under the FTA to enforce the Code such as requesting that the ITO enter into an enforceable undertaking or requesting the court to order an injunction relating to the contravention.

4.3.2 Benefits/Advantages

ITOs/new entrants

The Code may result in a general increase in the standard of tourism services, which may lead to increased demand for the services of ITOs in Queensland. The Code also requires ITOs to establish their own internal dispute resolution process, which in turn could lead to low cost resolution of disputes.

Tourists

The standards imposed through the Code would benefit tourists by raising the standards in the industry and by addressing a number of consumer problems related to misleading comments, high-pressure tactics or harassment, charging for free goods or services and ensuring the delivery of the agreed goods or services.

Tourism related businesses

Tourism related businesses would benefit from the increased standards of ITOs as a result of compliance with the Code's standards, and may benefit from increased demand

²⁹ Note the Scrutiny of Legislation Committee's Policy No 2 1996 on the delegation of legislative power to create offences and prescribe penalties

for their goods and services. Retailers, for example, would benefit from more fair and equitable shopping practices.

Government

The increased standard of tourism services resulting from adherence to the Code's standards may impact positively on repeat visitation rates, referred visitation and Queensland's image as an international tourism destination. This in turn may impact positively on the profitability and employment potential of tourism and tourism related businesses, and revenue generation of the State via taxation.

4.3.3 Summary

This option is likely to meet most of the objectives of the proposed Government intervention by protecting tourists and tourism-related businesses from undesirable conduct of ITOs. However, the effectiveness of deterring rogue operators in the industry is questionable due to the low penalties. Complementing the Code with a registration system may provide more appropriate deterrents. For example, a breach of the Code could result in placing conditions on an ITO's registration or suspending or cancelling registration.

Under this option, the Government would carry the full cost of regulating the industry.

4.4 Co-regulation by way of the introduction of a new, separate Act

This option involves the development of a new, separate Act that would require ITOs to be registered before they can conduct the business of an ITO in Queensland. The Act would not require tour guides to be registered. ITOs would also be required to adhere to a mandatory code of conduct. The Code would be in the form of subordinate legislation under the Act and would complement the voluntary industry Tourism Export Code of Conduct.

The Act would also contain a general unconscionable conduct provision, which would prohibit unconscionable conduct by ITOs and tour guides. The provision would be in similar terms to the FTA and the *Trade Practices Act 1974*, but would relate more specifically to conduct towards tourists by ITOs and tour guides.

Further detail of this option can be found in the policy proposal (see Appendix D).

Under this option, the following restrictions to competition have been identified:

- ITOs would be required to be registered in order to carry on the business of, or operate as, an ITO in Queensland. An ITO would be defined as an individual or group of individuals (including a corporation) who in the course of business sells travel packages to overseas-based wholesalers/retailers of tourism services or overseas-based corporate purchasers of tourism services where one or more components of these travel packages relates to traveling within Queensland.

The registration regime would apply not only to Queensland-based ITOs but also to ITOs based anywhere in Australia or overseas, as long as the services they provide have some connection with Queensland tourism products. This provision is required because, regardless of where ITOs are physically located, they may contract with product suppliers in Queensland and arrange for international tourists to visit Queensland as the whole or part of their travel itinerary.

Due to the broad definition of 'travel agent' under the TAA, most ITOs are required to be licensed travel agents. It is proposed that ITOs who are licensed under the TAA (anywhere in Australia) will be exempt from paying the registration fees under the new scheme, although they will be required to abide by the provisions of the new scheme. However, ITOs which also carry out the functions of a travel agent will still be required to be licensed under the TAA and to contribute to the TCF.

Registration would allow the ITO to enter or continue to operate in the industry as an ITO. To operate as an ITO without being registered would be an offence and appropriate penalties would apply. Injunctions would be available to prevent unregistered ITOs from operating in the industry and fines may be imposed as a penalty for, and a deterrent to, operating as an ITO whilst unregistered.

To be registered an ITO would need to be a suitable person. The *Introduction Agents Act 2001* would be used as a model for assessing whether a person fits that criterion. The factors that may be considered in determining whether an applicant for registration is a suitable person may include:

- whether the applicant has been convicted of an offence against the Act, the FTA, or a corresponding law within the last 5 years;
- whether the applicant has breached an undertaking given to the Commissioner for Fair Trading within the last 5 years;
- whether the applicant is under 18 years of age (in which case, registration will not be granted); and
- whether the applicant is an insolvent under administration.

ITOs who are not currently licensed under the TAA would pay a fee to register and renew their registration. It is proposed that these ITOs would have the option of registering annually or for longer periods (e.g. three years). The proposed new registration fee would be similar to the current fees under the TAA, with a once-off application fee of \$47.00 and a registration fee of \$470.00.

ITOs would be required to provide their names and addresses to the OFT for entry onto a register. For ITOs that are companies, both the corporate entity of the ITO and its directors should be subject to registration requirements, but only one fee would be required. For ITOs that are partnerships, both the partnership/trading name and the names of the individual partners would need to be disclosed. This would allow a record to be kept of individuals operating in the industry. These records are important in relation to requirements for re-registration and new registration, if a company or partnership ceases to trade and individuals form new companies or partnerships, or if an individual leaves one company or partnership and either forms or becomes employed by another.

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- Registered ITOs would be required to comply with a code of conduct (“the Code”). The Code would be by way of subordinate regulation similar to codes of conduct under section 119 of the *Property Agents and Motor Dealers Act 2000*.

The Code would complement the industry’s voluntary Tourism Export Code of Conduct and would contain the provisions detailed in the draft mandatory code in the Policy Proposal (see Appendix D.) However, the Code would prescribe minimum requirements, rather than the ‘best practice’ guidelines found in the voluntary Tourism Export Code of Conduct.

The majority of the standards in the mandatory Code do not impose restrictions on competition. However, the following three standards have been identified as minor restrictions:

- Information disclosure: An ITO must ensure that any quotation supplied to a tourist discloses the total price, including all taxes and charges.
- Records: The operational standard requires ITOs to retain archival copies of any promotional material, confirmed itineraries and quotes for a period of two years and accounting records for seven years after the arrival of the relevant tourist in Queensland.
- Identification: An ITO must ensure that its employed or contracted tour guides wear clearly readable and prominent identification when providing services to tourists (including in English and the predominant language of the tour group – the name and Australian contact business address of the tour guide and the ITO).
- Dispute Resolution Process: ITOs would be required to have a simple internal dispute resolution process and to inform tourists of the OFT complaint system if a matter cannot be resolved.

The costs/disadvantages and benefits/advantages of this option, in relation to each key group, are outlined in the sections below.

4.4.1 Costs/Disadvantages

ITOs/new entrants

The draft policy proposal and draft PBT Report/RIS which was released for public comment stated that all ITOs currently operating in the Queensland market (i.e. Queensland based and non-Queensland based), and new ITO entrants to the Queensland market, would incur the registration fee costs under the new scheme. It was also proposed that ITOs registered under the new scheme would be exempted from the licensing requirements under the TAA (Qld).

A number of stakeholders were concerned about the impact of the fees on non-Queensland ITOs, who would have had to pay the registration fee under the new scheme, the TAA fee in their State/Territory, and TCF contributions. As a result of these concerns, the policy has been amended such that all ITOs that are licensed under the TAA (anywhere in Australia) will be exempt from paying the registration fees under the new scheme. These ITOs would still have to pay TAA fees in their State/Territory and TCF contributions.

It is proposed that the registration fees (for ITOs and new market entrants not licensed under the TAA) would be:

Fee type	Amount (\$)
Application fee (once-off)	47.00
Annual license fee – individual/corporation	470.00

Many ITOs are currently required to be licensed under the TAA due to the very wide definition of ‘travel agent’ under that Act. It is unclear what proportion of ITOs operating in Australia are licensed under the TAA. Some reports suggest that only half of all ITOs (i.e. approximately 150) are currently licensed under the TAA. This could be due to the fact that some ITOs fall outside the functional definition of a travel agent within the TAA, while others might be exempted through the minimum turnover threshold. Others may simply be flouting the law.

Therefore, based on ABS data and ATEC anecdotal evidence on the potential number of ITOs currently operating in Australia (and assumptions on the number of these that are operating in Queensland), it is estimated that 75 ITOs would be required to pay the registration fee under the new legislation (i.e. 150 ITOs may not be currently licensed under the TAA in any Australian State or Territory, and 75 of these may operate in Queensland).

However, as the registration fee is to be based on the TAA (Qld) license fee, under the proposed new legislation all ITOs operating in Queensland should be paying the same amount (whether that be under the TAA (Qld) or the new legislation).

Under the restrictive components of the Code, some ITOs may face small costs related to providing more information in quotes, storage of records for two years and seven years (already required under the TAA), ensuring that their employed or contracted tour guides wear identification, and establishing a dispute resolution process. In particular, ITOs that operate in Queensland would be required to adhere to the operational requirements of the TAA in their state/territory, in addition to the Code and to the unconscionable conduct requirements under the proposed new Queensland Act.

Tourists

It is possible that tourists may be impacted upon if an ITO’s registration is suspended or cancelled. However, any impact on tourists will be considered prior to suspension/cancellation and other remedies will be utilized where possible.

The flow-on effects of the costs associated with complying with the Code standards may be passed on to tourists. Also, ITOs that incur the registration fee may pass on this cost to tourists. However, the extent to which any increases in cost would be passed on to tourists would depend on factors such as the competition in the market and the responsiveness of supply and demand to changes in price.

Tourism related businesses

ITOs that incur the registration fee may pass on this cost to tourism related businesses with which they contract, thus imposing additional costs on these businesses. However, the extent to which any increases in cost would be passed on to tourism-related businesses would depend on factors such as the competition in the market and the responsiveness of supply and demand to changes in price.

Through the consultation process on the draft PBT Report/RIS and policy proposal, one stakeholder suggested that Queensland could suffer a loss of inbound tourism market share as a result of introducing the proposed legislation. Any loss of market share would impact on tourism related businesses. However, based on the strength of the tourism product, and the fact that this scheme will contribute to raising standards in the Queensland tourism industry (as supported by several stakeholders through the consultation process), it is envisaged that the scheme will increase, and not decrease, Queensland's inbound tourism market share.

Government

Government would incur costs through administering and enforcing the new Act. Industry will contribute to these costs through registration fees.

4.4.2 Benefits/Advantages

ITOs/new entrants

The registration process (and the prohibition on unconscionable conduct) and the standards imposed through the Code may produce significant benefits for ITOs. The increased focus on ITO practices resulting from implementation of the registration process may increase demand for ITO services in Queensland. For example, China is forecast to become Australia's largest inbound tourism market by 2010, by which time there are expected to be over one million Chinese visitors per year³⁰. A significant number of these visitors will travel under the Approved Destination Status (ADS) arrangement, which allows Chinese group tours to travel to Australia for leisure purposes. To date, 68,000 arrivals and 3,800 groups have visited Australia from China for tourism purposes under the Approved Destination Status (ADS) arrangement.

The Chinese Government has previously indicated that some Australian business practices are compromising the quality of tourism services provided to Chinese tourists. A recently conducted China (ADS) Survey indicates that the areas causing dissatisfaction include the amount of time spent shopping and the quality of accommodation and meals. The introduction of the Outbound Travel Administration Law in China, which became effective on 1 July 2002, provides insight into the particular areas of concern that China has for its citizens when travelling to other countries, including Australia. The key components of the new regulations include that approved outbound tour travel agents should protect tourists' legal rights, must give precise and reliable information on itineraries, and must not engage in false advertising or under-cost pricing. There are also new regulations for tour escorts, which forbid them from promoting illegal activities, which include excess shopping.

³⁰ Tourism Forecasting Council, 2002

The introduction of the proposed registration scheme may therefore provide Queensland with a competitive advantage as it would demonstrate to the Chinese Government Queensland's commitment to addressing these concerns, and would increase the confidence of Chinese Government and industry officials with some control over the promotion of Queensland as a destination for their nationals. The proposed Act, coupled with the industry's voluntary Tourism Export Code of Conduct, would significantly contribute to the livelihood of the ADS program in Australia.

All ITOs that operate in Queensland (i.e. Queensland based and non-Queensland based) may benefit from industry and tourist perception of being quality assured through the registration system.

This option would create a 'level playing field' for all ITOs that operate in Queensland, by requiring all such operators to be registered and to comply with the Code and unconscionable conduct provisions. Similarly, all ITOs that operate in Queensland will be required to pay similar registration fees – whether that be through the TAA or under the proposed new legislation. This is unlike the current situation where not all ITOs are licensed (and therefore not all ITOs pay licensing fees) because some fall outside the functional definition of a travel agent within the TAA, others might be exempted through the minimum turnover threshold and others may simply be flouting the law.

Tourists

The standards imposed through the Code would benefit tourists by raising the standards in the industry and by addressing a number of consumer problems related to misleading comments, high-pressure tactics or harassment, charging for free goods or services and ensuring the delivery of the agreed good or service. Tourists would also benefit from the unconscionable conduct provision, which would address a number of problems in the industry such as overcharging or exerting undue control over a tourist's shopping activities.

Tourists would benefit from having access to the ITOs internal dispute resolution process and would be able to make complaints to the OFT.

Tourism related businesses

The majority of complaints received to date have been from traders affected by an ITO or tour guide's conduct. For example, a trader who witnesses a tour guide pointing out to tourists that their shop is not Government approved. However, under the FTA an action for damages based on misleading or deceptive conduct can only be taken if the loss suffered is by a "consumer". These traders do not fall within the definition of a "consumer" under the FTA. This situation would change under the proposed new Act, as action could be taken on behalf of any person aggrieved by the conduct of an ITO or tour guide.

Tourism related businesses would benefit from the increased standard of services provided by ITOs as a result of compliance with the Code and the unconscionable conduct provisions, and may benefit from increased demand for their goods and

services. Retailers, for example, may benefit from more fair and equitable shopping practices.

Government

The increased quality of tourism services resulting from adherence to the Code and unconscionable conduct provisions may impact positively on repeat visitation rates, referred visitation and Queensland's image as an international tourism destination. This in turn may impact positively on the profitability and employment potential of tourism and tourism related businesses, and revenue generation in the State via taxation.

The registration system would identify ITOs in the market. This information would be vital in ensuring that effective educational campaigns and compliance programs can be carried out by the OFT.

Combining the Code with a registration system would enable disciplinary action to be taken if the ITO breaches the Code. The disciplinary action would serve as an effective deterrent to breaching the Code, as the consequences could be the suspension or cancellation of registration or the placement of conditions on registration.

A tailor-made unconscionable conduct provision, which directs the court to consider specific unconscionable conduct related to the provision of tourism services, would be effective and easier to enforce than the general FTA unconscionable conduct provision. The tailor-made provision would also assist ITOs and tour guides in understanding what sort of conduct is considered unconscionable.

4.4.3 Summary

The development of industry specific legislation would allow for the greatest amount of scope and flexibility to target provisions to directly address problems in the tourism industry. It would therefore best meet the objectives of providing protection for consumers and other tourism and tourism related businesses that deal with ITOs and tour guides.

5.0 Conclusion

In conclusion, this review has found that the most appropriate method for regulating ITOs and tour guides in Queensland is through a separate Act that would require ITOs that operate in Queensland to register and comply with a mandatory Code of Conduct, and will prohibit unconscionable conduct by ITOs and tour guides (Policy Option 4.4 in this report).

The development of industry specific legislation would allow for the greatest amount of scope and flexibility to target provisions to directly address problems in the tourism industry. It would therefore best meet the objectives of providing protection for consumers and other tourism and tourism related businesses that deal with ITOs and tour guides.

The introduction of this legislation may strengthen demand for Queensland holiday products and provide Queensland with a competitive advantage over other destinations. The Chinese Government, in particular, is likely to look very favourably upon this legislation as a means of addressing identified quality issues in the Australian tourism market.

This option would best complement the industry-based, voluntary Tourism Export Code of Conduct being finalised by ATEC at present, as it leaves the compliance and enforcement of standards with the Government and allows ATEC to focus on best practice and industry development. The industry (through ATEC) has continued to strongly support the development of legislation to complement the industry-based, voluntary Tourism Export Code of Conduct. This option also best complements the other initiatives being undertaken at present to address the identified problems, including educating visitors about their consumer rights in Queensland and Australia, and better enforcing relevant existing legislation.

Through the consultation process on the draft policy proposal and draft PBT Report/RIS, several stakeholders provided support for the policy proposal. Key concerns with the proposal included the level and type of enforcement activities required, the need for the inclusion of a licensing system for tour guides, broadening the definition of an ITO, registration fees and the need for a national approach to this legislation. These submissions have been further assessed and a number of changes to the policy proposal have been made including broadening the definition of an ITO and exempting licensed travel agents from paying the registration fees.

Appendix A: Terms of Reference – NCP Review

1. THE LEGISLATION

Regulation of tourism services in Queensland

2. THE NEED FOR A REVIEW

In April 1995, the Commonwealth, State and Territory Governments signed a set of agreements to implement a National Competition Policy (NCP). Under the policy, each participating jurisdiction committed to implementing a series of competition reforms. Pursuant to these agreements, each participating jurisdiction was obliged to review and, where necessary, reform all legislation that contained measures restricting competition. Each jurisdiction also agreed to subject all new legislative proposals that contained measures restricting competition to the public benefit test (PBT).

This Review is being conducted in accordance with the Queensland Government's *Public Benefit Test Guidelines* (PBT Guidelines).

The guiding principle for the review of legislation, as contained in Clause 5(1) of the Competition Principles Agreement (CPA), is that legislation should not restrict competition unless it can be demonstrated that:

- (a) the benefits of the restriction to the community as a whole outweigh the costs; and
- (b) the objectives of the legislation can only be achieved by restricting competition.

3. REVIEW METHODOLOGY

The Review will be conducted in accordance with Clause 5 of the CPA. As such, the Review should:

- clarify the objectives of the legislation;
- identify the nature of the restriction on competition;
- analyse the likely effect of the restriction on competition and on the economy generally;
- assess and balance the costs and benefits of the restriction including the identification of market failure;
- identify alternative means for achieving the same result including non-legislative approaches; and
- assess the costs and benefits of the implementation of the identified alternatives.

The Queensland Government's *Public Benefit Test Guidelines* also require that Reviews, in assessing the most effective means of achieving a policy objective, should take the following issues into account in line with Clause 1(3) of the CPA:

- government legislation and policies relating to ecologically sustainable development;
- social welfare and equity considerations, including community service obligations;
- government legislation and policies relating to matters such as occupational health and safety, industrial relations and access and equity;
- economic and regional development, including employment and investment growth;
- the interests of consumers generally or of a class of consumers;

-
- the competitiveness of Australian, and specifically Queensland, businesses; and
 - the efficient allocation of resources.

The Review will also take account of the Government's Priority Outcomes for Queensland, as follows:

- More Jobs for Queensland -- Skills and Innovation -- The Smart State
- Safer and More Supportive Communities
- Community Engagement and a Better Quality of Life
- Valuing the Environment
- Building Queensland's Regions.

In particular, the following Fair Trading outcomes will be considered in undertaking this review:

- Access to appropriate information to enable informed decisions to be made by market 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 and unconscionable conduct by market participants
- Minimal compliance costs for business.

4. SCOPE OF THE REVIEW

This Review will cover the proposed regulation of Inbound Tour Operators (ITOs) and Tour Guides.

5. CONDUCT OF THE REVIEW

In accordance with the PBT Guidelines, a minor review of the proposed tourism services regulation is being conducted by the Policy and Legislation Division of the Office of Fair Trading (OFT). A minor review is being conducted because:

- the registration requirements will not be more restrictive than the requirements in the *Travel Agents Act 1988*, under which many ITOs are currently licensed;
- the conduct restrictions under the proposed Code of Conduct will be minor and unlikely to impose high compliance costs on ITOs;
- an independent consultant, the Centre for International Economics (CIE), has already conducted a cost/benefit analysis of options to regulate the industry ("Regulatory Options for Inbound Tour Operators", March 2000); and
- there has been extensive consultation with the community in the preparation of the CIE report and the public release of the "Policy Paper on Proposed Regulation of Inbound Tourism Operators by the OFT" in May 2001.

6. CONSULTATION

In relation to the current Review, the draft PBT Report/RIS will be provided to key stakeholder groups/associations directly for comment. At the same time, the conduct of the review will be advertised indicating that copies of the draft PBT Report/RIS are available for comment from OFT and on OFT's website.

Appendix B: List of stakeholders who provided submissions on the draft Policy Proposal and PBT/RIS report

1. Surfers Paradise Traders Association Inc
2. Quicksilver Connections Ltd
3. Queensland Department of Families
4. JCM Destination Australia Pty Ltd
5. Australia Bound Travel Pty Ltd
6. K.D. Limos
7. SET Directions Marketing
8. Australian and New Zealand College for Seniors Ltd
9. Brisbane IKC Tour
10. Australian Tourism Export Council (ATEC)
11. Sandy Davey
12. Queensland Retail Traders & Shopkeepers Association (QRTSA)
13. Commonwealth Department of Industry, Tourism and Resources
14. ID Tours South Pacific Pty Ltd
15. Ken Done & Associates Pty Ltd
16. Tourism Tropical North Queensland
17. Australian Tourism Operators Network
18. Victorian Department of Justice
19. Skyrail
20. William Tait
21. New South Wales Department of Fair Trading
22. South Australian Minister for Tourism
23. ACT Minister for Tourism
24. Queensland Minister for Aboriginal and Torres Strait Islander Policy and Minister for Disability Services
25. Queensland Hotels Association
26. Victorian Minister for Tourism
27. Queensland Bus Industry Council Inc
28. Minister for State Development, Tourism and Small Business (WA)
29. Department of Immigration and Multicultural and Indigenous Affairs
30. Axio - Niche Australian Holiday Experiences
31. Federal Minister for Small Business and Tourism.

Appendix C: Legislation governing travel in other countries

Europe and the United Kingdom

The European Community has issued two Directives that affect the travel industry – a Directive on package travel and a Directive on timeshare regulation. The Directive on Package Travel arose from the European Community Commission's initiative in drawing attention to the importance of tourism. The preamble to the Directive states that since tourism plays an increasingly important role in the economics of the Member States, and the package system was seen as a fundamental part of EU tourism, it was felt that the package travel industry in the Member States would be stimulated to greater growth and productivity if at least a minimum of common rules were adopted. It was perceived that the disparities in rules protecting consumers in different Member States was a disincentive to consumers buying packages outside their own Member State.

Canada

Three Canadian provinces have enacted specific legislation concerning the travel industry. These statutes are the *Travel Agents Act* (B.C.S. c-409) and the *Travel Industry Act* (R.S.O. CT-19) and the *Travel Agents Act* (Q.S. c A-10). The British Columbia and Ontario Statutes are extremely similar in their approach. There is a requirement for each travel agent and travel wholesaler operating in the province to be registered with a registrar to be appointed by the Crown. Conditions of registration, suspension and termination are established. Deposits are to be dealt with as trust funds. There are requirements for ongoing supervision including the filing of financial statements, and regulation of change in share structure. Both statutes establish a compensation fund and a method for claimants to make application and be reimbursed. Limits are established for payments per customer and for claims arising out of a major event. Both statutes provide for broad remedies, including conducting investigations and appointing a receiver-manager. The Ontario Travel Agents Act legislation covers both inbound and outbound tourists who purchase travel services from travel agents and travel wholesalers within Canada.

The Federal Government also plays a role in relation to the regulation of the travel industry arising from its treaty making status with other nations. For example, on August 3, 1995, the Governments of Canada and the United States entered into an agreement regarding the application of their competition and deceptive marketing practices laws. The 1995 Agreement operates in addition to the Canada - U.S. treaty on mutual legal assistance in criminal matters that came into effect in 1990, which applies to criminal offences under the Competition Act.

United States

Currently 13 States of the United States have legislation regulating aspects of the travel industry. These range from fairly limited Acts regulating travel agents in the traditional approach of a licensing agency to statutes of broad construction which regulate "sellers of travel services" (e.g. Florida and Massachusetts). Many of the States have a concept of a compensation fund.

Malaysia

The Ministry of Culture, Art and Tourism regulate the tourism industry within Malaysia. Regulations governing the industry are enshrined in the *Tourism Industry Act and Regulations, 1992*. The Act requires that no person or company can operate, or hold him or herself out as operating a variety of tourism and tourism-related activities without being licensed.

Japan

The Japanese Travel Agency Law regulates travel operators in Japan, with its primary purpose being to ensure professionalism of the industry and to provide consumer protection. The Japanese Travel Agency Law is based on the following key principles:

- Registration of travel operators
- Provision of business guarantee bonds
- Certification of travel sponsors
- Maintenance of fair trading practices by travel agents
- Establishment of the Association of Travel Agents.

The legislation incorporates a ‘Travel Itinerary Booking Guarantee’ that holds travel agencies liable for compensation in case they do not organise itineraries as specified in their contracts, including accommodation, restaurants, transportation vehicles and any other lands services.

Japan has also recently introduced new Contract Law that applies to Japanese ITOs as well as others providing goods and services to consumers.

Hong Kong

The Travel Agents Ordinance (Cap 218) (TAO) provides the legislative framework for the regulation and control of outbound travel agents and for the operation of the Travel Agents Compensation Fund. The TAO is administered through the Travel Agents Registry, within the Trade and Industry Bureau.

The TAO prohibits any person from carrying on business as a travel agent without a licence, at a place other than that specified in the licence and not in accordance with the conditions of that licence (which includes membership of an ‘approved organisation’ which at present is the Travel Industry Council of Hong Kong). The TAO empowers the Registrar of Travel Agents to refuse to grant a licence if s/he is of the opinion that the applicant is not ‘a fit and proper’ person, or the proposed premises is not suitable. Further, Section 32A and 32G of the TAO provides for the establishment of the Travel Industry Compensation Fund (TICF) and the TICF Management Board. The purpose of the TICF is to provide ex gratia payments to outbound travellers who are aggrieved by default of travel agents after their outbound fares have been paid to a maximum of 90% of the package tour fare paid. The TICF also provides financial relief to outbound travellers who are injured or killed in accidents whilst touring abroad.

While inbound tour operators and inbound travel agents are not required to be licensed in Hong Kong, the Hong Kong Association of Registered Tour Co-ordinators (HARTCO) has also called on the government to implement rules on inbound operators.

HARTCO has also recommended comprehensive training and an industry entrance exam for tour co-ordinators in Hong Kong in order to maintain the long-term stability and professionalism of the industry in Hong Kong.

Tourism associations in countries such as Hong Kong and Singapore are developing Codes of Conduct for members. The Hong Kong Association of Registered Tour Co-ordinators (HARTCO) has also called on the Government to implement legislation to regulate inbound travel operators and stricter licensing of tour guides to ensure quality and professionalism at all levels.

Singapore

Outbound tourism in Singapore is regulated and controlled through the Singapore Tourism Board (STB), a semi-government body. A pre-condition of obtaining a licence is being part of the Singapore Association of Travel Agents (SATA). Inbound travel agents are also required to be licensed through STB and SATA, as are inbound tour guides. While licensing is a prerequisite to operate within the tourism industry in Singapore, there is no travel protection fund available for either inbound or outbound tourism. Further, research to date has not identified any specific consumer codes that specifically cater for tourism.

China

The Chinese Government has introduced a new Outbound Travel Administration Law, which became effective on 1 July 2002 to address a number of areas of concern for its citizens when visiting other countries. The key components of the new regulations include that approved outbound tours travel agents should protect tourists' legal rights, must give precise and reliable information on itineraries, and must not engage in false advertising or under-cost pricing. There are also new regulations for tour escorts that forbid them from promoting illegal activities which include excess shopping.

Appendix D: Proposed Regulation of Tourism Services in Queensland – Policy Proposal

1. A new Act

- 1.1 There will be a new Act to regulate Inbound Tour Operators (ITOs) and tour guides.

2. Legislative model

- 2.1 The proposed new Act (“the Act”) will regulate **ITOs** in two ways:
- (a) by making them subject to registration;
 - (b) by regulating their conduct, first by a Code of Conduct, and second by prohibiting unconscionable conduct.

The Act will introduce a mandatory Code of Conduct. A breach of the Code will be met with disciplinary action.

It will be an offence for the ITO to engage in unconscionable conduct in connection with the provision of services to tourists.

- 2.2 The Act will regulate **tour guides** in only one respect: it will prohibit unconscionable conduct by tour guides in connection with the provision of services to tourists.

3. Definition of ITO

- 3.1 An ITO will be defined along the following lines:

An individual or group of individuals (including a corporation) who, alone or with others, in the course of a business sells or offers for sale travel packages for tourists, where one or more components of that travel package relate to visiting or travelling within Queensland, and where such packages are sold or otherwise provided to:

- (a) overseas-based wholesalers of tourism services;*
- (b) overseas-based retailers of tourism services;*
- (c) overseas-based corporate purchasers of tourism services (e.g. overseas companies, which purchase such packages for their employees).*

- 3.2 “Travel packages” will be defined along the following lines:

Travel package means the pre-arranged combination of at least two of the following components, to be sold or offered for sale at an inclusive price:

- (a) transport;*
- (b) accommodation;*

-
- (c) information or advice;*
 - (d) food;*
 - (e) introducing tourists to retailers at the travel destination;*
 - (f) translation, guiding or escort services; and*
 - (g) visiting attractions at the travel destination, including but not limited to entry to tourist attractions such as theme parks and entertainment.*

The definition of “travel packages” will include part-packages.

3.3 The Act will not apply to non-profit activities or community activities.

4. Definition of tour guide

4.1 A tour guide will be defined along the following lines:

Any person who for reward (whether monetary or otherwise):

- (a) accompanies any tourist or group of tourists travelling within or visiting any place within Queensland; and*
- (b) provides information and advice directly to that tourist or group of tourists.*

4.2 It does not matter that the tour guide may only accompany the tourist or tour group for only a part of their tour within Queensland.

4.3 Both Australian-based and overseas-based guides will be captured by the definition.

4.4 Volunteer guides will be excluded by operation of the definition because they do not undertake their activity “for reward”. This will ensure that guiding undertaken by friends, family, casual business relationships etc. is not caught by the legislation.

5. Definition of tourist

5.1 The definition of “tourist” will include a group of tourists.

5.2 The definition will be based on the definition used by the Bureau of Tourism Research, which divides tourist into the following three groups:

- (a) International tourist: a person from another country, who travels within or who visits any place within Queensland, and who is away from his/her home country for less than 12 months; or
- (b) Domestic tourist: a person who undertakes a trip of at least 40 kilometres, involving a stay away from his/her home for at least one night (but a total of less than 12 months); or
- (c) Daytrip tourist: a person who undertakes a round trip of at least 50 kilometres, is away from his/her home for at least 4 hours, and does not spend a night away from his/her home.

5.3 Person who are undertaking routine travel such as commuting between work, school or home are not to be caught by the definition.

5.4 Although the primary concern being addressed by the proposed new legislation is the protection of international tourists, who are disadvantaged by their cultural and language characteristics, the Act will offer protection to both international and domestic tourists. This will ensure that both groups receive the same level of protection from the inappropriate conduct of tour guides and ITOs, and it will remove any difficulties presented by “mixed group” situations, where a tour comprises both domestic and international tourists.

6. Registration of ITOs

6.1 ITOs will be required to be registered under the Act before they can conduct the business of an ITO in Queensland.

6.2 Registration will allow the ITO to enter or continue to operate in the Queensland tourism services industry. To operate as an ITO in the Queensland market without being registered under the Act will be an offence. Maximum penalties of up to \$15,000 will apply. There will be an enforcement regime (including injunctions) to prevent unregistered ITOs from working as ITOs.

6.3 **Fees:** ITOs will pay a fee to register and renew their registration. It is proposed that ITOs would have the option of registering annually or for longer periods. The proposed fees are:

Application fee (once-off):	\$47.00
Annual licence fee	\$470.00

6.4 Most ITOs are required to be licensed under the *Travel Agents Act 1988* (“TAA”) due to the broad definition of ‘travel agent’. It is proposed that ITOs who are licensed travel agents (anywhere in Australia) will be exempted from the registration fee under the Act.

6.5 **Register:** ITOs will be required to provide their names and addresses for entry onto a register.

- For ITOs which are companies, both the corporate entity of the ITO and its directors will be subject to registration requirements, but only one fee will be required.
- For ITOs which are partnerships, both the partnership/trading name and the names of the individual partners will be required to be disclosed.

This will allow a record to be kept of individuals operating in the industry. This is important in relation to fitness requirements for re-registration and new registration, where a company or partnership ceases to trade and individuals form new companies or partnerships, or if an individual leaves one company or partnership and either forms or becomes employed by another.

The register will also note whether the registration is conditional and if so, what the conditions are, and whether the registration has been cancelled or suspended, and the reason for the cancellation or suspension.

The register will be open for public inspection. There will be a \$10.00 fee to inspect the register and a \$10.00 fee for a copy of an entry.

- 6.6 **Certificate:** A certificate of registration will be provided.
- 6.7 **Fitness and propriety checks:** To obtain registration, an ITO must be a “suitable person”. The *Introduction Agents Act 2001* will be used as a model for assessing whether a person fits that criterion. The factors that may be considered in determining whether an applicant for registration is a suitable person may include:
- whether the applicant has been convicted of an offence against the Act, the *Fair Trading Act 1989* (“FTA”), the TAA, or a corresponding law within the last 5 years;
 - whether the applicant has breached an undertaking given to the Commissioner for Fair Trading within the last 5 years;
 - whether the applicant is under 18 years of age (in which case, registration will not be granted); and
 - whether the applicant is an insolvent under administration.
- 6.8 **Cancellation, suspension, refusal to renew and imposition of conditions:** Registration may be affected in any of these ways on grounds such as the following:
- contravention of the mandatory Code of Conduct;
 - commission of an offence under the Act, the FTA or *Trade Practice Act 1974* (“TPA”);
 - breach of an undertaking;
 - registrant no longer being a “suitable person”; and
 - registration obtained falsely.

7. Mandatory Code of Conduct

- 7.1 Registered ITOs will be required to comply with a mandatory Code of Conduct. The Code of Conduct will be by way of a Regulation similar to Codes of Conduct under section 119 of the *Property Agents and Motor Dealers Act 2000*.
- 7.2 The content of the Code of Conduct will complement the industry-based voluntary code, the Tourism Export Code of Conduct.
- 7.3 A draft of the proposed content of the Code of Conduct is found at the end of this Policy Proposal.
- 7.4 **Contravention of Code of Conduct:** A contravention of the Code of Conduct will be met with disciplinary action in a Tribunal. The Tribunal will be able to impose conditions on an ITO’s registration, or cancel/suspend registration.

Other action in response to a contravention of the Code will be similar to those available under the FTA for a breach of a code under that Act, and will include:

- enforceable undertakings; and
- injunctions.

8. Unconscionable Conduct

8.1 It will be an offence for ITOs and tour guides to engage in unconscionable conduct in providing (or in connection with the provision of) services to a tourist.

8.2 The conduct of other persons will also be subject to scrutiny in the following ways:

- (a) employees and sub-contractors/independent contractors of the ITO, where the ITO has control over the conduct of those persons – in that the ITO will be liable for their unconscionable conduct;
- (b) any person/entity having a contractual relationship with an ITO or tour guide (such as retailers, hotels, restaurants) (for convenience call them an “associated person”) – in that the conduct of those associated persons can be considered when determining whether an ITO or tour guide has acted unconscionably.

This will deter ITOs and tour guides from dealing with unscrupulous persons and help to ensure that ITOs and tour guides only deal with operators who maintain certain standards of behaviour.

8.3 The “unconscionable conduct” provision will appear along the following lines:

A tour guide or ITO must not, in providing (or in connection with the provision of) services to a tourist, engage in conduct that is, in all the circumstances, unconscionable.

Without limiting the matters to which regard may be had to decide whether an ITO or tour guide has engaged in unconscionable conduct, regard may be had to:

- (a) *the relative strengths of the bargaining positions of the tourist and the ITO, tour guide or associated person;*
- (b) *whether any undue influence or pressure was exerted on, or any unfair tactics were used against, the tourist by the ITO, tour guide or associated person;*
- (c) *the extent to which the ITO, tour guide or associated person unreasonably failed to disclose to the tourist:*
 - (i) *any intended conduct of the ITO or tour guide that might affect the interests of the tourist; and*
 - (ii) *any risks to the tourist arising from the intended conduct (being risks that the ITO, tour guide or associated person should have foreseen would not be apparent to the tourist);*

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- (d) *the extent to which the ITO, tour guide or associated person failed to disclose to the tourist any relationship of the ITO, tour guide or associated person to other people in connection with the provision of services by the ITO, tour guide or associated person to the tourist;*
 - (e) *whether the tourist was reasonably able to protect his, her or their own interests because of the cultural, language or religious characteristics of the tourist;*
 - (f) *the amount for which, and the circumstances under which, the tourist could have acquired identical or equivalent goods or services from a person other than the ITO, tour guide or associated person;*
 - (g) *the extent to which the conduct of the ITO, tour guide or associated person toward the tourist was consistent with the conduct of the ITO, tour guide or associated person in similar transactions;*
 - (h) *the requirements of any code of conduct prescribed by regulation;*
 - (i) *the requirements of any applicable industry code; and*
 - (j) *any other relevant factor.*

8.4 The effect of including “associated person” in the above factors for consideration is that if an “associated person” is involved in inappropriate conduct, and that conduct is connected with the provision of services by an ITO or tour guide, the conduct of the “associated person” will contribute to any finding of unconscionable conduct on the part of the tour guide or ITO. This does not require the Commissioner for Fair Trading to prove that the conduct of an “associated person” was unconscionable – it merely allows a court to scrutinise the conduct of the “associated person” in the context of the provision of services by the ITO or tour guide. It recognises that there is often a link between the package or service provided by the ITO and the conduct of an “associated person”.

9. Enforcement

- 9.1 **Who complaint is made to:** Complaints about the conduct of an ITO or tour guide will be made to the Commissioner for Fair Trading. The complaints will then be subject to a filtering process to discard unfounded complaints. The Commissioner will pursue the complaint as either a disciplinary matter (breach of Code of Conduct) or as a prosecution (e.g. for unconscionable conduct).
- 9.2 This does not affect a person’s liberty to make a complaint about any fair trading matter to the Commissioner, and take action him/herself under any relevant legislation which allows him/her to do so.
- 9.3 **Who can make a complaint:** A person aggrieved by the conduct of an ITO or tour guide may make a complaint. It is envisaged that the majority of persons with complaints will be tourists, but complaints are also expected from traders,

and other persons in the industry who observe and experience the adverse effects of the conduct of ITOs and tour guides first hand.

- 9.4 **Enforcement and remedies:** There will be different enforcement avenues for (a) breaches of the Code of Conduct, and (b) offences, including unconscionable conduct. Breaches of the Code of Conduct will be dealt with primarily by undertakings, injunctions and restrictions on registration. Penalties for offences will include, in addition to those measures, fines and orders directing the refund of money.
- 9.5 The Commissioner will be empowered to make claims for compensation on behalf of people who are adversely affected by the actions of the ITO or tour guide. Awards of compensation will be made against the ITO or tour guide.

10. Appeals

- 10.1 There will be a right of appeal to the Tribunal against decisions of the Commissioner for Fair Trading in relation to registration.
- 10.2 There will be a right of appeal against decisions of the Magistrates Court to the District Court in relation to matters over which it has jurisdiction, such as prosecutions for offences.

PROPOSED PROVISIONS OF THE MANDATORY CODE OF CONDUCT

1. Knowledge of Act, Code and fair trading legislation

An ITO must have a reasonable knowledge and understanding of the (new) Act, this Code and of the *Fair Trading Act 1989* and the *Trade Practices Act 1974* in so far as they are relevant to the activities, practices and conduct of the ITO.

2. Honesty, fairness and professionalism

2.1 An ITO must act honestly, fairly and professionally in providing, or in connection with the provision of, services to tourists, whether directly or indirectly.

2.2 Without limiting 2.1, an ITO must treat a tourist honestly and fairly.

3. Skill, care and diligence

An ITO must exercise reasonable skill, care and diligence in providing, or in connection with the provision of, services to tourists.

4. Fraudulent or misleading conduct and misrepresentations

4.1 An ITO must not engage in conduct that is fraudulent or misleading, in providing, or in connection with the provision of, services to tourists.

4.2 An ITO must not make any misrepresentations, in providing, or in connection with the provision of, services to tourists, about a service, or a component of a service, including but not limited to representations about:

- (a) the mode of transport used for transfers and sightseeing, including the standard of that transport;
- (b) the existence or location of, or accessibility to, a region, area or attraction or the travel time or route used to get to such a place;
- (c) the standard, style and price of any accommodation included in a package;
- (d) the standard and price of any food and beverages included in a package;
- (e) the management of the tour;
- (f) guiding services included in the package;
- (g) the price of tourist attractions, tours, entertainment and other activities included in the package, and whether the cost of these activities is included in the package;
- (h) conditions as to reservation, payment, refund and cancellation; and
- (i) restrictions applying to any element of the package provided to the tourist, including restrictions as to children, smoking, seat allocation, baggage.

5. High pressure tactics or harassment

An ITO must not engage in high-pressure tactics or harassment, in providing, or in connection with the provision of, services to tourists.

6. ITO to ensure tour not dominated by shopping

6.1 An ITO must ensure that a tour is not dominated by shopping excursions, unless this is requested by the tourist or the tourist's agent, or is agreed between the ITO and the tourist or the tourist's agent before the tour commences.

6.2 An ITO must not use pressure or undue influence to encourage a tourist to shop as a replacement (in whole or in part) for some other activity on the tourist's itinerary or which the tourist had a reasonable expectation of undertaking.

7. ITOs not to charge for free goods or services

An ITO must not charge any person for a product or service (e.g. entry to venue) which is available to the general public at no cost.

8. Advertising, promotional material and quotations

An ITO must ensure that any advertising or promotional material (including brochures), and any quotation supplied to, or for the benefit of, a tourist:

- (a) is not misleading;
- (b) discloses any conditions or restrictions applying to the provision of the tour or other service;
- (c) for quotations – discloses the total price, including all taxes and charges.

9. ITO to deliver the agreed service or product

9.1 Subject to 9.2, where an ITO sells a package on the basis of promotional material, an itinerary or a quotation, the ITO must deliver the package in accordance with that material, itinerary or quotation.

9.2 Where a product or service included in a package becomes unavailable after sale of the package, the ITO must wherever possible provide a product or service of comparable value and quality, or provide a refund where such substitution is not possible.

10. ITOs and their tour guides

An ITO must ensure to the best of their ability that tour guides, who are employed or contracted by them to provide services to tourists:

- (a) do not prohibit or impede tourists from shopping in retail outlets of their choice or from purchasing products of their choice (e.g. retail merchandise or optional day tours);

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- (b) do not prohibit, impede or use influence to prevent information providers and traders lawfully displaying or providing information on retail, day tour or other tour services or other services to tourists;
 - (c) do not make false or misleading remarks about the quality or availability of products, services or providers of products and services, whose products, services or businesses they are not promoting;
 - (d) do not make false or misleading remarks about the existence or location of, or accessibility to, a region, area or attraction or the travel time or route used to get to such a place;
 - (e) do not confiscate or withhold a tourist's passport or other personal documents, money or other instruments of payment, or make false or misleading representations about the need to do so;
 - (f) do not exert undue pressure or influence on a tourist in relation to any of the above; and
 - (g) wear clearly readable and prominent identification when providing services to tourists which includes the name and Australian contact business address of the tour guide and ITO in English and the predominant language of the tour group.

11. ITO employees and contractors

ITOs will only employ or contract with persons who:

- (a) hold any licences or authorisation required by law to perform their duties (e.g. operator accreditation or driver authorisation under Public Transport legislation);
- (b) are legally employable (e.g. hold appropriate visa or residency); and
- (c) where needed, have the appropriate level of language skills which are reasonably necessary to provide service to a tourist.

12. Health, safety and environment

- 12.1 An ITO must ensure that any vehicles under its control are roadworthy (in accordance with Queensland Transport requirements) and comply at all times with relevant legislation and registration requirements.
- 12.2 An ITO must comply with applicable health and safety legislation.
- 12.3 Without limiting 12.2, an ITO must take all reasonable steps to provide a safe environment at all times for its employees, contractors and customers.
- 12.4 An ITO must have emergency evacuation procedures in place in any premises or vehicle under its control.

13. Legal compliance

- 13.1 An ITO must comply with Commonwealth and State fair trading legislation.

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- 13.2 An ITO must comply with all Commonwealth and State legislation relating to its business operation, including maintaining and complying with requirements for licences and permits.
- 13.3 An ITO must comply with all Commonwealth and State legislation relating to financial, auditing and reporting requirements.
14. **ITO to maintain records**
- 14.1 An ITO must retain copies of any promotional material, confirmed itineraries and quotations for a period of two years after the arrival in Queensland of the tourists to whom the material, itineraries or quotations relate.
- 14.2 An ITO shall keep such accounting records as are necessary to correctly record and explain the financial transactions and financial position of the business and shall retain those records for a period of seven years.
15. **ITO to have complaint handling procedure**
- 15.1 An ITO must have a reasonable, simple and easy to use procedure in place for handling complaints by tourists.
- 15.2 An ITO must have information readily available to inform tourists of the procedure. The information must include the following details:
- (a) how a complaint is to be made;
 - (b) when a complaint must be in writing and when it may be oral; and
 - (c) the person who is to handle the complaint and their relationship, if any, with the ITO.