

TRAVEL AGENTS AMENDMENT AND EXPIRY BILL 2014

Receipt and First Reading

Bill received from the Assembly; and, on motion by **Hon Michael Mischin (Minister for Commerce)**, read a first time.

Second Reading

HON MICHAEL MISCHIN (North Metropolitan — Minister for Commerce) [2.41 pm]: I move —

That the bill be now read a second time.

The purpose of the Travel Agents Amendment and Expiry Bill 2014 is to repeal the Travel Agents Act 1985. It also makes various savings and transitional arrangements, including refunding fees to licensees, ensuring that the repeal of the act does not affect the Travel Compensation Fund's capacity to be administered until its termination in the second half of 2015, and allowing proceedings to be undertaken against travel agents for breaches of the act that occurred prior to its repeal.

The government's key objective in moving to repeal the act is to minimise any disadvantage to travel agents and their customers doing business in Western Australia, given the cross-border nature of the industry. For the benefit of members, I will provide a brief outline of the current regulatory regime and the national scheme so that the need for, and objectives of, the bill can be seen in context.

At the end of April this year there were 345 licensed travel agents in Western Australia. Licensed travel agents include not only the traditional travel agencies, but also other types of travel intermediaries; for example, cruise operators, wholesalers, tour operators and Australian-based online travel agents such as travel.com.au, wotif.com and Zuji. Travel agents deal with significant amounts of consumer funds, often paid well in advance of travel dates. According to the Travel Compensation Fund, in 2011–12 licensed Australian travel agents—of which there are around 3 000 in total—turned over in excess of \$21 billion. More recent data is not available because from 2012–13 onwards travel agents were no longer required to submit their annual financial returns to the Travel Compensation Fund.

The decision by state governments to regulate the industry through a national cooperative scheme for the uniform regulation of travel agents—the national scheme—arose from concerns about substantial losses suffered by consumers as a result of travel agency collapses in the 1980s. Under the national scheme, all participating jurisdictions enacted uniform rules through state-based legislation, requiring travel agents to be both licensed and participants in the Travel Compensation Fund.

The Travel Compensation Fund provided prudential oversight of the industry by undertaking annual assessments of the financial viability of agencies and compensated consumers for losses resulting from a licensed travel agent becoming insolvent or failing to pass on a consumer's funds to end suppliers such as airlines and hotels. The decision to end the national scheme was made in December 2012 by a majority of participating jurisdictions. The travel industry transition plan agreed to at the time identified 1 July 2014 as the date by which jurisdictions should aim to repeal respective travel agent legislation. Prudential oversight of travel agents ceased from 1 July 2013 and eligibility for compensation will cease from 1 July this year. Claims against licensed agents for events that occur before this date will still be able to be made until 30 June 2015, and the wind-up of the Travel Compensation Fund is expected to be fully completed by the end of 2015. Western Australia and South Australia opposed dissolving the scheme but were outvoted.

It is fair to say that the government has some reservations in regard to these changes. However, other jurisdictions, as is their right, have resolved to deregulate travel agents and to end the national scheme. Many of the arguments for deregulation were indeed persuasive. For example, the regulatory scheme does impose a significant cost on industry at a time when consumers rely less on travel agents than they did in the recent past. This is due to the rise in online, supplier-direct transactions with consumers combined with a decline in the relative cost of travel resulting in a reduced risk of substantial loss to consumers. Although Western Australia certainly recognised the general need for reform, it did not support the full dissolution of the national scheme on the basis that there would be no equivalent protections available to consumers to those offered by the Travel Compensation Fund. Western Australia's view was that improvements to the efficiency of the Travel Compensation Fund should be considered as a first step rather than abandoning the national scheme in total. Nevertheless, the decision to end the national scheme meant that the landscape for Western Australian regulation changed significantly, given that the viability of the scheme depends on it operating nationally.

Western Australia indicated at the time that it would consider its options in the face of the decision to end the national scheme. The government subsequently committed to consulting with local stakeholders before reaching a final decision about the future regulation of Western Australia's travel agents. Consultation with stakeholders

was undertaken through the public release of a position paper in August 2013, outlining a range of options. Stakeholders generally supported deregulation due to concerns that the local travel industry would be at a competitive disadvantage if Western Australia did not deregulate in line with other jurisdictions. Some stakeholders were also of the view that an industry-led accreditation scheme, being developed by the Australian Federation of Travel Agents, would deliver significant benefits for both consumers and industry, and would ensure the long-term viability of the industry. A decision regulatory impact statement was then prepared, taking into account stakeholders' views. Each of the options was considered in terms of costs and benefits to consumers, industry and government. As a result, it became increasingly clear that it was not viable for Western Australia to attempt to go it alone and to try to replicate the current compensation and licensing arrangements in a vacuum.

To illustrate this point, between 2006 and 2012, of the compensation paid by the Travel Compensation Fund to Western Australians, 87 per cent was due to the insolvency or other failure of interstate, rather than locally based, travel agents. Therefore, in the context of the national scheme ending and deregulation proceeding in other jurisdictions, deregulation was identified as yielding the greatest benefit to the Western Australian community as a whole. Accordingly, and after due consideration, the government has concluded that there is little option for Western Australia but to proceed with deregulation in this field. Post-deregulation, the Australian Consumer Law will become the main law under which consumer complaints relating to the activities of travel agents can be pursued.

I now turn to future national initiatives aimed at building consumer and industry awareness of the imminent changes and the implementation of a new industry-led accreditation scheme. In recognition of the need to provide a strong consumer voice, consumer protection ministers recently approved a grant of \$2.8 million to the Australian Consumers' Association, trading as Choice, funded from Travel Compensation Fund reserves, to implement a number of interdependent projects over a period of four and a half years. These projects include conducting research to identify and track emerging travel issues and consumer needs; providing online information for consumers about their rights under the ACL and industry-led mechanisms; delivering targeted online education campaigns to achieve maximum consumer awareness; and undertaking advocacy and policy development to advance the interests of consumers.

In addition, funding of up to \$3 million from Travel Compensation Fund reserves will be allocated to a major national community education campaign targeting both consumers and industry. Its key aims will be to ensure that consumers understand what they need to do to protect their interests when purchasing travel products and services, and to make industry aware of its obligations under the Australian Consumer Law. The Australian Federation of Travel Agents has received a grant of \$2.8 million, funded from Travel Compensation Fund reserves, to develop a voluntary accreditation scheme comprising a charter and code of conduct, which will include complaint-handling processes and set standards of good industry practice. Consumers will be encouraged to seek out industry-accredited travel agents as a means of protecting their interests.

I understand that the Australian Federation of Travel Agents is also working with an overseas-based insurance broker to develop a range of insolvency insurance products, which will be available to travel agents who are members of the Australian Federation of Travel Agents' voluntary travel accreditation scheme, referred to as ATAS. Of particular interest is the proposal to provide a travel agent insolvency insurance product, which has previously not been available in the marketplace. Full details are not yet available, but it is understood that this insurance is likely to take the form of a blanket cover applicable to the travel agent's business as a whole. It will therefore be up to consumers to check whether travel agents they are dealing with have this form of insurance cover in place. It is important for members to note that travel insurance policies generally available to consumers in the marketplace expressly exclude claims in relation to insolvency of travel agents and tour operators. It is possible that this may change in the future, depending on whether the insurance industry assesses this type of product as viable in the absence of the Travel Compensation Fund.

Now that the decision has been made to deregulate, the government is committed to proceeding with the repeal of the act as quickly as possible, given other jurisdictions are aiming to repeal their respective legislation by 1 July 2014. Achieving a date as close as possible to 1 July 2014 is important to provide certainty for Western Australian travel agents and to ensure that they are not subject to additional regulatory costs as compared with their competitors based in other jurisdictions. I am also mindful that current licensing requirements include proof of being a participant of the Travel Compensation Fund, which will no longer be possible after 1 July 2014.

With regard to refunding licensing fees, Western Australia's licensing regime differs from other jurisdictions in that it provides for triennial rather than annual payment of licensing fees. The bill provides for the payment of proportionate refunds to those licensees whose licences have more than 12 months to run at the date of repeal of the act. An estimated \$200 000 will be refunded to around 70 per cent of licensees. This approach is consistent

with that in most other jurisdictions and has the support of the peak industry group, the Australian Federation of Travel Agents.

Although it is intended that the requirement for travel agents to be members of the Travel Compensation Fund will cease from 1 July 2014, the bill includes transitional provisions to allow the Travel Compensation Fund to satisfy any claims for compensation by consumers affected by the default of a licensed travel agent that occurred prior to the repeal of the act. The bill also includes transitional provisions allowing for the Travel Compensation Fund to wind up its affairs and allows for proceedings to be undertaken against travel agents for breaches of the act that occurred prior to its repeal.

In conclusion, the deregulation of travel agents will ensure consistency with other jurisdictions and enable Western Australian travel agents to remain competitive with their deregulated interstate counterparts. Deregulation will also deliver on the government's commitment to reduce red tape and the regulatory burden on business.

Pursuant to standing order 126(1), I advise that this bill is not a uniform legislation bill. It does not ratify or give effect to an intergovernmental agreement to which the government of this state is a party. This bill, by reason of its subject matter, does not introduce a uniform scheme or uniform laws throughout the commonwealth. I commend the bill to the house and table the explanatory memorandum.

[See paper 1655.]

Debate adjourned, pursuant to standing orders.