




Government of Western Australia
Department of Commerce

EXPLANATORY MEMORANDUM

TRAVEL AGENTS AMENDMENT AND EXPIRY BILL 2014

Signed: 

Hon Michael Mischin MLC
MINISTER FOR COMMERCE

6/5/2014

Travel Agents Amendment and Expiry Bill 2014

Overview of the Bill

The primary purpose of the Travel Agents Amendment and Expiry Bill 2014 (the Bill) is to repeal the *Travel Agents Act 1985* (the Travel Agents Act). The Bill also makes savings and transitional arrangements.

The Bill ensures travel agents based in Western Australia are regulated in a similar manner to their competitors operating in other jurisdictions. This will ensure that consumers and travel agents are not disadvantaged as a result of doing business in Western Australia. Travel agents will no longer be required to be licensed in order to operate in Western Australia, thus reducing red tape and the regulatory burden on business.

The transitional and savings provisions included in the Bill enable:

- The Commissioner for Consumer Protection (the Commissioner) to provide refunds to existing licensees and new applicants less the cost of calculating and processing the refund.
- The assessment and payment of claims to consumers under the Travel Compensation Fund (the Compensation Scheme) in relation to matters which arose before the transition day.
- The Commissioner to continue to investigate and take action against travel agents in relation to certain offences or conduct under the Travel Agents Act alleged to have occurred before the transition day.
- The commencement, conduct and disposal of proceedings before the State Administrative Tribunal (SAT) in relation to certain offences or conduct alleged to have occurred before the transition day.
- The review by the SAT of any reviewable decision made before the transition day.

Part 1 – Preliminary

Clause 1 Provides that the short title of this Bill (when enacted) is to be the *Travel Agents Amendment and Expiry Act 2014*.

Clause 2 Provides the commencement dates for the various Parts of the Bill. Various provisions need to come into effect at different times.

Paragraph (a) provides that Part 1 of the Bill will commence on the day this Act receives Royal Assent.

Paragraph (b) provides that Part 2 of the Bill will commence on a day fixed by proclamation, and that different days may be fixed for different provisions.

Paragraph (c) provides that Part 3 of the Bill will commence on the day after the day on which the *Travel Agents Act 1985* expires under section 61(1) of that Act as amended by section 7 of this Act.

Part 2 – *Travel Agents Act 1985* amended

Clause 3 Explains that Part 2 amends the *Travel Agents Act 1985*.

Clause 4 Deletes the long title of the Act to simplify the description of the instrument by inserting:

“An Act relating to the regulation of the travel industry”.

Clause 5 Section 3 amended

Amends the definitions in section 3(1) of the *Travel Agents Act* to:

- remove the current definition of Compensation Scheme;
- insert a new definition for Compensation Scheme (including a note indicating where a copy of the Trust Deed referred to in the definition can be found);
- insert a definition for transition day; and
- insert a definition for Trust Deed.

A new definition for Compensation Scheme is required to ensure reference is made to the most up to date version of Travel Compensation Fund Trust Deed as revised to cater for the orderly winding-up of the Travel Compensation Fund given the ending of the national Co-operative Scheme for the Uniform Regulation of Travel Agents.

Clause 5 also inserts a new section 3(3) of the *Travel Agents Act* indicating that a note set out at the foot of a provision does not form part of the Act.

This has been included to readily accommodate changes to the content of the note, (for example a change in web address referred to in the note) rather than requiring a legislative amendment.

Clause 6 Section 5A inserted

Inserts section 5A after section 4 of the *Travel Agents Act* and makes provision for the *Travel Agents Act* not to apply on or after the transition day except in relation to certain purposes outlined in Part V of this Act.

This clause effectively repeals the *Travel Agents Act* and removes the need for travel agents in Western Australia to be licensed and removes all matters relevant to this requirement.

Clause 7 Part V inserted – Expiry of Act and related transitional arrangements

Inserts Part V after section 60 of the *Travel Agents Act*. Provision is made for the expiry of this Act and related transitional arrangements.

Division 1 – Expiry of Act

Section 61 – When Act to expire

Section 61 subclauses (1) and (2) provides that this Act will expire when the Minister publishes a notice in the Gazette stating that:

- the Minister is satisfied of certain matters; and
- the Act expires at the end of the day specified in the notice.

Subclause (3) specifies the matters that the Minister must be satisfied of prior to publishing a notice in the Gazette, these being that:

- the Compensation Scheme has been terminated in accordance with the Trust Deed; and
- there is no reason for the Act to continue.

Division 2 – Transitional arrangements on and after transition day

Section 62 – Purposes for which Act continues to apply

Section 62 provides that the Travel Agents Act will continue on or after the transition day in relation to a number of matters.

Paragraph (a) will apply for the purpose of assessing claims and paying compensation to consumers under the Compensation Scheme in respect of any act or omission that occurs before the transition day.

Paragraph (b) saves certain provisions of the Travel Agents Act to enable the Commissioner to investigate or inquire into matters under Part II Division 3 of the Travel Agents Act the grounds for which arose before transition day.

Part II Division 3 of the Travel Agents Act relates to the Commissioner's role in investigating certain complaints made by persons in regard to the holding of a licence by a specified licensee. For example, an allegation that the business to which a licence relates is being carried on in a dishonest or unfair manner.

Paragraph (c) saves certain provisions of the Travel Agents Act to enable the Commissioner to request that licensees give and comply with undertakings under section 37 of the Travel Agents Act in connection with unjust conduct allegedly engaged in before transition day.

Section 37 of the Travel Agents Act deals with situations where a person who carries on business as a travel agent has, in the course of business, repeatedly engaged in unjust conduct. The Commissioner is able to request the person execute a deed, whereby the person gives certain undertakings, for example the discontinuance of the unjust conduct.

Paragraph (d) saves the Commissioner's powers to investigate and prosecute any offence under this Act alleged to have been committed before transition day.

Paragraph (e) provides for the giving and withdrawal, and the payment of the modified penalty specified in, any infringement notice in respect of any offence under this Act alleged to have been committed before transition day.

Paragraph (f) saves certain provisions of the Travel Agents Act allowing for the commencement, conduct and disposal of proceedings before the State Administrative Tribunal under Part II Division 3 of the Travel Agents Act in respect of any allegation the ground for which arose before transition day.

Part II Division 3 of the Travel Agents Act relates to the Commissioner's role in investigating certain complaints made by persons in regard to the holding of a licence by a specified licensee. Provision is made for the Commissioner in certain circumstances to make an allegation to the State Administrative Tribunal concerning a specified licensee. The State Administrative Tribunal in turn has the power to determine disciplinary action, for example, impose a fine.

Paragraph (g) saves certain provisions of the Travel Agents Act enabling the State Administrative Tribunal under Part II Division 4 to review any reviewable decision made prior to the transition day. Part II Division 4 of the Travel Agents Act allows persons who are aggrieved by a reviewable decision to apply to the State Administrative Tribunal for a review of the decision.

Paragraph (h) saves certain provisions of the Travel Agents Act allowing for the commencement, conduct and disposal of proceedings before the State Administrative Tribunal under Part III of the Act in respect of any unjust conduct engaged in before the transition day or any failure to observe an undertaking.

Section 63 – Refund of licence fees

Section 63 provides for the refund of licence fees to persons who held a licence before the transition day.

Subclause (1) defines terms referred to in section 63 including: "licence fee"; "licence period"; "refundable portion" and "unexpired portion".

Subclause (2) specifies that the unexpired portion of the licence period must be greater than one year in order for a licensee to be entitled to a refund under section 63(3) to apply.

Subclause (3) entitles persons who held a licence immediately before transition day, to a refund of the unexpired portion of the licence fee, less the cost of calculating and processing the payment of the refund.

Section 64 – Refund of application fees

New section 64 provides for the refund of application fees.

Subclause (1) provides for the payment of refunds to persons who have applied for a licence and paid the prescribed fee immediately before transition day but who have not yet been granted or refused a licence by the Commissioner.

Subclause (2) provides for the deduction of the cost of calculating and processing the payment of the refund from the refund amount.

Section 65 – Transitional regulations

Section 65 provides authority for regulations to be made for the purpose of dealing with transitional matters arising from the commencement of this Act.

Subclause (1) provides for the definition of terms used in this section for the purpose of the transitional regulations, including: “publication day”, “specified” and “transitional matter”.

Subclause (2) provides that in the event there is insufficient provision under Division 2, the regulations may deal with all matters of a transitional nature that are necessary for the implementation of this Act.

Subclause (3) provides that any transitional regulations necessary to give effect to this Act may provide that specified provisions of a written law do not apply in relation to specified matter or apply with modification.

Subclause (4) allows transitional regulations to provide that they have effect to a state of affairs as if it had existed, or not to have existed, from a day prior to the day on which the regulations are gazetted, provided that day is not earlier than the transition day.

Where transitional regulations contain such a provision, subclause (5) provides that the provision does not –

- affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of the person that existed before the regulations were gazetted; or
- impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the regulations were gazetted.

The combined effect of subclauses (4) and (5) allows regulations to apply retrospectively in regard to matters occurring on or after transition day but before the day on which the regulations are published, but ensures that such regulations will not adversely affect a person’s rights or impose liabilities on a person.

Part 3 – Other Acts Amended

Clause 8 Inserts Part 3.

Part 3 of the Bill repeals all references to the *Travel Agents Act 1985* contained within existing Western Australian legislation.