Government of **Western Australia**
Department of **Commerce**

FUTURE REGULATION OF TRAVEL AGENTS

IN

WESTERN AUSTRALIA

DECISION REGULATORY IMPACT STATEMENT

Prepared by the Department of Commerce

November 2013

This Decision Regulatory Impact Statement has been prepared in compliance with the Western Australian Government's requirement for a Regulatory Impact Assessment in regard to the future regulation of travel agents in Western Australia.

Public comments and submissions were invited in response to options presented in the position paper, *Regulating Travel Agents in Western Australia* released by the Department of Commerce on 19 August 2013.

EXECUTIVE SUMMARY

Recommendations

1. ***That Western Australia (WA) removes all industry specific regulation for WA travel agents and follows the timeframes of the Travel Industry Transition Plan to the extent possible.***

Current scheme

The national scheme for the Uniform Regulation of Travel Agents (the national scheme) was introduced in 1986 in order to promote nation-wide industry standards and to protect consumers from inadequate service from travel agents and financial loss arising from failure to pass on funds to suppliers and/or insolvency of the travel agent.

Under the national scheme, all participating jurisdictions have enacted uniform rules through state based legislation, including a requirement that travel agents be licensed and participate in the Travel Compensation Fund (TCF). In Western Australia (WA), travel agents are regulated by the *Travel Agents Act 1985* (the Act) and the Travel Agents Regulations 1986.

As a result of the national scheme, the regulatory regime for travel agents provides consumer protection in two broad categories:

- licensing with entry and conduct requirements; and
- insolvency protection measures including prudential oversight and a compensation scheme administered by the TCF.

The TCF is based in Sydney and its operation is governed by a trust deed approved by participating state and territory Ministers. Participating jurisdictions are represented on its board by officers of the relevant departments on a rotational basis. The board also includes consumer and industry members. The TCF is funded through contributions by licensed travel agents whose participation in the fund is compulsory. Additional funds are derived from recovery actions and investments.

The TCF provides prudential oversight of licensed travel agents upon application for a licence and participation in the TCF together with annual assessments of the financial viability of travel agents before their licences are renewed. The TCF requires participants to submit audited financial accounts annually and imposes a requirement of a bank guarantee and an insurance arrangement for participants who do not, or cease to meet the capital requirements. The TCF also conducts field audits as part of its compliance program including visits to agents where client funds may be at risk.

Value of travel industry market

Based on information provided by the TCF, travel industry turnover for the 2011/2012 financial year was $21 billion per year nationally. More recent figures are not available as the TCF is no longer collecting this data from participant travel agents.

Decision of Ministers

On 7 December 2012, in a majority decision, Ministers from participating jurisdictions in the national scheme approved the Travel Industry Transition Plan (TITP) which, among other things, ends the national scheme for travel agent regulation and winds up the TCF.

This decision was made in the context of a national review of the continuing need for regulation and industry's proposal by its peak body, the Australian Federation of Travel Agents (AFTA), to self-regulate through the establishment of a voluntary accreditation scheme.

While many of the arguments for deregulation are persuasive - less consumer reliance on travel agents due to the rise in on-line marketing and supplier direct transactions; a decline in the relative cost of travel and so risk of substantial loss to consumers; the advent of the Australian Consumer Law (ACL); and the capacity for credit card chargeback through banks – WA did not support the disbandment of the scheme. The main reason was that there is no equivalent to the compensation fund provided by the TCF if deregulation occurs. However, in light of the majority decision, WA must consider what level of state regulation it will retain, if any, in the face of national deregulation.

Phased implementation

Phased implementation of the TITP began from 1 July 2013. Key dates are:

- Execution and commencement of a TCF Substitution Trust Deed from 1 July 2013 which ends prudential supervision of travel agents by the TCF, although travel agents will still be required to participate in the compensation fund until state and territory regulation can be repealed and to comply with state and territory licensing requirements.
- By 1 July 2014 jurisdictions are expected to repeal their respective travel agents' legislation and travel agents will cease to be required to be TCF members and cease to be licensed. In any event, participating Ministers have directed the TCF to amend the Substitution Trust Deed to make 30 June 2014 as the participation cessation date.
- AFTA is developing a voluntary industry accreditation scheme which is expected to commence on 1 July 2014.
- Consumer research and advocacy arrangements are expected to be established during 2014/15. These include monitoring consumers' experiences with the new travel industry regime including credit card chargeback and insurance arrangements in cases where travel services are not delivered.
- Wind-up of the TCF sometime between 1 July and 31 December 2015, although conclusion of TCF recovery action and payment of remaining eligible claims will continue for some time after this.
- Distribution of remaining trust funds to participating jurisdictions in accordance with the TCF Substitution Trust Deed.

Options for the regulation of travel agents in WA

Five options have been considered for WA in light of the decision to disband the national scheme. These range from deregulation of the industry in line with other jurisdictions through to maintaining to the extent possible, the current WA licensing regime, prudential supervision and compensation for consumers.

Options for the future regulation of travel agents in WA include:

Option A – remove all industry specific regulation for WA travel agents;

Option B – implement a negative licensing scheme for WA travel agents;

Option C – under a code of conduct, require WA travel agents to comply with basic standards and use the ACL to sanction non-compliant agents;

Option D – regulate WA travel agent businesses through licensing and prudential oversight but with no compensation fund; and

Option E – maintain key elements of the national scheme in WA, that is, regulate travel agent businesses located in WA through licensing, prudential oversight and a compensation fund for consumers.

The table on page 18 provides a comparison summary of the costs and impacts of the options for consumers, industry and government.

Consultation

In light of national developments, the Department of Commerce (the Department), undertook consultation with stakeholders. A position paper outlining the five options under consideration was released by the Department in August 2013. Local stakeholders including licensed travel agents, consumer advocates and relevant government departments were invited to make submissions. A total of 13 submissions were received.

There was general support for deregulation with 10 stakeholders expressing support for option A. A key reason for stakeholders supporting option A was concern that WA's travel industry would be at a competitive disadvantage if WA did not deregulate in line with other jurisdictions. Stakeholders were also of the view that the proposed industry accreditation scheme being developed by AFTA would deliver significant benefits for consumers and industry and would ensure the long-term viability of the industry.

Two stakeholders supported maintaining the status quo. Another stakeholder (being a travel agent) did not identify a preferred option but noted specific concerns in regard to chargeback arrangements with financial providers.

Mitigation of consumer risk

A significant benefit of the current scheme is access to compensation in the event of travel agent insolvency or failure to pass on consumer funds for other reasons. Several possibilities exist to mitigate the risks for consumers if the travel industry is deregulated and are explored below.

Recent information from AFTA regarding the voluntary industry accreditation scheme they are developing indicates that accredited agents will be able to obtain supplier insolvency insurance to cover consumers in the event of the insolvency of carriers and accommodation providers to whom the agent has paid moneys. This insurance is provided by some insurers overseas but has not generally been available in Australia due to the existence of the TCF. Without the TCF, it may become commercially worthwhile for this type of insurance to be offered. AFTA is also investigating the potential for insolvency cover for travel agents themselves. If such insurance eventuates, the protections for WA consumers may not be significantly diminished as only loss through misappropriation of funds would not be covered.

AFTA's accreditation scheme will include a code of conduct to address conduct, skill and financial management standards that are now addressed through state licensing and the TCF prudential supervision of travel agents. This will mitigate against risk of inappropriate service for consumers and insolvency for businesses. It will also allow travel agents who subscribe to the accreditation scheme to market this to potential consumers and encourage them to deal with accredited travel agent businesses.

Cost/ benefit analysis

Each of the policy options has been assessed against the objectives identified in section 2 of this paper and considered, where possible, in terms of quantifiable net cost/ benefit. The net benefit per year of implementing option A is estimated at $1.155 million. Section 4 provides further detail in regard to how this figure was derived and identifies costs and benefits which cannot be ascertained at this stage.

Option A is therefore identified as the option which is most likely to meet the policy objectives for reform as the overall benefits of implementing option A outweigh the costs thus resulting in a net public benefit under this option.

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1. STATEMENT OF THE ISSUE

Summary

The issue under consideration relates to whether it is appropriate to continue regulating Western Australia (WA) travel agents. This issue has arisen due to the ending of a national uniform scheme which has underpinned the regulation of travel agents since 1986. The following briefly summarises the key reasons for concluding that regulation of WA travel agents is no longer considered necessary:

- Market consolidation and greater stability in the travel industry.
- The risk of insolvency in the travel intermediary industry is no higher than other comparable industries (based in Dun and Bradstreet data).
- Prepayments and holding of deposits are common in the travel industry and these arrangements do not differ in their commercial nature from many similar industries.
- Consumers now have greater access to information and the ability to contract directly with suppliers through electronic payments and the internet.
- Increasing household incomes and consumers' familiarity with travel, combined with the declining real cost of travel, make travel purchases a less significant household purchase.
- Consumers have the option of protecting themselves against insolvency risks, via 'chargeback' mechanisms offered by credit cards (subject to specific conditions).
- Generic consumer protection measures are now available that did not exist when the national scheme was instituted.
- The proposed industry-led accreditation scheme will complement generic consumer protection measures by setting industry standards for agent competency and funds management, providing access to dispute resolution and potentially making insurance to cover insolvency available.
- Competitive disadvantage for WA travel agents given all other jurisdictions are deregulating.

Objectives of the existing national scheme

The National Co-operative Scheme for the Uniform Regulation of Travel Agents (the national scheme) sought to address two key consumer protection objectives:

- inadequate service, either as a result of incompetence on behalf of the travel intermediaries or inappropriate conduct; and
- financial loss arising from the failure of travel intermediaries to account for pre-paid monies.

Current regulatory framework

WA travel agents are currently regulated by the *Travel Agents Act 1985* (the Act) and the Travel Agents Regulations 1986. WA is a party to the national scheme which includes a travel compensation fund to compensate consumers for losses arising from a travel agent's insolvency or other failure to pass on funds to a supplier. The Act requires that travel agents be licensed and participants of the Travel Compensation Fund (TCF).

National scheme

The national scheme was introduced in 1986 following some major collapses of travel agents and currently includes all jurisdictions except the Northern Territory. The national scheme was introduced to promote nation-wide industry standards and to protect consumers from inadequate service from travel agents and financial loss arising from failure to pass on funds to suppliers and/or insolvency of the travel agent. It is important to note that the focus of the national scheme has been on travel agents or intermediaries and has not usually covered travel and accommodation suppliers.

Consumer protection

As a result of the national scheme, the regulatory regime for travel agents provides consumer protection in two broad categories:

- licensing with entry and conduct requirements; and
- insolvency protection measures including prudential oversight and a compensation scheme administered by the TCF.

TCF

Under the national scheme, all participating jurisdictions have been required to enact uniform rules through state-based legislation, including a requirement that travel agents be licensed and be members of the TCF. The TCF is based in Sydney and its operation is governed by a trust deed approved by participating state and territory Ministers. Participating jurisdictions are represented on the TCF board by officers of the relevant departments on a rotational basis. The board also includes consumer and industry members.

TCF prudential oversight and compensation

The TCF requires travel agents to have sufficient capital and financial systems to operate with a reduced risk of insolvency. It uses financial ratio tests and minimum capital requirements based on gross annual turnover as an indication of the adequacy of a business's financial resources. Until 1 July 2013, all TCF participants were required to submit annually audited financial returns and the TCF could impose requirements such as bank guarantees or insurance arrangements on a business which did not meet the capital requirements. Field audits were undertaken of businesses that gave cause for concern.

In the event of a travel agent collapse, the TCF generally manages all consumer enquiries and arranges compensation. Due to the TCFs effective handling of such matters, while consumers are inconvenienced by failures, they have not been left out of pocket, and there has been no pressure for government to intervene.

The TCF's reserve funds are estimated at approximately $29 million[1]. Most claims are assessed and payments made within seven days on average and recovery action is taken to recoup expenses where possible. This may take several years and involve litigation.

WA licensing and compliance

In accordance with the national scheme, the Act defines the type of travel arrangements which require a licence to operate as a travel agent. These include:

- selling tickets entitling, or otherwise arranging for passage on transport such as planes, boats, or trains;
- selling or arranging travel and accommodation; and/or
- purchasing for resale the rights of passage on conveyances.

An individual applying for a licence must be over 18 years of age; be fit and proper; pay a prescribed fee; and provide certain information. A further condition of the licence is that the applicant must participate in the TCF, membership of which also requires fees.

In addition to these eligibility rules, travel agents and certain employees, such as, the day-to-day manager of the business outlet, are required to have a specified level of experience and/or qualifications.

Licensing and work to ensure compliance with the Act is undertaken by the Consumer Protection Division of the Department and is largely funded by revenue from licence fees. The ACL also operates in addition to the Act and provides general consumer protection in addition to the industry specific protections.

[1] TCF media release 26 June 2013.

Regulatory costs

WA licensing and compliance

Triennial licensing fees for a natural person range from $1,184 for travel agents with one principal office, to $3,634 for those with ten or more branches. For a body corporate, the fees range from $1,795 for one principal office to $4,195 for ten or more branches. There are currently 332 licensed travel agents in WA.

Total licensing income based on the review of fees and charges for 2013/14 is $261,350 and this covers departmental costs for administering licensing and compliance regimes[2].

Membership of Travel Compensation Fund

In addition to the above licensing fee, a travel agent applying to join the TCF for the first time is required to pay $8,260 for their principal location and an additional $5,515 for each additional branch location. An annual renewal fee of approximately $425 for a principal location and $320 for each additional branch location also applies.

The total amount paid per annum by WA agents is $179,125[3].

Cost of national scheme

PricewaterhouseCoopers (PwC), in a report titled the *Review of consumer protection in the travel and travel related services market* November 2010, estimated the cost of the national scheme including licensing and compliance, prudential oversight and compensation at $25.3 million per annum[4]. Based on WA's proportion being nine per cent[5], the estimated cost to WA was $2.277 million per annum[6].

Value of claims

At a national level, PwC estimated the regulatory costs at around nine times greater than the average value of claims paid. PwC did not provide costs for separate jurisdictions, however, the average pay-out to consumers in WA is $507,340 per annum[7] and based on PwC's national estimates, regulatory costs for WA would be around five times the value of claims paid.

Their 2010 report found that: the value of national regulation was not cost effective with the regulatory burden on industry far outweighing consumer benefit given the travel market has changed considerably since 1986; and that general consumer protection regulation was sufficient to safeguard consumer interests. PwC recommended that the national scheme be disbanded.

[2] Consumer Protection 2013/14 review of fees and charges.
[3] Information provided by the TCF to Consumer protection July 2013.
[4] PwC *Review of consumer protection in the travel and travel related services market* November 2010 p105. This review was commissioned by the then Ministerial Council on Consumer Affairs in 2009.
[5] TCF Annual Report 2012.
[6] TCF Annual Report 2012.
[7] TCF claims data for 2006 - 2012 as of 10 July 2013 supplied to Consumer Protection.

National review

The 2010 PwC report was in response to a review of the national scheme that was initiated by Consumer Protection Ministers in 2009. The purpose of the review was to assess the effectiveness of, or need for, specific consumer protection measures in the travel and travel-related services markets with a focus on the operation of the TCF.

Context

Recent developments

Since the introduction of the national scheme a number of developments had occurred:

- Market consolidation and the declining market share (in terms of revenue) of smaller agencies have encouraged greater stability in the travel industry.

- Consumers have greater access to information and the ability to contract directly with suppliers through electronic payments and the internet. More and more consumers are doing so, in which case their funds are not at risk from travel intermediary collapse. The popularity of credit card usage also reduces the amount of funds exposed to this risk.

- Increasing household incomes and consumers' familiarity with travel, combined with the declining real cost of travel, make travel purchases a less significant household purchase.

- Private sector options are available to consumers to protect themselves against insolvency risks, including the 'chargeback' mechanism offered by credit cards. 'Chargeback' is a common security feature of credit cards by which consumers can request their financial institution to 'reverse' a transaction where the goods/services are not supplied, are defective or transactions are unauthorised. The availability of chargeback is not a regulatory requirement and is provided at the discretion of card issuers. The terms and conditions on which chargeback is available to consumers, such as time limits on when claims can be made, varies among card issuers and products.

Prepayments

Prepayments and carriage of monies are common in the travel industry and these arrangements do not differ in their commercial nature from many similar industries. Data relating to market entries and exits, businesses entering external administration and the probability of business distress, indicates that the risk of insolvency in the travel intermediary industry is no higher than other comparable industries.[8]

Australia's consumer protection framework

Consumer protection laws redress failures in markets that leave consumers particularly vulnerable to financial or other risks. Consumer protection, properly designed, can remove or mitigate the risks to consumers, while still allowing markets to function efficiently.

Since the start of the ACL on 1 January 2011, Australia has had a single national fair trading and consumer protection law. The ACL regulates the conduct of all businesses in all sectors, including the travel sector. A generic consumer protection framework provides certainty to all businesses and consumers as to their rights, expectations, responsibilities and obligations regardless of where and in which industry they operate.

[8] This is based on estimates of the risk of financial distress prepared by business information firm Dun and Bradstreet for PwC.

Some industries or sectors may have particular circumstances that give rise to a need to supplement the generic provisions with additional specific consumer protection measures. Whether such a need exists should be assessed with reference to the circumstances of each market or industry.

The Productivity Commission has noted that poorly targeted departures from generic consumer protection rules may be costly, by increasing compliance costs, restricting competition, limiting innovation and creating regulatory uncertainty[9].

Travel intermediaries are covered by the framework

WA reforms need to be considered in the context of the generic fair trading and consumer protection framework in the ACL.

The ACL is enforced by the Australian Competition and Consumer Commission and state and territory fair trading agencies. Australia's corporations and criminal laws, rules governing the Australian Securities Exchange and activities of regulators (such as the Australian Securities and Investment Commission) also provide prudential oversight of incorporated travel agent businesses and address insolvency issues.

Regulatory and non-regulatory measures supplement the generic rules in the travel industry, providing, either directly or indirectly, an additional layer of protection to consumers. They include:

- codes of conduct instituted and enforced by industry associations;
- commercial arrangements — such as credit card merchant agreements; and
- private protections — most importantly, travel insurance and credit cards 'chargeback' mechanisms.

National review components

The review included national public consultation through the release of an issues paper, a subsequent consultation regulatory impact statement (C-RIS) and more recently, the Travel Industry Transition Plan (TITP). WA stakeholders were consulted during the stages of the review.

A C-RIS was released by the Commonwealth in 2011 outlining options for the regulation of the travel industry. It concluded that industry-led regulation and reliance on the ACL and other safeguards ought to be pursued. A draft decision regulatory impact statement (D-RIS) was developed but not finalised. Consultation then occurred on a draft TITP in 2012.

Material developed as part of the national review

In developing and assessing the various options, the Department has taken into account the material generated by the national review including:

- PwC study of consumer protection in the travel industry presented in February 2010 following a national review of travel and the travel related services market (this study was used to inform the C-RIS);
- National C-RIS outlining options for regulation of travel agents released in March 2011; and
- TITP outlining the proposed transition to de-regulation of licensing of travel agents across Australia and wind-up of the TCF.

[9] Productivity Commission (2008), 'Review of Australia's Consumer Policy Framework'.

The following:

- summarises the findings of the PwC study;
- presents the conclusions as outlined in the 2011 national C-RIS;
- outlines the recommendations of the draft national decision-making RIS; and
- summarises the recommended a course of action presented in the TITP for transitioning out of the national scheme.

PwC study

As indicated above in late 2009, PwC was commissioned to conduct a national study of consumer protection in the travel industry. PwC undertook consultations and research and prepared their 2010 report. The study sought views from a range of stakeholders through an issues paper. The issues paper was distributed to all TCF participants. It was also distributed to AFTA, the Council of Australian Tourism Operators (CATO), the Australian Tourism Export Council (ATEC) and other identified stakeholders.

The study also included a second phase where a national consumer survey was conducted on a range of issues relating to consumer protection in the travel industry and on consumers' willingness to pay for such protection. PwC surveyed a random sample of over 800 travel consumers.

The survey covered such matters as consumer behaviour in regard to booking travel, how frequently consumers used credit cards to pay for travel, consumer satisfaction with services offered by travel agents and awareness of protections offered via the TCF. The survey found that consumers appeared to value protection from travel agent insolvency, and were willing to pay $30 on a $1,000 fare for such protection.

In addition, PwC conducted a survey of Australian travel agents. The survey was distributed to all TCF members and covered a range of issues relating to consumer protection in the travel industry and the existing regulatory regime. The survey was distributed to all TCF members and attracted 415 responses. The survey found that forty-five per cent of respondents viewed the national scheme as providing effective consumer protection. A majority of respondents believed that suffering financial loss from the bankruptcy of a travel agent or travel service supplier represents a somewhat significant or very significant risk to consumers.

The following provides a summary of the PwC study's key findings. Further detail is provided at Appendix A.

- PwC estimated the cost of the national scheme (at the time) — including licensing, prudential oversight and compensation — to be $25.3 million per annum. The directly observable benefit (as measured in terms of the average payout to consumers) is $2.9 million (averaged over the previous 10 years).
- The majority of travel intermediaries (65%) believe that licensing requirements are duplicated to some degree by the membership requirements of the TCF.[10]
- There is little evidence of a significant problem in business conduct in the industry. In most states, the travel industry accounts for no more than five per cent of complaints to consumer protection bodies and travel intermediaries typically make up less than one third of these.

[10] Based on a survey of Australian travel agents conducted by PwC. See PwC *Review of consumer protection in the travel and travel related services market* 2010 (page 84).

- A body of opinion amongst stakeholders that the industry-specific disciplinary powers, currently incorporated into licence conditions, are important in ensuring good conduct in the industry.[11] PwC noted however, that this could also be achieved through negative licensing or a registration scheme rather than a full licensing scheme.

- In the opinions of stakeholders on the ongoing relevance and appropriateness of insolvency protection, in light of the historical developments of the travel industry, differ widely.

- Suggested benefits of prudential oversight of the industry are: reducing the risk of travel agency insolvency therefore reducing the risk of financial loss to consumers, and consequently, the TCF, and other creditors; promoting consumer confidence in the travel agent market and the tourism industry more broadly; and providing a form of accreditation — that is, membership in the TCF testifies, to some degree, to the business' solvency and bona fide nature.

- The extent to which the prudential oversight function is currently reducing the risk of travel agency insolvency is difficult to ascertain. While there is a broad perception that the TCF's prudential oversight has reduced the financial volatility of the industry, the nature and structure of the industry had changed dramatically since that time. Even if failures did increase, a six-fold increase in the current value of lost funds would be required before the value of lost funds exceeded the economic cost of the national scheme.

- Suggested benefits of compensation arrangements are: the compensation of consumers who would otherwise lose their prepayments for travel services; a swift and costless resolution of claims — the average turn-around time for claims on the TCF is between five and seven days;[12] and handling complaints that might otherwise be resolved by the relevant fair trading body.

Consultation Regulatory Impact Statement conclusions

In response to the PwC study, a C-RIS was prepared seeking stakeholder views. The C-RIS was released in February 2011. The C-RIS presented the following conclusions:

- industry-led regulation has merit and should be further considered in the light of stakeholder views; and

- utilising the national consumer protection framework under the ACL and other safeguards has merit and should be further considered in the light of stakeholder views.

Further detail in relation to these conclusions is provided at Appendix B.

Travel Industry Transition Plan

A draft national D-RIS based on the outcome of C-RIS was prepared by the Commonwealth Treasury, however, it was not endorsed by Ministers at their meeting of 3 June 2011. One key reason was the need to further examine the regulatory overlay applying to travel agents and to understand in detail how the national scheme interacts with other laws and industry-led arrangements.

The TITP was subsequently proposed as a pathway towards reform, taking into account all previous reviews in this area. On 6 July 2012, Ministers agreed to the draft TITP and requested that public consultation about the implementation be undertaken.

[11] For example, PwC's survey of Australian travel agents found that 65 per cent of agents considered the licensing authorities' disciplinary powers important to ensuring good conduct in the industry. See PwC (2010: page 106).

[12] Information provided to PwC by Travel Compensation Fund.

The TITP recommended a course of action for transitioning out of the national scheme for travel agents that was considered appropriate in light of contemporary market conditions, existing regulatory coverage and experiences of consumer detriment. The TITP acknowledged that all risk could not be eliminated. In particular, the TITP identified information disclosure, security and liability issues, and consumer access to redress as areas of ongoing concern, just as they are in other retail sectors. The point was made that this failure is not, however, indigenous to the travel agent sector.

The TITP placed strong emphasis on education, noting that consumers must be provided with information centred on key consumer rights and responsibilities to allow them to make informed decisions about entering safely into transactions with intermediaries and how to respond to detriment if it arises. Investment in a consumer voice was also identified as presenting an untapped opportunity to support and facilitate research and advocacy on consumer issues arising from interactions with travel intermediaries.

The TITP placed the ACL centrally as the most appropriate form of regulation for travel agents both at present and in the foreseeable future. However, the TITP also recognised the potential for an experienced, well-established industry to play a central role in overseeing the activities of its representatives and in building and maintaining high levels of service quality in the absence of more formal regulation.

Decision to end national scheme

Following the consultation on the draft TITP, Ministers agreed (by majority decision) in December 2012, to the implementation of the TITP and the phased ending of the national scheme in favour of an industry-led accreditation scheme and reliance on the ACL and other safeguards.

Arguments for deregulation

Key arguments for deregulation being:

- there is less consumer reliance on travel agents due to the rise in on-line marketing and supplier direct transactions;
- there has been a decline in the relative cost of travel and so risk of substantial financial loss to consumers;
- the advent of the ACL provides consumers with a nationally consistent means to assess travel agent conduct and seek redress against unfair trading practices;
- administration and compliance costs associated with complying with current regulation is an unnecessary burden for business; and
- the capacity for credit card chargeback through banks allows some consumers to recover their money when services are not supplied.

Deregulation concerns

WA (and South Australia) did not support the full disbandment of the scheme at that time. While WA recognised the need for change there was a desire to first consider less costly regulatory mechanisms rather than full withdrawal. There was also concern that the TITP to effect the change was not sufficiently detailed and that there would be no equivalent to the compensation fund provided by the TCF if deregulation occurred. A further reason for not supporting the TITP was that WA did not consider that the option of improving the efficiency of the TCF and reducing costs for industry had been sufficiently explored.

WA position

WA indicated at the time that it would consider its options in light of these developments. Cabinet subsequently provided ‘in-principle’ approval to contemplate changes to the regulatory regime for WA travel agents.

As a result, consideration as to the appropriate degree of regulation to apply to travel agents operating in WA in the context of national deregulation has been undertaken.

Changing context for WA

The decision to cease the national scheme gives rise to real issues as to the viability of WA attempting to replicate the current arrangements in a vacuum particularly given that all other jurisdictions are deregulating. Other options have therefore been explored. In considering options, importance was placed on ensuring that travel agents and consumers are not disadvantaged as a result of doing business in WA.

The decision to end the national scheme means that the landscape for WA regulation changes significantly given the scheme very much depended on it operating nationally. The cross-border nature of the travel industry sees many WA consumers transacting with interstate travel agents. Similarly, many WA travel agents transact with interstate consumers.

For example, between 2006 and 2012, of the compensation paid to West Australians for failures of travel agents, 87 per cent related to travel agents operating out of eastern states based agencies. As suggested by these figures, the reality is that while the local travel agent still provides an important personalised service, increasingly people are also taking advantage of the option to book utilising on-line facilities where the provider may well be located interstate, or based overseas.

This mix of delivery mechanisms and geographic spread was part of the rationale for reviewing the regulatory scheme. The concern being, for Australian providers to compete with overseas operators, regulation costs need to be contained.

The case to move away from a compensation scheme also recognised that in days gone by, a journey overseas was often a rare once in a lifetime event costing a great deal in real terms. However, in more recent times through competition between airlines, overseas travel has become relatively attainable for many consumers and in real terms significantly cheaper.

Voluntary industry accreditation scheme

Recent information provided by AFTA indicates that the voluntary accreditation scheme will address conduct, skill and financial management standards that are now addressed through state licensing and the TCF prudential supervision of travel agents. This will mitigate against risk of inappropriate service for consumers and insolvency for businesses. It will also allow travel agents who subscribe to the accreditation scheme to market this to potential consumers and improve the prospects of consumers dealing with accredited travel businesses. There may be less need for the Department to take action under the ACL once the accreditation scheme is implemented.

The accreditation scheme being developed by AFTA includes providing travel agent participants with access to two new insurance products as part of their business model. One that covers in the event a third party supplier of travel services to whom an agent has passed on consumer funds becomes insolvent and one for an agent to be able to insure against their own insolvency.

AFTA has advised that it is well advanced in its negotiations with insurers and is close to finalising an insurance product to cover for the insolvency of travel service suppliers (e.g. airlines, cruise operators and accommodation providers). It is noted that insurance products covering insolvency of travel service suppliers (rather than insolvency of travel intermediaries) has been available in the marketplace for some time.

AFTA has advised that insurance covering occurrences of insolvency or default by travel agents (intermediaries) will take longer to finalise but is expected to occur prior to the anticipated commencement of its accreditation scheme in mid-2014. It is understood that AFTA proposes offering these products as an optional component of accreditation.

The availability of intermediary insurance arrangements means that consumers may be afforded similar protections to those currently available as a result of compensation arrangements in place under the TCF meaning the risk is reduced and the protections for WA consumers may not be significantly diminished, as only loss through misappropriation of funds will not be covered for those participating in the scheme.

To date these forms of insolvency insurance have not been the norm nor made available by the insurance industry largely due to the existence of the TCF making it uneconomical for potential providers. The potential impact on consumers of AFTA's insurance arrangements cannot be assessed at this point as details in regard to proposed intermediary insurance are not available. It is, however, assumed that consumers are likely to bear the cost of such insurance as a result of business passing on costs to consumers. This is also assumed to have been the case under TCF arrangements.

WA position paper

A position paper titled, *Regulating Travel Agents in Western Australia* was released by the Department on 19 August 2013 for consultation. The position paper recommended that WA should adopt the national position having considered the advantages and disadvantages of possible options which ranged from full deregulation through to retention of key elements of current regulation including licensing, prudential oversight, and a compensation fund for consumers.

Submissions closed on Friday, 4 October 2013. A total of 13 submissions were received with 10 stakeholders expressing support for full deregulation. Two stakeholders expressed support for maintaining the status quo due to concerns about the negative impact on consumers and reduction in consumer confidence in the travel industry. One stakeholder did not express a preference but noted specific concerns in regard to the financial hardship caused to business as a result of how chargebacks are dealt with under merchant and credit card agreements.

The D-RIS takes into account information gathered through the PwC study, the regulatory impact assessment undertaken by Commonwealth Treasury, data provided by the TCF and the views of stakeholders in response to the position paper. Deregulation, consistent with the decision of other jurisdictions, is recommended as the preferred option.

2. OBJECTIVES

Objectives for reform

The key objectives for considering reforms are to:

- implement a consumer protection framework that is well targeted and proportionate to the risks being addressed;
- minimise the regulatory burden on business while achieving an appropriate level of consumer protection;
- ensure that travel agents and consumers are not disadvantaged as a result of doing business in WA;
- promote consistency in the approach to consumer protection across sectors and industries; and
- imbed a flexible framework that is responsive to the changing circumstances and needs of the sector.

3. OPTIONS FOR THE REGULATION OF TRAVEL AGENTS IN WA

Overview of options

Options for the future regulation of travel agents in WA include:

- ***Option A*** – remove all industry specific regulation for WA travel agents;
- ***Option B*** – implement a negative licensing scheme for WA travel agents;
- ***Option C*** – under a code of conduct, require WA travel agents to comply with basic standards and use the Australian Consumer Law (ACL) to sanction non-compliant agents. This could involve mandating parts or the entire voluntary accreditation scheme;
- ***Option D*** – regulate WA travel agents through licensing and prudential oversight but with no compensation fund; and
- ***Option E*** – maintain key elements of the national scheme in WA, that is, regulate travel agents through licensing, prudential oversight and a compensation fund for consumers.

Consideration of options

The Department of Finance's Regulatory Gatekeeping Unit (RGU) requires government decisions about regulatory proposals to assess whether regulation is required or if policy objectives can be achieved by alternative means with lower costs for business and the community.

The following assessment of the options has been undertaken in line with the RGU's regulatory impact assessment requirements. The options are presented according to how much regulation is imposed.

General assumptions

It should be noted for all the regulatory options it is assumed that:

- retaining the status quo is no longer an option given national developments to end the current cooperative scheme;
- for practical and legal jurisdictional reasons precluding enforcing regulation on agents based outside WA, only travel agents based within WA would be regulated;
- general consumer protection laws under the ACL would remain available for all options as would other redress options, such as credit card chargeback;
- some private sector prudential oversight measures, which are intended to protect commercial interests but indirectly benefit consumers, such as bank merchant arrangements and the International Aviation Transport Association (IATA) accreditation, will continue irrespective of the option being considered; and
- there will be compliance costs for travel agents who voluntarily participate in the proposed new national accreditation scheme. However, these costs have not been included in estimating costs of options as they are unknown at this time.

For options D and E, it is assumed that full cost recovery would be achieved through licensing fees.

Option A – Remove all industry specific regulation

Under option A, industry specific travel agent regulation would be repealed to bring WA into line with other jurisdictions.

Licensing restrictions for travel agents, such as entry requirements would be removed and industry standards and practices and other restrictions with which the agent is currently required to comply would also be removed. General consumer protection provisions and other measures discussed earlier would apply rather than industry specific legislation.

It would be a business decision for travel agents whether or not they participate in the proposed accreditation scheme being developed by AFTA.

As licensing would be removed, government would lose revenue from licensing fees and so would not be able to offset costs associated with dealing with complaints and any action required under the ACL. The Department deals with approximately 247 travel industry consumer complaints per year[13]. The number of complaints is likely to increase in a deregulated market due to complaints that are now referred to the TCF having to be dealt with by the Department. A portion would require some form of action under the ACL. However, overall workload would decline through not having to licence travel agents or undertake compliance activity associated with licensing.

Option B – Implement a negative licensing scheme for WA travel agents

Under negative licensing, individuals can operate as a travel agent unless removed due to being unfit. This is in contrast to positive licensing regimes, where legislation requires prospective travel agents to demonstrate that they meet pre-conditions before entering the industry.

New legislation would be required to set a framework to allow the removal of travel agents from the industry who fail to meet set standards of practice and conduct such as for fraudulent behaviour or gross incompetence.

There would be minimal regulatory costs for industry dependent on standards of practice established and costs for government associated with licensing and compliance would be reduced. However, consumer complaints are likely to increase and be a demand on government resources. This would be due to complaints that are now referred to the TCF having to be dealt with by the Department and possible increased volatility within the industry due to deregulation interstate and negative licensing that increases the risk of unfit agents operating in WA. Government would also need the capacity to investigate and take action against errant agents. Costs for government of negative licensing could not be recovered from industry through licence fees.

Option C – Code of conduct under WA's Fair Trading Act

Under option C, legislation regulating travel agents would be repealed and in its place, a mandatory code of conduct for travel agents would be developed under the *Fair Trading Act 2010* (WA). (Note: The *Fair Trading Act 2010* (WA) applies the uniform national consumer protection law(s) - the Australian Consumer Law (ACL) as a law of Western Australia and also provides for codes of practice).

The extent of requirements to be included in a code of conduct would depend on the adequacy and take up of the proposed industry accreditation scheme being developed by AFTA. The proposed accreditation scheme is likely to address conduct, skill and financial management standards that are now addressed through state licensing and the TCF prudential supervision of travel agents. This will mitigate against risk of inappropriate service for consumers and insolvency for businesses. AFTA is also investigating potential insurance requirements for accredited travel agents to protect consumer funds.

To ensure all agents meet minimum standards it may be appropriate to mandate some elements of the voluntary scheme. Alternatively, if the voluntary scheme is considered deficient the WA code could compensate by requiring set standards.

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[13] Based on average number of complaints for 2010 - 11 (130) 2011 - 12 (368) and 2012 - 13 (244) Department of Commerce Annual Reports: 2010 - 11, 2011 - 12 and 2011 - 13.

As this option imposes compulsory conduct requirements there would be a responsibility for government to undertake a proactive program to ensure compliance with the code but without the capacity to recover costs from industry in the absence of a licensing regime. It is also relevant to note that enforcement powers and remedies for breaches of codes made under the ACL are limited[14].

Costs for this option are based on an assumption that the code of conduct would impose minimal conditions such as a requirement for a travel agent to use a trust account to hold consumer funds, to hold certain qualifications or some other form of accreditation.

Should a more extensive code be required the costs for government and industry would increase and could potentially be similar to option D. The greater the extent of prudential or other oversight required through a WA code the more costly the code would be for government.

Consumer complaints are likely to increase and be a demand on government resources. This would be due to complaints that are now referred to the TCF having to be dealt with by the Department and increased volatility within the industry due to deregulation interstate and much decreased WA regulation that increases the risk of unfit agents operating.

Industry is not likely to support the development of a mandatory code of conduct due to it being another layer of regulation compared with other jurisdictions and is likely to view a mandatory code, even a limited code, as unfair, and anti-competitive. This may be especially so for businesses which operate nationally as they may be required to use different funds management and other processes in WA.

Option D – Licensing and prudential oversight but with no compensation

Option D would continue existing WA licensing and compliance requirements for travel agents and impose new prudential supervision of their operations on the basis that this reduces the risk of insolvency. Unlike the national scheme, this option would not provide compensation to consumers in the event of a travel agent insolvency or defalcation.

The licensing regime would continue to provide:

- a means of screening entry of operators to the travel agent market;
- industry standards and practices with which the agent is required to comply;
- experience and/or education qualifications for managers of travel agencies and branches; and
- a means of ensuring agents comply with the licensing conditions and industry standards.

WA legislation and regulations would be appropriately amended to provide, at the state level, for the new prudential oversight function that would be modelled on the current TCF scheme. Prudential oversight would include requirements to ensure that WA agents hold and maintain sufficient capital and submit annually audited accounts.

Option E – Maintain key elements of the national scheme (licensing, prudential oversight and a compensation fund)

Option E would maintain to the extent possible key elements of the current national scheme by amending existing WA legislation to: continue WA licensing and compliance functions, introduce prudential supervision and introduce a scheme to compensate consumers for loss of funds in the event of a travel agent insolvency or failure to pass on funds.

[14] The Commissioner for Consumer Protection must apply to the State Administrative Tribunal for an order which may require the travel agent to cease certain behaviour or place conditions on conduct; or to rectify any damage to a consumer. If an order is breached a fine of up to $50,000 may be imposed.

While it is currently a condition of licence under the Act to participate in the compensation scheme, administration of the scheme is undertaken at a national level by the TCF. Establishing and administering a compensation scheme and providing prudential oversight would be new roles for WA and therefore a new cost to government.

The licensing regime would provide:

- a means of screening entry of operators to the travel agent market;
- industry standards and practices with which the agent is required to comply;
- experience and/or education qualifications for managers of travel agencies and branches;
- mandatory participation of travel agents in a compensation scheme; and
- prudential oversight of travel agents to reduce the risk of insolvency.

Under this option, prudential oversight and compensation to consumers would be modelled on the current TCF scheme. Prudential oversight would include requirements to ensure that WA agents hold and maintain sufficient capital and submit annually audited accounts.

Compensation would be provided to consumers who suffer a loss due to agent insolvency or a failure to pass on funds, on the same basis as the TCF currently operates. That is, compensation would not be provided to consumers once the travel agent had passed on the money to the supplier and it would not cover point to point only travel. In addition, compensation would not be provided until the consumer had pursued all other avenues such as credit card chargeback.

As only WA travel agents will contribute to a compensation fund there will be a reduction in payments of between 60 - 90 per cent to WA consumers based on claims data from the TCF. This is because most travel agent failures have involved interstate agents and these agents will not participate in the compensation scheme.

4. IMPACT ANALYSIS

Overview

The following section provides an analysis of the impact of each of the five options. A table assessing each option against the objectives is provided at the end of this section. Appendix C outlines further supporting information for each option including the context, assumptions made and detail in regard to how costs were established. This section should be read in conjunction with Appendix C.

Comparative summary

A summary comparing the impact of each of the five options is provided in Table 1 below.

Table 1: Comparison of options – Summary

	Option A Deregulation	**Option B Negative Licensing**	**Option C ACL Code of Conduct**	**Option D Licensing and Prudential Oversight (no compensation)**	**Option E WA Licensing and Compensation**
Consumers	Compensation Loss: $507,340 pa Average median loss per consumer $1,400	Compensation Loss: $507,340 pa Average median loss per consumer $1,400	Compensation Loss: $507,340 pa Average median loss per consumer $1,400	Compensation Loss: $507,340 pa Average median loss per consumer $1,400	Compensation reduced by 60-90 per cent but ongoing cover of 10-40 per cent. Loss: $304,410-$456,615 pa Ongoing benefit: $50,735 - $202,935 pa
	Lowest costs and low to medium risk of financial loss in event of insolvency as no licensing and prudential oversight	Lower costs and medium risk of financial loss in event of insolvency as no positive licensing and prudential oversight	Low to medium costs and medium risk of financial loss in event of insolvency as no licensing and prudential oversight	Higher costs and lower risk of financial loss in event of insolvency due to licensing and prudential oversight	Highest costs and lower risk of financial loss in event of insolvency due to licensing and prudential oversight
Industry	Savings: $1,315 - $2,015 pa per agent	Savings: $1,315 - $2,015 pa per agent	Minimal code: savings: $1,315 - $2,015 pa. Extensive code: costs $2,100 - $3,300 pa per agent	Costs: $2,215 - $4,120 pa per agent	Costs: $3,720 - $5,355 pa per agent
	No barriers to entry	Minimal barriers to entry	Minimal to medium barriers to entry	High barriers to entry	Highest barriers to entry
	Lowest compliance costs. Higher risk of insolvencies due to no licensing and removal of prudential oversight.	Lower compliance costs. Higher risk of insolvencies due to no positive licensing and prudential oversight.	Low to medium compliance costs. Higher risk of insolvencies due to licensing and prudential oversight	Higher compliance costs. Reduced risk of insolvencies due to licensing and prudential oversight	Highest compliance costs. reduced risk of insolvencies due to licensing and prudential oversight
Government	Less work, costs $271,980 pa	Equal work, costs $442,780 pa	Variable work and costs $305,760 - $1,100,000 pa	New work but less than option E, costs recouped via licensing fees paid by industry (on a cost recovery basis).	New work, costs recouped via licensing fees paid by industry (on a cost recovery basis) and fees for membership of compensation scheme.
	Risk of consumer demand for compensation	Risk of consumer demand for compensation	Risk of consumer demand for compensation	Risk of consumer demand for compensation	Lower risk of consumer demand for compensation
TITP Issues				TCF prudential supervision ceased 30 June 2013	TCF prudential supervision ceased 30 June 2013

	Option A Deregulation	Option B Negative Licensing	Option C ACL Code of Conduct	Option D Licensing and Prudential Oversight (no compensation)	Option E WA Licensing and Compensation
Net benefit /loss	The impact of this option on consumers, industry and government has been assessed. Overall, it is considered that the benefits of implementing option A outweigh the costs resulting in a net public benefit under this option.	The impact of this option on consumers, industry and government has been assessed. Overall, it is considered that the costs of implementing option B outweigh the benefits resulting in a net negative public benefit under this option.	The impact of this option on consumers, industry and government has been assessed. Overall, it is considered that the costs of implementing option C outweigh the benefits resulting in a net negative public benefit under this option.	The impact of this option on consumers, industry and government has been assessed. Overall, it is considered that the costs of implementing option D outweigh the benefits resulting in a net negative public benefit under this option.	The impact of this option on consumers, industry and government has been assessed. Overall, it is considered that the costs of implementing option E outweigh the benefits resulting in a net negative public benefit under this option.

Risk of insolvency and demand for compensation

Table 1 above makes reference to risk of insolvency and risk of demand for compensation. Options A, B and C which do not include prudential oversight are assessed as having a higher risk of insolvency and consequent demand for compensation as compared to options D and E which include prudential oversight.

The level of the risk of insolvency and demand for compensation is difficult to assess as it is affected by a broad range of variables including the general state of the economy and the individual circumstances of a particular (travel agent) business. It is, however, assumed that the TCF's prudential oversight arrangements have played a role in preventing travel agency collapses.

It is assumed that the number of failures may increase in the absence of the national scheme. The degree of risk cannot be assessed as it is reliant on a broad range of factors. In addition, the full impact of the industry's accreditation scheme will have a bearing, but cannot be assessed until operational in the marketplace for a reasonable period of time.

TCF prudential oversight of industry

The following summarises the TCF's role in providing prudential oversight. The extent to which risk of insolvency has been reduced in the past as a result of the TCF's role in providing prudential oversight is difficult to quantify. (Note: Options D and E assume similar levels of prudential oversight as undertaken by the TCF.)

Currently, as a result licensing, travel intermediaries are required to be participants in the TCF. One of the TCF's functions is to provide prudential oversight. An underlying factor that makes an individual eligible to participate in the TCF is whether the TCF considers the individual has, and is likely to continue to have, sufficient financial resources to carry on business as a travel intermediary. In formulating its opinion, the TCF can consider a number of factors, including any previous involvement of the person in the industry. However, the primary indicator is the person's financial position.

The TCF has developed guidelines according to which it determines whether or not a participant, or potential participant, has sufficient financial resources. These include minimum capital requirements (based on gross annual turnover) and two financial ratio tests:

- net tangible assets relative to gross turnover; and
- net working capital relative to monthly overhead expenses.

In addition to allowing, refusing or cancelling participation in the fund on the basis of financial resources, the TCF may also impose financial requirements on participants, including:

- maintaining a client account for received monies;
- increasing the capital/reducing the debt of the business;
- providing security in favour of the Board;
- obtaining insurance or a guarantee; or
- accounting requirements (including audited financial accounts).

The TCF requires all participants to submit audited financial accounts annually and imposes a requirement of a bank guarantee and an insurance arrangement for participants who do not, or cease to, meet the capital requirements.

Recent information regarding AFTA's accreditation scheme indicates that a certain level of financial assessment will be undertaken depending on whether the travel agent is an Australian Securities Exchange (ASX) listed company, in which case, existing audited accounts will be required. Other businesses will be required to provide certified financial accounts. A fit and proper entity test is also proposed.

Table 2 below provides information in regard to travel agent failures by location for the years 2007 to 2012. A total of eight WA travel agents had failures resulting in claims averaging around $70,000 per year (relating to WA travel agents only). This represented around 6 per cent of all TCF participant failures for the same period.

Table 2: Agent failures by location 2007-2012

Year	ACT	NSW	VIC	QLD	SA	WA	TAS	TOTAL
2012	1	8	0	5	1	2	0	17
2011	0	11	3	4	0	0	0	18
2010	0	9	2	5	1	2	0	19
2009	0	18	11	1	0	0	0	30
2008	0	22	8	6	0	4	0	40
2007	0	8	6	1	3	0	0	18
Total	1	76	30	22	5	8	0	142

In relation to option A, the risk of insolvency will be dependent to some degree on the detail and uptake of the industry-led accreditation scheme. Also, it is noted that non-members of the industry accreditation scheme may be at greater risk of insolvency. Further information is provided at Appendix D in relation compensation payments across jurisdictions for the period 2001 to April 2013 as well as information regarding travel agent failures and claims paid in Western Australia.

Risk of consumer complaints about deregulation

The PwC study found that consumers are largely unaware of the TCF's existence and functions. A survey of consumers suggested that only 14 per cent have at least some awareness of the TCF, with only three per cent having a good understanding of the TCF and its functions. It is therefore assumed that consumers are largely unaware of the protections afforded by the TCF until such time as problems arose as travel agent failures. It is therefore difficult to assess whether consumers in general would be critical of the decision to deregulate.

Consumer advocates who provided input during the consultation phase of the national review were opposed to the proposal to deregulate and are likely to be critical on behalf of consumers in the event of future intermediary failures. The risk of criticism generated by consumer advocates is assessed as medium to high.

Nevertheless, as outlined in the information below, it is likely that complaints to the Department as a result of future travel agency failures are expected to increase as the TCF will no longer be available to deal with such issues and as consumers seek information about their rights in such instances.

Option A – remove all industry specific regulation

Advantages and disadvantages

Advantages

The following benefits have been identified in relation to option A.

- This option represents an overall saving for industry in TCF, licensing and compliance costs estimated at $2.277 million [15].
- This option will deliver reduced costs for agents in TCF, licensing and compliance costs of between $1,315 - $2,015 per annum.
- Removing barriers to entry should also increase competition and lower costs for consumers. However, the travel services market is well consolidated with two players occupying 54 per cent of the market[16]
- Travel agents may be inclined to adopt voluntary national accreditation and its associated standards to maintain consumer confidence and market share.
- Regulation of travel agents across Australia will be consistent.
- Low to medium risk of financial loss for consumers due to:
    - industry self-regulation through travel agent accreditation scheme;
    - travel agents being able to insure against their insolvency and supplier insolvency; and
    - ability to seek reimbursement of payments via credit card.
- No licensing costs for government– costs associated with maintaining licensing regime eliminated. (Note: Licencing costs are on a cost recovery basis, therefore no quantifiable benefit to government.)

Disadvantages

The following disadvantages have been identified.

- WA consumers would no longer be able to claim compensation in the event of travel agent insolvency or other failure to pass on funds. Under the national scheme, compensation is estimated to be worth an average of $507,340 per annum for WA consumers[17]. Median payments to WA consumers from the TCF from 2006 - 2012 show that most consumers would lose between $1,000 - $1,600 in the event of an insolvency or failure to pass on funds for other reasons and that the average median claim for the period is $1,400. If insurance becomes available and is required under a voluntary accreditation scheme this loss would be reduced.
- Industry is likely to experience increased volatility in a deregulated market with medium insolvency risk for industry due to:
    - industry self-regulation through the voluntary accreditation scheme; and
    - potential reduction in business due to greater competition in the marketplace.
- While government will have reduced work due to removal of licensing there is medium risk of increased costs to government as it will not be able to recover costs from industry and so these will become an additional draw on the Department's budget. These costs, estimated to be $271,980 per annum include dealing with increased consumer complaints and taking action under the ACL.

[15] Based on WA's nine per cent proportion of the estimated cost of the national scheme of $25.3 million per annum including licensing and compliance, prudential oversight and compensation as identified in PriecewaterhouseCoopers *Review of consumer protection in the travel and travel related services market* November 2010 p105. The review was commissioned by the then Ministerial Council on Consumer Affairs in 2009.

[16] Travel Industry Transition Plan – December 2012 Victoria/New South Wales.

[17] TCF claims data as of 13 April 2013 supplied to Consumer Protection.

- There may be pressure on the Government to provide compensation in the event of major consumer losses.

Table 3: Option A costs[18] and benefits by interest group

Option A – remove all industry specific regulation for WA travel agents	
Consumers	• An average loss to consumers of $507,340 per annum unless mitigated by insurance under voluntary accreditation scheme. • A benefit should arise from increased competition and lower industry costs leading to increased choice and reduced costs for consumers.
Industry	• Industry would make an estimated saving of $1,315 - $2,015 per agent per annum.
Government	• Loss of licensing income of $261,350 per annum. • Complaints would be expected to increase along with actions under the ACL. This additional cost is estimated to be $135,990 per annum. • Net cost to government is estimated to be $271,980 per annum.
Net Benefit/Loss	• The impact of this option on consumers, industry and government has been assessed. Overall, it is considered that the benefits of implementing option A outweigh the costs resulting in a net public benefit under this option.

Option B – Implement a negative licensing scheme for WA travel agents

Advantages and disadvantages

Advantages

The following benefits have been identified in relation to option B.

- Unfit agents can be removed from the industry
- This option represents a saving for agents in TCF, licensing and compliance costs of between $1,315 - $2,015 per annum as it removes entry and ongoing costs.
- Removing barriers to entry should also increase competition and lower costs for consumers. However, as previously noted the travel services market is well consolidated with two players occupying 54 per cent of the market.
- Travel agents may be inclined to adopt voluntary national accreditation and its associated standards to maintain consumer confidence and market share.
- While government benefits from a reduction in workload due to the removal of licensing, this would be offset by additional costs incurred in complaint handling, investigation and action against errant agents.

Disadvantages

The following disadvantages have been identified:

- Medium risk of financial loss to consumers.
- WA consumers would no longer be able to claim compensation in the event of travel agent insolvency or other failure to pass on funds. This is estimated to be worth an average of $507,340 per annum for WA consumers.
- it is difficult to detect unlawful or grossly incompetent behaviour and consumers could experience significant detriment before an unfit agent is removed from the industry;
- industry is likely to oppose this option due to the national inconsistency of the regulation.

[18] Appendix A see Option A costs.

- Government costs will not be recovered from industry and so will become an additional draw on consolidated revenue or a reduction in other Consumer Protection services. These costs, estimated to be $442,780 include dealing with agents who do not comply with the negative licensing scheme and dealing with increased consumer complaints.

Table 4: Option B costs[19] and benefits by interest group

Option B - Implement a negative licensing scheme for WA travel agents	
Consumers	• Unfit agents can be removed. • An average loss to consumers of $507,340 per annum unless mitigated by insurance under voluntary accreditation scheme. • With reduced barriers to entry and reduced costs for industry, greater competition and reduced costs could be expected for consumers.
Industry	• Industry would make an estimated saving of $1,315 - $2,015 per agent per annum.
Government	• Loss of licensing income of $261,350 per annum. • Complaints would be expected to increase. The additional costs are estimated to be $305,760 per annum. • Costs of investigations and legal action to sanction unfit agents are estimated to be approximately $137,020 per annum. • The net cost to government of a negative licensing scheme is estimated to be $442,780 per annum.
Net Benefit/Loss	• The impact of this option on consumers, industry and government has been assessed. Overall, it is considered that the costs of implementing option B outweigh the benefits resulting in a net negative public benefit under this option.

Option C – Code of conduct under the Australian Consumer Law

Advantages and disadvantages

Advantages

The following potential benefits have been identified in relation to option C.

- This option represents a saving to industry as there are no WA licensing or TCF costs and only the costs of meeting code requirements. Savings are estimated to be $1,315 - $2,015[20] per agent per annum. However if an extensive code is implemented there may be no savings.
- A minimal code is unlikely to affect new entrants to the WA industry and so is unlikely to reduce competition within the state. However, it is noted that the travel services market is well consolidated with two players occupying 54 per cent of the market.
- Medium risk of financial loss to consumers.
- There is a reduced risk of pressure on government to compensate consumers in the event of a major insolvency of a WA travel agent to the extent that a code protects consumer funds.

Disadvantages

The following disadvantages have been identified.

- WA consumers would no longer be able to claim compensation in the event of travel agent insolvency or other failure to pass on funds. This is estimated to be worth an average of $507,340 per annum for WA consumers.
- Nationally based travel agents could be required to vary funds management or other arrangements for WA and would strongly oppose this option.

[19] Appendix A see Option B costs
[20] See Option C Costs, Appendix A.

- As there would be no licensing regime there would be increased costs to government with no ability to recover costs from industry through licensing fees. Ongoing activity would include increased complaints, investigations and enforcement relating to code requirements. These costs are estimated to be around $305,760[21] per annum but could range up to $1.1 million if an extensive code with prudential requirements is instituted.

Table 5: Option C costs[22] and benefits by interest group

Option C - Code of conduct under the ACL	
Consumers	• An average loss to consumers of $507,340 per annum unless mitigated by insurance under voluntary accreditation scheme. • With reduced barriers to entry and reduced costs for industry, greater competition and reduced costs could be expected for consumers.
Industry	• Compliance costs to travel agents of meeting code requirements would vary subject to the extent of the code. • National travel agents may face major accounting or other systems costs of compliance. • Industry would make an estimated saving of $1,315 - $2,015 per agent per annum. There may be no savings and potentially costs with an extensive code.
Government	• Loss of licensing income of $261,350 per annum. • Complaints would be expected to increase and there would be proactive compliance work for the code. The additional costs are estimated to be $305,760 per annum but could range up to $1,100,000. • The net cost of introducing a code for government is estimated to be $305,760 per annum but could range up to $1,100,000.
Net Benefit/Loss	• The impact of this option on consumers, industry and government has been assessed. Overall, it is considered that the costs of implementing option C outweigh the benefits resulting in a net negative public benefit under this option.

Option D – Licensing and prudential oversight but with no compensation

Advantages and disadvantages

Advantages

The following benefits have been identified in relation to option D.

- Lower risk of financial loss to consumers.
- Protections provided by the scheme may act as an incentive for WA consumers to use WA travel agents.
- Standards of conduct and entry requirements such as experience and education qualifications would continue to apply to WA travel agents.
- Prudential requirements would continue to reduce the risk of insolvency of WA travel agents.

Disadvantages

The following disadvantages have been identified.

- WA consumers would no longer be able to claim compensation in the event of a travel agent insolvency or defalcation. This is estimated be worth an average of $507,340 per annum for WA consumers.

[21] See Option C Costs, Appendix A.
[22] Appendix A see Option C costs.

- PwC analysis estimated that the prudential oversight is not a significant protection and that it would take six times the current rate of failure before it became cost effective[23].

- There will be increased costs to industry for prudential oversight.

- Increased costs for travel agents are likely to be passed on to consumers and could result in consumers using non-licensed interstate and international agents and direct bookings, thereby, further reducing the numbers of WA consumers protected by regulation.

- Industry would be strongly opposed to this option due to the national inconsistency of the regulation and the costs of administration and compliance.

- A WA scheme could be viewed as unfair and anti-competitive to WA travel agents and act as a disincentive for new participants to enter the market and potentially result in existing licensees leaving the marketplace. National operators may be more inclined to withdraw physically from WA and operate via the internet. The effect could be to take business from smaller WA agents and increase their costs and so increase their risk of insolvency.

- Much of industry is likely to consider it important to participate in the proposed new national accreditation scheme and would also have costs associated with this.

Table 6: Option D costs[24] and benefits by interest group

Option D - Licensing and prudential oversight but no compensation	
Consumers	• An average loss to consumers of $507,340 per annum unless mitigated by insurance under voluntary accreditation scheme. • Nil direct costs. However, increased costs for travel agents are likely to be passed on to consumers.
Industry	**Current costs to industry:** • Average annual licence fee for WA based travel agents business is $790. • TCF renewal contributions are $425 per annum. • Internal administration - it currently costs each licensed travel agent business approximately $100 - $800 per annum to cover their own administration costs of compliance and licensing requirements other than fees and training[25]. • Total current costs estimated at $1,315 - $2,015 per annum per agent. **New costs to industry under option D:** • Industry would continue to pay most current costs with the exception of contributions to a compensation fund. • It is estimated that the new cost of operating prudential supervision in WA is $1,325 - $2,530 per travel agent per annum. **Total cost to industry under option D estimated at $2,215 - $4,120 per agent per annum** (This figure rebates the $425 TCF annual fee).
Government	• If the costs for licensing, prudential supervision and operation of the compensation fund are not fully passed on to industry they would become a draw on consolidated revenue or a reduction in other departmental services.
Net Benefit/Loss	• The impact of this option on consumers, industry and government has been assessed. Overall, it is considered that the costs of implementing option D outweigh the benefits resulting in a net negative public benefit under this option.

[23] PwC *Review of consumer protection in the travel and travel related services market* November 2010 p82.
[24] Appendix A see Option D costs
[25] PwC *Review of consumer protection in the travel and travel related services market* November 2010 p84.

Option E – Maintain key elements of the national scheme (licensing, prudential oversight and a compensation fund)

Advantages and disadvantages

Advantages

The following benefits have been identified in relation to option E.

- Lowest risk of financial loss to consumers.
- 10 - 40 per cent of consumers' monies, compared to cover under the national scheme, would continue to be protected and consumers who use licensed WA travel agents would have access to compensation in the event of an agent's insolvency or failure to pass on funds.
- Protections provided by the scheme may act as an incentive for WA consumers to use WA travel agents.
- Standards of conduct and entry requirements such as experience and education qualifications would continue to apply to WA travel agents.
- Prudential oversight would continue to reduce the risk of insolvency of WA travel agents.
- As insolvencies and defalcations occur criticism of the WA Government for the disbandment of the national scheme will be averted.

Disadvantages

The following disadvantages have been identified:

- Compared with the present cover under the national scheme it is estimated that there would be a reduction of between 60 - 90 per cent in compensation for consumers.
- A WA scheme, as compared with the TCF operation, would lose efficiencies from economies of scale resulting in higher licensing fees being imposed on travel agents to recover costs – these are estimated at an additional $2,830 - $3,765 per agent per annum compared to current national scheme costs.
- Industry is likely to strongly oppose this option due to the national inconsistency of the regulation and the costs of administration and compliance.
- A WA scheme could be viewed as unfair and anti-competitive to WA travel agents and act as a disincentive for new participants to enter the market and potentially result in existing licensees leaving the marketplace. National operators may be more inclined to withdraw physically from WA and operate via the internet. The effect could be to take business from smaller WA agents and increase their costs and so increase their risk of insolvency.
- Increased costs on travel agents are likely to be passed on to consumers and could result in consumers using interstate and international based agents and direct bookings, thereby, further reducing the numbers of WA consumers protected by regulation.
- Recent examples of insolvencies of Classic International Cruises' and Kumuka Worldwide Travel's show the pay out in WA as at 10 July 2013, amounting to $2,524,366[26]. If a similarly large failure of a WA based travel agent occurred the Government would be at risk of having to provide funding to supplement the fund.
- The existence of the TCF has been cited as a reason that it has been uneconomical for insurers to provide cover in the event of supplier insolvency. The existence of a scheme in WA, although small compared to the TCF, may reduce the likelihood of AFTA being able to provide such insurance through its proposed accreditation scheme.

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[26] Information provided to Consumer Protection by the TCF.

Table 7: Option E costs[27] and benefits by interest group

Option E – Maintain key elements of the national scheme for travel agent businesses in WA through licensing; prudential oversight; and a compensation fund for consumers	
Consumers	• 60 - 90 per cent reduced compensation payments compared to the national scheme. Based on average payments to WA consumers this is an estimated loss of $304,410 - $456,615 per annum. • 10 - 40 per cent of payments compared to the national scheme would continue to be paid to eligible WA consumers representing an estimated $50,735 - $202,940 compensation per annum. • Nil direct costs. However, increased costs for travel agents are likely to be passed on to consumers.
Industry	**Current costs to industry:** • Average annual licence fee for WA based travel agents business is $790. • TCF renewal contributions are $425 per annum. • Internal administration - it currently costs each licensed travel agent business approximately $100 - $800 per annum to cover their own administration costs of compliance and licensing requirements other than fees and training[28]. • Total current costs estimated at $1,315 - $2,015 per annum per agent. **New costs to industry under option E:** In addition to the current costs there would be new costs: • Providing prudential oversight and operating a compensation scheme are new functions for WA and are estimated to cost $940,000 - $1.25 million. The average cost per agent per annum would be $2,830 - $3,765. • Total additional costs per agent per annum are estimated to be $2,830 - $3,765. **Total costs to industry under option E estimated at $3,720 - $5,355 per agent per annum.** (This figure rebates the $425 TCF annual fee).
Government	• If the costs of licensing, prudential supervision and operating a compensation fund are not fully passed on to industry they would become a draw on consolidated revenue or a reduction in other departmental services. • The benefit to government is that the compensation scheme reduces political pressure in the event of major consumer losses.
Net Benefit/Loss	• The impact of this option on consumers, industry and government has been assessed. Overall, it is considered that the costs of implementing option E outweigh the benefits resulting in a net negative public benefit under this option.

Assessment against objectives

Each of the policy options has been assessed against the objectives identified in section 2.

Table 8 presents a summary of the outcome of this assessment.

Option A is identified as the option which is most likely to meet the policy objectives for reform as the benefits of implementing option A outweigh the costs thus resulting in a net public benefit under this option.

Quantifiable cost/ benefit analysis of preferred option A

Costs

Where possible, costs associated with implementing option A have been quantified and are estimated to be around $1.122 million per year based on the following:

- **Consumers:** Costs to consumers is estimated to be around $507,340 per year (unless mitigated by insurance under the voluntary industry accreditation scheme) based on the average compensation paid to WA consumers for the years 2006 to 2012.

[27] Appendix A see Option E costs

[28] PwC *Review of consumer protection in the travel and travel related services market* November 2010 p84.

- **Government:** Cost to government is estimated to at $272,980 per year based on the likely increase in workload requiring inspection, investigation or further action.
- **Industry:** Cost to industry is estimated to be around $341,550 per year (this conservatively estimates that the industry-led accreditation scheme and associated insurance cover for insolvencies will cost business around 15 per cent of the cost of current regulatory arrangements which is estimated at $2.277 million).[29]

Benefits

- Where possible, benefits associated with implementing option A have been quantified and are estimated to be around $2.277 million per year based on the following:
- Consumers: Benefits to consumers have not been quantified as it difficult to establish the potential benefits to consumers resulting from reduced compliance costs for travel intermediaries, greater competition and innovation which should lead to business cost savings being passed on to consumers.
- Government: Benefits to government are assessed as nil.
- Industry: Benefits to industry is estimated to be around $2.277 million per year. [30]

Net benefit

The net benefit of implementing option A is therefore estimated at $1.155 million per year.

Costs not able to be quantified

In calculating the net benefit of option A, it has not been possible to quantify the following elements:

- **Removal of prudential oversight by TCF:** It is assumed that the TCF's prudential oversight of travel agent businesses has an effect in reducing their risk of financial insolvency. It is, however, difficult to quantify the benefit this has delivered to consumers over the years. As a result, the cost to consumers of the potential increase in business insolvencies as a result of removing the prudential oversight function provided by the TCF cannot be quantified.
- **Industry-led accreditation scheme:** It is difficult at this stage to quantify the benefits to consumers resulting from the yet to be implemented industry-led accreditation scheme.

As a consequence, the quantifiable cost/ benefit analysis outlined above does not include consideration of these anticipated costs and benefits to consumers associated with option A.

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[29] It should, however, be noted that at this stage, it is difficult to ascertain the likely costs to industry in participating in the industry-led accreditation scheme as full details as to the cost of joining the scheme, complying with financial requirements and accessing optional insolvency insurance arrangements are not available.

[30] Based on WA's nine per cent proportion of the estimated cost of the national scheme of $25.3 million per annum including licensing and compliance, prudential oversight and compensation as identified in PriecewaterhouseCoopers *Review of consumer protection in the travel and travel related services market* November 2010 p105. The review was commissioned by the then Ministerial Council on Consumer Affairs in 2009.

Table 8 Assessment of options against objectives

	OBJECTIVE 1 *Implement a consumer protection framework that is well targeted and proportionate to the risks being addressed.*	**OBJECTIVE 2** *Minimise the regulatory burden on business while achieving an appropriate level of consumer protection.*	**OBJECTIVE 3** *Ensure that travel agents and consumers are not disadvantaged as a result of doing business in WA.*	**OBJECTIVE 4** *Promote consistency in the approach to consumer protection across sectors and industries*	**OBJECTIVE 5** *Imbed a flexible framework that is responsive to the changing circumstances and needs of the sector.*
OPTION A **Deregulation**	✔	✔	✔	✔	✔
OPTION B **Negative Licensing**	✔	✔	✔	X	X
OPTION C **ACL Code of Conduct**	✔	✔	X	X	X
OPTION D **Prudential Oversight**	X	X	X	X	X
OPTION E **WA Licensing and Compensation**	X	X	X	X	X

5. CONSULTATION

Summary of earlier consultation as part of the national travel review

National initiative

The proposal to cease the current regulatory arrangements emanates from a national review initiated by Ministers for Consumer Protection. The purpose of the review was to establish whether the national scheme continued to be the most appropriate form of consumer protection in the travel and travel-related services markets.

The review was initially coordinated by the Commonwealth Treasury and more recently by Victoria and New South Wales' consumer protection agencies, with input from other jurisdictions.

Key stakeholders to the review

Key stakeholders included:

- Australian Federation of Travel Agents (AFTA);
- Australian Tourism Export Council (ATEC);
- Council of Australian Tour Operators (CATO);
- International Air Transport Association (IATA);
- Mobile Travel Agents (MTA);
- Insurance Council of Australia;
- CHOICE;
- Queensland Consumers Association;
- Board of Trustees of the TCF; and
- Various Commonwealth, state and territory government agencies across Australia.

Public consultation

Public consultation took place at three key stages of the review:

- Stage 1, an extensive study conducted by consultants, PwC (2010);
- Stage 2, the public release of a C-RIS (March 2011); and
- Stage 3, the release of a Travel Industry Transition Plan (August 2011).

The Department was involved in the consultation process and ensured that WA based stakeholders were contacted and invited to provide input. Information regarding the review was publicised by the Department and relevant material was posted on the Department's website.

Summary of outcome of consultation

In summary, while consumer and industry advocates broadly supported the need for reform, there were strongly opposing views amongst stakeholders in regard to the nature and extent of these reforms. Many industry advocates called for deregulation on the basis that the current arrangements were burdensome relative to the risk of consumer detriment. Consumer advocates on the other hand, supported the retention of the current arrangements with some improvements on the basis that ceasing the preventative and deterrent aspects of the TCF's work including significant prudential oversight, compliance activities and recovery actions through the courts may expose consumers to an increased likelihood of risk.

Further detail

Further detail in regard to the outcome of consultation for each stage of the national review is provided at Appendix E.

Recent consultation in WA

In June 2013, Cabinet provided 'in principle' agreement to further consider changes to the regulatory regime applicable to Western Australian travel agents in light of national developments. In seeking this approval, a commitment was given to consult with local stakeholders in regard to options in regard to the future regulation of the travel industry. Cabinet was provided with a preliminary analysis of options available to WA which subsequently provided the basis of a position paper released by the Department in August 2013.

Licensed travel agents were contacted via email or letter alerting them to the release of the position paper and inviting comment. Stakeholders including relevant government departments, consumer advocacy groups and stakeholders who had previously provided input were invited to make a submission. The position paper was also publicised through media releases, the Department's regular media segments and the Department's website.

Overview of submissions

A total of 13 submissions were received. The following tables provide an overview of submissions by category of organisation and preferred position.

In summary, there was general support for deregulation with 10 stakeholders expressing support for option A. Of those in support of option A, eight expressed strong support or support, one expressed support, but preferred mandatory rather than voluntary accreditation and one supported with reservations on the basis that it was difficult to comment without adequate details especially in regard to insurance arrangements and consumer protection.

Two stakeholders expressed support for maintaining the status quo due to concerns about the negative impact on consumers and reduction in consumer confidence in the travel industry.

One stakeholder did not express a preference but noted specific concerns in regard to the financial hardship caused to business as a result of how chargebacks are dealt with under merchant and credit card agreements.

Table 9: Input received by category of organisation

Representing	Number
Consumers	1
Travel industry associations	3
WA based travel agents	4
Large national and international travel companies with presence in WA	2
Insurance industry association	1
WA State Government agencies	2

Table 10: Summary of support for options

Position	Number
Support option A	10
Support retaining the status quo	2
No preferred option indicated	1

The following provides further detail in relation to each of the submissions received in response to the position paper.

	Organisation	Representing	Preferred Option	Position
1.	**Consumer Advisory Committee**	**Consumers** Statutory committee appointed by Minister for Consumer Affairs to provide advice to the Minister and Commissioner.	**Option A** (Although noting lack of detail available.)	• Notes effectiveness will be dependent upon the details within the proposed accreditation scheme which is still to be drafted. • Makes suggestions in regard to what should be included in the proposed accreditation scheme. • Recommends ongoing rigorous debate with the insurance industry to ensure the insurance space left as a result of disbanding the TCF is filled. • Believes that disbanding the national scheme will not be a major diminution of consumer rights. • Supports residual TCF funds being used for the purpose of overseeing the implementation of new arrangements and raising consumer awareness to reduce risk of loss for consumers.
2.	**Australian Tourism Export Council**	**Travel Industry** Industry Association representing peak national body representing the tourism export sector (valued at $26 billion), with a membership base of 850 including national and multi-nationals as well as small and medium sized tourism enterprises. (Includes, transport and accommodation sectors tourism operators, inbound tour operators, global online travel companies and destination management organisations.)	**Option A** (Strong support)	• Supports the Travel Industry Transition Plan as the means for guiding the way forward. • Expresses confidence in AFTA's ability to develop a strong and viable program which meets the needs of industry and consumers. • Notes the extensive industry consultation undertaken by AFTA. • Expresses a view that proposed changes are an important and significant reform and provide the groundwork for better meeting the needs of modern travel. • Believes the proposed AFTA scheme will work to eliminate crippling duplication of state and federal level industry regulation and ensure the long term viability of the travel industry. • Gave strong support for AFTA's accreditation scheme as best way forward. • Calls on WA government to endorse option A and to communicate this to industry in order to prevent further confusion.

	Organisation	Representing	Preferred Option	Position
3.	**Australian Federation of Travel Agents**	**Travel Industry** Peak industry body representing travel intermediaries. Also represents non-intermediary sectors of the travel related service industries. Represents the majority of travel agents based in WA.	**Option A** (Strong support)	• Strong advocate for deregulation for many years. • Expresses concern in regard to the release of the Position Paper having caused confusion for WA based travel agents. • Requests support for the Travel Industry Transition Plan. • Disagrees with the view that deregulation will provide no equivalent consumer protection as compared to the TCF. • Notes progress in developing the accreditation scheme. • Identifies regulatory measures in place which will provide oversight of the travel industry and consumer protection. • Notes that other options are onerous, impose increased regulatory costs with minimal benefits. • Seeks a public announcement regarding WA's position in early November 2013.
4.	**Council of Australian Tour Operators**	**Travel Industry** Industry Association representing the majority of outbound wholesalers and tour operators in Australia with a total annual turnover in excess of $500 million.	**Option A** (Strong support)	• Believes current scheme is out-dated and due for change. • Supports AFTA's submission. • Supports deregulation for WA travel agents as this would allow WA travel agents to join rest of Australia and ensure national support of the Travel Industry Transition Plan and an industry–led accreditation scheme.
5.	**Travel and Cruise Fundamentals**	**Travel Industry** Travel agent: Willetton/Leeming operating since 1996.	**Option A**	• Understands that AFTA intends implementing a voluntary insurance program to replace TCF. • Not supportive of having different arrangements in place to other jurisdictions. • Prefer level playing field. • Suggests WA make insurance to protect consumers mandatory. • Acknowledges the importance of protecting consumers. • Identifies a number of disadvantages with the option of replicating the TCF arrangements including issues with credit card chargeback which adversely impact travel agents. • Believes a voluntary insurance option which covers both consumers and travel agents will be more equitable for all.

	Organisation	Representing	Preferred Option	Position
6.	**Our Travel Agent**	**Travel Industry** Travel agent: Byford	**Option A** (Strong support)	• Raises specific concerns in regard to chargeback and negative impact on travel agents as made liable by financial provider under Merchant Agreement. • Points to inadequacies of the TCF. • Questions the need for red tape when other industries don't have the same requirements in place. • Calls for the WA Government to follow the lead of other jurisdictions in deregulating.
7.	**Travelworld Collie**	**Travel Industry** Travel agent: Collie	**N/A** (Submission does not specify a preferred option.)	• Raises concerns about how chargebacks are dealt with under Merchant and Credit Card Agreements and calls for the review to consider the financial hardship caused by these arrangements. • Outlines case of two clients making claims via chargeback totalling $12,518 when Classic International Cruises (wholesaler) collapsed. • In this case, the bank in turn debited this amount from the travel agents' account. • Provides sample bank letter basis for debit from account. Letter refers to the terms and conditions of the Merchant Agreement which make the travel agent liable for the chargeback. • Notes that the client had credit card travel insurance which covered insolvency, however, the insurance company refused to pay the claim as the client had the option to chargeback to the agent. • Notes that TCF refused to pay claims on basis that consumer had paid by credit card and could pursue chargeback.

	Organisation	Representing	Preferred Option	Position
8.	**Casey Australia Tours**	**Travel Industry** Travel agent: Bicton	**Status quo** (Strongly opposed to deregulation.)	• Appalled at prospect of industry deregulation. • Refers to situation prior to regulation where describing it as a mess and frequent bankruptcies of businesses and consumers' moneys being taken by agents. • Believes industry regulation has resulted in a very stable industry. In cases where businesses go broke consumer funds are protected. • Points to bad publicity at the time and reduced consumer confidence in the industry. • Happy with one off cost to become a participant as sees it as being of value as helped to keep industry stable. • Believes TCF reserves should be used for intended purposes or if to be used for other purposes that authority of participants should be required. • Believes that residual TCF funds should be returned with interest to contributors.
9.	**House of Travel** (In Australia trades markets services under trading entities: Specialist Holidays Pty Ltd and TravelManagers Pty Ltd)	**Travel Industry** Large company operating in Australia and New Zealand with sales of $1 billion. Offers retail travel services and corporate travel management services.	**Option A** (With significant reservations.)	• Notes that comments are made from the perspective of the end consumer. • Refers to concerns expressed in earlier submissions and confirms these concerns still stand. • Notes difficult to comment without adequate details especially in regard to insurance arrangements and consumer protection. • Of the view that disbanding the TCF is premature in the absence of knowing how travel agents will be administered and consumers protected under an industry accreditation scheme. • Concerned that consideration has not been given to improving the efficiency of the TCF and reducing cost for industry. • Notes AFTA is proposing insurance policies will be available to protect consumers but concerned details are very vague and will not be mandatory. • Concerned that there is little clarity as to how industry will operate in a deregulated/accredited environment, but notes important not to over-burden WA industry compared to rest of Australia once AFTA detail is known and consumer protection is satisfactorily addressed. • Provides specific comments in relation to each option.

	Organisation	Representing	Preferred Option	Position
10.	**Flight Centre**	**Travel Industry** Market capitalisation of $4.9 billion, operating in 11 countries and employing 15,000 people including 820 in WA.	**Option A** (Strong support)	• Supports AFTA's submission. • Reiterates views previously provided during the review. • Believes the marketplace has changed considerably since the current regime was introduced with industry consolidation, technological advancement. • Urges the WA Government to consider specific points in deliberations about the future regulation of WA travel agents, including prudential oversight and existing laws. • Provides attachment identifying specific laws applying to listed entities. • Believes that prescriptive laws and a locally based regime cannot deal adequately with shifts in technology, globalisation and product innovation and will restrict participation in the industry by WA businesses. • Believes that a heavy handed regulatory response will deter investment and growth in WA businesses.
11.	**Insurance Council of Australia**	**Insurance industry** Representative body of the general insurance industry. Members represent more than 90 per cent of total premium income written by private sector general insurers. Members include both insurers and reinsurers.	**Status Quo**	• Referred to concerns previously raised during earlier consultation as part of the national review, in regard to negative impact of removing the TCF on consumers' prospects of recovering losses except under action via the ACL. • Notes that action under the ACL would be beyond the reach of most consumers. • Reiterated view that TCF provides an important consumer protection that should be maintained. • Raised need to ensure that in absence of TCF, consumers are made aware that travel insurance products do not cover travel agents who become insolvent. • Expressed support of AFTA's preliminary work towards an industry accreditation scheme. • Notes that this work includes travel agency solvency and risk management.

	Organisation	Representing	Preferred Option	Position
12.	**Small Business Development Corporation**	**Government**	**Option A**	• Notes that SBDC does not receive many complaints from travel industry re red tape and acknowledges it is not knowledge expert in the area. • Instead defers to AFTA's perspective as the representative body. • Quotes AFTA's assessment that red tape costs/burden for industry is over $19.5 million per year. • Believes that retaining licensing and compensation in WA travel agents would place WA at a disadvantage. • Understands that WA travel agents support ending of licensing. • Assumes accreditation scheme will ensure consumers can be confident in dealings with industry. • Notes that small business is more significantly impacted by red tape than other sectors of the community.
13.	**Tourism WA**	**Government**	**Option A**	• Supports consultation at the local level. • Supports achieving consistency with other jurisdictions in order to provide fairness and equity for WA businesses so that they are not disadvantaged. • Supports appropriate transition arrangements. • Supports recommended option on the position paper (option A).

6. PREFERRED OPTION

Recommendation

It is recommended that option A, deregulation in line with other jurisdictions, be adopted.

The following briefly discusses and compares the various options and establishes the reasons for selecting option A as the preferred option.

Preferred option (deregulation)

Based on an analysis of available options against the objectives identified at section 2 of the paper, option A is identified as having the most potential to:

- appropriately balance the needs of consumers and industry;
- reduce the regulatory burden on travel agents;
- provide a level playing field for travel agents operating in WA;
- provide consumers with the same protections and risks as other consumers nationally; and
- be responsive to the travel sector's needs and market developments.

While it is the least cost option for government it would mean that revenue from licensing will not be available to offset the cost dealing with travel related consumer disputes and industry compliance where required.

Option A, deregulation, is favoured by industry and is the least cost option for government. Consumers potentially benefit from increased competition and lower service costs while they forego compensation. Median payments to consumers from the TCF from 2006 - 2012 show that most consumers compensation payments were between $1,000 - $1,600 in the event of an insolvency or failure to pass on funds for other reasons and that the average median claim for the period was $1,400.

Fortunately, travel agent collapses are infrequent events and this level of monetary loss is not as great for most consumers in real terms as travel costs in the late 1980's when the scheme was established. The proposed voluntary industry accreditation scheme being developed by AFTA includes proposals for insurance against supplier insolvency and, therefore, a level of protection and reduction of risk to consumers dealing with accredited agents that have insurance.

Industry standards

Options prescribing industry operating standards (options B and C) impose some regulation on industry which on the whole is considered a minimal barrier to entry. Option C (code of conduct under the ACL) could impose increased costs on travel agents and this would vary depending on the extent of imposed standards. The extent to which government would want to impose standards would also be affected by the voluntary industry accreditation scheme being developed by AFTA.

To ensure an even playing field and consistent standards across all WA based travel agents, elements of the accreditation scheme could be mandated under a code. Alternatively, if a code required additional measures to the accreditation scheme it would likely be opposed strongly by industry as travel agents that become accredited would face duplicate regulation and potentially increased costs.

Options B and C also impose costs on government due to the need to fund the Department's ongoing work to enforce the regulatory regimes for each option without the revenue from licensing travel agents to offset these costs. Option B (negative licensing) is estimated to cost more than the current licensing and compliance work under WA's role in the national scheme and option C around the same amount provided it was a minimal code of conduct. If an extensive code of conduct was required, costs would exceed those of the current regime. Funding for this work would need to come from the consolidated fund and/or through a reduction in other work undertaken by the Department.

Retention of regulation

Options that retain licensing and additionally include a compensation scheme, options D and E respectively, are considered to be untenable in light of national deregulation due to increased costs for WA travel agents compared to interstate and overseas competitors, which would result in a competitive disadvantage. In addition, reduced consumer compensation and increased service costs for consumers are likely to result. It would also be difficult to implement these options in synchrony with phased national deregulation.

Status quo not possible

Travel agents operate in a national and international market and consumer compensation through the national scheme has been able to operate due to uniformity of regulation across the majority of jurisdictions. Without national regulation, none of the options considered can retain the level of consumer compensation currently provided by the TCF. This is because most WA consumers obtain travel services through interstate providers and it will no longer be possible to regulate travel agents physically based outside WA. Under all regulatory options there is a reduction in compensation available to WA consumers of between 60 - 90 per cent compared to the national scheme.

7. IMPLEMENTATION AND EVALUATION STRATEGY

Implementation of option A

This initiative links with national reforms and, as a result, comprises implementation elements at both the local and national level.

Local implementation

Implementation of option A will require the repeal of the Act and the Travel Agents Regulations 1986. The Department will coordinate the repeal of the legislation and provide support and advice to stakeholders.

Ideally, the repeal of the legislation should take effect on 1 July 2014 as this timeframe aligns with the date identified in the TITP for jurisdictions to repeal their respective legislation. Achieving this target date is subject to Cabinet and Parliamentary approval and priorities.

In the lead up to this date, a public awareness and community education campaign will be rolled out nationally to ensure WA consumers, industry and other relevant stakeholders are aware of the changes to the regulatory framework and the impact on compensation arrangements. Of particular importance is communicating consumers' entitlement to make claims during a transitionary claims period following the conclusion of the TCF.

The national education campaign will involve a range of actions including media releases, publication of web material and direct contact with industry stakeholders to ensure they are kept informed about the reforms. It is noted that AFTA is also committed to delivering a comprehensive education campaign promoting the proposed accreditation scheme to industry and consumers.

Drafting of transitional provisions

Each jurisdiction's Act has various provisions which are necessary for the TCF to discharge its duties. In order to enable the orderly closure of the TCF, those provisions in the Acts which require membership of the TCF will need to be removed with effect on 1 July 2014. Where an Act is repealed in its entirety, savings provisions are required for the TCF to function until closure in the second half of 2015. At the request of Ministers, the National Parliamentary Counsels' Committee is providing assistance to develop the necessary consistent savings and transitional provisions. This will aid in drafting WA's repeal Bill.

National implementation

Travel Industry Transition Plan

A TITP has been developed and endorsed by Ministers which sets out the key dates for implementing the national reforms. As far as possible, WA will follow the transition plan in implementing the reforms in WA.

Key dates identified in the TITP for the phased implementation of reforms are summarised below.

2013

- Execution of the TCF Substitution Trust Deed from 1 July 2013 (completed).
- Prudential supervision of travel agents by the TCF ceased on 1 July 2013, although travel agents are still required to participate in the fund until state and territory regulation can be repealed.
- Development of a voluntary industry accreditation scheme will occur. The Australian Federation of Travel Agents (AFTA) is funded from the TCF to develop the voluntary accreditation scheme.
- Commencement of a consumer communication and education strategy will occur.

2014

- By 1 July 2014, jurisdictions are expected to repeal their respective travel agents' legislation and travel agents will cease to be required to be TCF members. In any event, participating Ministers have directed the TCF to amend the Substitution Trust Deed to make 30 June 2014 the participation cessation date[31].
- A voluntary industry accreditation scheme is expected to commence on 1 July 2014.
- Consumer research and advocacy arrangements as outlined in the TITP are expected to be established that include monitoring consumers' experiences with the new travel industry regime including the effectiveness of credit card chargeback and insurance arrangements. The TCF Trust Deed provides for these activities to be funded through the TCF, subject to the granting of endowments as approved by Ministers.

2015

- The TCF closes sometime between 1 July and 31 December 2015.
- Conclusion of TCF recovery action and payment of remaining eligible claims will continue for some time after this.
- Remaining trust funds are to be distributed in accordance with the TCF Substitution Trust Deed.

Coordinated approach

The Policy and Research Advisory Committee (PRAC) and the Education and Information Advisory Committee (EIAC) are national committees established under the auspices of the Legislative and Governance Forum on Consumer Affairs (CAF) and include senior representatives from each jurisdiction. PRAC and EIAC are responsible for coordinating the implementation process, including policy and community awareness aspects of the reforms. WA remains actively engaged in this process and is committed to working collaboratively to ensure positive outcomes for WA stakeholders.

Voluntary industry accreditation scheme

A working party to assist with the development of the voluntary industry accreditation scheme has been established. Consumers, industry and government are represented on this working party. The working party will monitor the effectiveness of industry-led regulation until fully operational.

Compensation

The wind up of the TCF is being carefully managed in order to balance the need to protect consumers from losses that are covered by the TCF, the interests of businesses that pay premiums to the TCF, governments who ultimately underwrite the TCF and to avoid any unintended consequences. This will be undertaken in consultation with the TCF Board.

Evaluation

National evaluation: consumer endowment initiative

Monitoring and evaluation will be undertaken as part of a national consumer endowment initiative. Ministers have endorsed TCF reserves being made available, through a contestable process, to provide for the establishment of a 'consumer voice' aimed at empowering consumers in the new market and also supporting enhanced representations to government on consumer policy initiatives related to travel agents. This initiative is seen as playing a key role in monitoring and evaluating the impact of the reforms on consumers and industry and ensuring CAF is made aware of any issues of concern as early as possible.

Consumer advocates will be invited to develop a proposal to be considered and approved by CAF. It is proposed that any research or advocacy undertaken by grant recipients should either assist travelling consumers or otherwise contribute to the development of consumer-related travel policies and educational initiatives. Recipients will be encouraged to collaborate with other relevant research or advocacy groups.

[31] CAF decision 5 July 2013.

It is intended that recipients will use the endowment grant to support research and/or advocacy related purposes. For example:

- researching consumer experiences under the new regulatory arrangements for travel agents;
- assisting consumers with related enquiries and/or complaints;
- investigating emerging issues;
- investigating the effectiveness of applicable consumer protections;
- identifying potential changes to related policy and regulatory mechanisms;
- educating consumers about the risks involved in transacting with travel agents;
- educating consumers about relevant laws, industry-led regulatory mechanisms, or market-based mechanisms; or
- contributing to the development of consumer-related policies and initiatives regarding the travel intermediary industry.

Local monitoring

The impact of the repeal of the legislation will be monitored by the Department on an ongoing basis. This will include consideration of the following market intelligence collected by the Department:

- number and nature of calls received by year in regard to travel arrangements;
- outcome of phone enquiries;
- number and nature of complaints received by the Department's Consumer Protection Division by year in regard to travel issues;
- analysis of advice line and complaint trends pre and post repeal of the legislation;
- analysis of any changes/trends over time;
- level of calls/complaints as compared to other areas regulated by the Department's Consumer Protection Division; and
- analysis of media coverage since repeal of the legislation.

SUMMARY OF STUDY BY CONSULTANTS

In late 2009, the then Standing Committee of Officials on Consumer Affairs (SCOCA) commissioned PricewaterhouseCoopers (PwC) to conduct a study of consumer protection in the travel industry. PwC undertook consultations and research during 2010, and prepared a report titled Review of consumer protection in the travel and travel related services market (the study). The study sought views from a range of stakeholders through an issues paper. The issues paper was distributed to all TCF participants. It was also distributed to AFTA, CATO, ATEC and other identified stakeholders.

Surveys

The study also included a second phase where a consumer survey was conducted on a range of issues relating to consumer protection in the travel industry and on consumers' willingness to pay for such protection. PwC surveyed a random sample of over 800 travel consumers.

The survey covered such matters as consumer behaviour in regard to booking travel, how frequently consumers used credit cards to pay for travel, consumer satisfaction with services offered by travel agents and awareness of protections offered via the TCF. The survey found that consumers appeared to value protection from travel agent insolvency, and were willing to pay $30 on a $1,000 fare for such protection.

In addition, PwC conducted a survey of Australian travel agents. The survey was distributed to all TCF members and covered a range of issues relating to consumer protection in the travel industry and the existing regulatory regime. The survey was distributed to all TCF members and attracted 415 responses.

Summary of PWC study findings

The following provides a summary of the PwC study as presented in the draft decision making RIS prepared by the Commonwealth Treasury.

Estimated cost

PwC estimated the cost of the national scheme — including licensing, prudential oversight and compensation — to be $25.3 million per annum. The directly observable benefit (as measured in terms of the average pay-out to consumers) is $2.9 million (averaged over the last 10 years). PwC's estimated costs are set out in the table below:

Licensing regime

The current travel intermediaries licensing regime is aimed at achieving four outcomes:

- ensuring participants fulfil certain minimum criteria related to establishing their bona fide nature (for example, greater than 18 years of age, fit and proper person, not previously disqualified from holding a licence) and disclose certain business details;
- ensuring a minimal standard of competence through training and/or experience requirements;
- collecting revenue to fund compliance and enforcement activities by the relevant authority; and
- mandating participation in the compensation arrangements.

Minimum criteria

Minimum criteria for licensing are a relatively inexpensive means of regulating entry into the travel intermediaries market, imposing relatively minor administrative costs on business while enabling licensing authorities to easily and efficiently impose and enforce regulations. The cost of these requirements relate to the time taken by a travel agent (or their employee) to complete the required paper work and other tasks to comply with the national scheme.

The majority of travel intermediaries (65 per cent) believe that licensing requirements are duplicated to some degree by the membership requirements of the TCF.[32]

Training requirements

A typical training course that meets the training requirements costs approximately $800,[33] although travel intermediaries report spending approximately $2,000 per course. The nature of the training courses is essentially practical, dealing with the mechanics of booking and selling international flights. The courses merely ensure the licensed travel agent (or designated manager) is competent in the basic skills necessary to sell international travel.[34]

Revenue collection

Licensing authorities collect revenue from industry to finance the administration of the national scheme and compliance and enforcement activities by the relevant body. Revenue collection via this mechanism is appropriate, as costs incurred by government in relation to a particular industry are funded by that industry and, therefore, reflected in the business' cost structure.

Mandating participation in the compensation arrangements

The licensing scheme is also the mechanism by which travel intermediaries are required to participate in the industry compensation scheme arrangements.

Conduct

There is little evidence of a significant problem in business conduct in the industry. In most states, the travel industry accounts for no more than five per cent of complaints to consumer protection bodies and travel intermediaries typically make up less than one third of these.

The study found a body of opinion amongst stakeholders that the industry-specific disciplinary powers, currently incorporated into licence conditions, are important in ensuring good conduct in the industry.[35] PwC noted however, that this could also be achieved through negative licensing or a registration scheme rather than a full licensing scheme.

Insolvency protection

The study found that the opinions of stakeholders on the ongoing relevance and appropriateness of insolvency protection, in light of the historical developments of the travel industry, differ widely. The national scheme has two components: prudential oversight and compensation.

Prudential oversight

Suggested benefits of prudential oversight of the industry are:

- reducing the risk of travel agency insolvency — limiting the financial loss to consumers, and consequently, the TCF, and other creditors;
- promoting consumer confidence in the travel agent market and the tourism industry more broadly; and
- providing a form of accreditation — that is, membership in the TCF testifies, to some degree, to the business' solvency and bona fide nature.

[32] Based on a survey of Australian travel agents conducted by PwC. See PwC (2010: page 84).
[33] Based on the advertised price of qualifying training units.
[34] Based on a survey of Australian travel agents conducted by PwC. See PwC (2010: page 86). PwC's survey of Australian travel agents found that only 18 per cent of travel agents consider the training somewhat or very effective at achieving consumer protection outcomes. See PwC (2010: page 86).
[35] For example, PwC's survey of Australian travel agents found that 65 per cent of agents considered the licensing authorities' disciplinary powers important to ensuring good conduct in the industry. See PwC (2010: page 106).

The extent to which the prudential oversight function is currently reducing the risk of travel agency insolvency is difficult to ascertain. While there is a broad perception that the TCF's prudential oversight has reduced the financial volatility of the industry, the nature and structure of the industry has changed dramatically since that time. Even if failures did increase, a six-fold increase in the current value of lost funds would be required before the value of lost funds exceeded the economic cost of the national scheme.

Compensation

Suggested benefits of compensation arrangements are:

- the compensation of consumers who would otherwise lose their prepayments for travel services;
- a swift and costless resolution of claims — the average turn-around time for claims on the TCF is between five and seven days;[36] and
- handling complaints that might otherwise be resolved by the relevant fair trading body.

[36] Information provided to PwC by Travel Compensation Fund.

CONSULTATION REGULATORY IMPACT STATEMENT CONCLUSIONS

In response to the PwC study, a C-RIS seeking stakeholder views was developed. The following presents the conclusions outlined in the C-RIS released in February 2011.

Competency and conduct

Industry-led regulation has merit and should be further considered in the light of stakeholder views. The ACL prohibits a range of unfair practices, such as misleading or deceptive conduct, by suppliers of any kind, including travel agents. Australia's generic consumer protection framework, which is underpinned by the *Intergovernmental Agreement for the Australian Consumer Law* means that the Australian, State and Territory governments can monitor jointly the effectiveness of the ACL and modify it if appropriate for all industries that deal with significant consumer deposits. All jurisdictions are also committed to ensuring that industry-specific regulation does not duplicate or unnecessarily alter the effect of the ACL.

Some oversight of the travel intermediary industry may be warranted because consumer deposits continue to be held by travel intermediaries for a period of time. Replacing a licensing scheme with voluntary accreditation with NTAF would benefit consumers by reducing compliance costs, particularly by reducing the excess regulatory compliance costs imposed on travel intermediaries above other travel businesses. This could lead to greater competition and more innovation by travel intermediaries, although this is difficult to quantify.

The nature of the current training courses is essentially practical, dealing with the mechanics of booking and selling international flights. They do not relate to the key consumer protection risks identified in the industry, such as those associated with inadequate service and business insolvency. The benefits of industry-led regulation are a reduction in the administrative burden of the scheme. In addition to removing training requirements, removing all licensing requirements would remove mandatory compliance costs.

A more flexible regulatory approach could also provide potential gains to consumers through new business models, given the impact of technological changes in this sector. State and territory governments could retain some form of regulatory oversight of travel intermediaries if there were remaining concerns about the potential for persons who present an unacceptable residual risk of consumers losing deposit funds.

Compensation

Utilising the national consumer protection framework under the ACL and other safeguards has merit and should be further considered in the light of stakeholder views. This option involves basing consumer protection in the travel industry on the national consumer protection framework. Consumers would also have a number of non-regulatory protection mechanisms available to them.

The current compensation arrangements appear to impose significant regulatory burden on travel intermediaries and a cost on consumers relative to the risk of consumer detriment from travel agent collapses. The study also found that consumers are largely unaware of the TCF's existence and functions. This option would allow more travel agents to set up business, increasing competition and travel intermediaries will no longer be required to pay the entry and ongoing fees associated with membership of the TCF. Where these costs are incurred by travel intermediaries, the high level of competition in the travel sector would ensure that the majority of these savings are passed on to consumers. This option would bring the regulation of travel intermediaries in line with the remainder of the travel industry and the regulation of most other industries of comparable risk to consumers and systemic importance.

Additionally, consumers will be able to rely on the generic consumer protection provisions of the ACL, which imposes restrictions on the conduct of all businesses relating to competition, fair trading and consumer protection legislation.

The ACL, which applies nationally, in all states and territories, and to all Australian businesses, provides certainty to consumers and businesses as to their rights, expectations, responsibilities and obligations regardless of where and in which industry they operate.

Consumers will still be able to pursue redress for monies lost due to fraud, misappropriation of funds and other misconduct under existing generic consumer and criminal laws.

COST ESTIMATES FOR EACH OF THE OPTIONS FOR REGULATING OF TRAVEL AGENTS IN WA

Option A – deregulation

1. ***Context:***
   - WA would be consistent with other jurisdictions.
   - Consumers would be dependent on the ACL and general industry remedies for problems.

2. ***Assumptions:***
   - Problems with travel agents would come to government attention through complaints and complaints would increase due to deregulation.

3. ***Costs:***
   - Loss of income from removal of licensing is $261,350.
   - Currently the Department gets approximately 250 complaints per annum about the travel industry based on average of past three financial years. The TCF has received an average of 550 claims per annum from WA consumers (based on claims data from 2001-2012). It is assumed that all these inquiries would be directed to the Department once national deregulation occurs. This is a 220 per cent increase in inquiries likely to require some form of inspection, investigation or further action. During 2012 there were an unusually high number of claims to the TCF from WA and the average based on 2006 – 2011 data was 160 representing a 65 per cent increase in workload for WA. For modelling, a 100 per cent increase in workload is assumed. Current FTE costs for conciliation and investigations are 1 level 4.3 and 0.5 level 2.4. On costs estimated at a minimum of 30 per cent. Total cost $135,990. Due to a doubling in the volume of work the FTE and costs would double - a net new cost of $271,980 per annum as licensing revenue fully recovers the current costs of this work.

4. ***Net Cost/Benefit:***
   - The impact of this option on consumers, industry and government has been assessed. The cost-benefit analysis concludes that the net impact of deregulation would be positive with the overall benefits exceeding the costs.

Option B – negative licensing scheme

1. ***Context:***
   - There would be no regulation in other jurisdictions and so negative licensing is likely to be seen as restrictive by industry.

2. ***Assumptions:***
   - Problems with travel agents would come to government attention through complaints and complaints would increase due to deregulation.
   - A range of penalties will be available e.g. fines, restriction orders and banning from the industry.

3. ***Costs:***
   - Loss of income from removal of licensing is $261,350.
   - Currently the department gets approximately 250 complaints per annum about the travel industry based on average of past three financial years. The TCF has received an average of 550 claims per annum from WA consumers (based on claims data from 2001-2012). It is assumed that all these inquiries would be directed to the Department once national deregulation occurs. This is a 220 per cent increase in inquiries likely to require some form of inspection, investigation or further action. During 2012 there were an unusually high number of claims to the TCF from WA and the average based on 2006 - 2011 data was 160 representing a 65 per cent increase in workload for WA.

- For modelling, a 100 per cent increase in workload is assumed. Current FTE costs for conciliation, proactive compliance and investigations are 1 level 4.3 and 0.5 level 2.4. On costs estimated at a minimum of 30 per cent. Due to an increase in the volume and complexity of work FTE requirements would be 2 level 5.4 and 1 level 2.4 costing $305,760 per annum. This would be a net new cost as licensing revenue fully recovers the current costs of this work.
- Legal and other costs of removing an agent from the industry are estimated using FTE for a senior investigations officer and a legal officer for six months each. The time covers investigation, prosecution and appeal processes. Senior officer costed at level 6.4 and legal officer at specified calling level 3.4 plus on costs of at least 30 per cent. Salaries L6.4 $101,520; SCL3.4 $109,280. Total cost $137,020.
- Appeal processes would place additional marginal costs on the State Administrative Tribunal or courts.

4. *Net Cost/Benefit:*
- The impact of this option on consumers, industry and government has been assessed. The cost-benefit analysis concludes that the net impact of negative licensing would be negative with the overall costs exceeding the benefits.

Option C – code of conduct under the ACL

1. *Context:*
- An element of the TITP is the development of a voluntary industry code of conduct so a WA code would not be comprehensive but focus on protecting consumer funds and providing consumers with relevant information.
- PwC recommended an industry code that included disclosure requirements covering whether funds were held in a client account and the circumstances in which funds were withdrawn; whether the agent was a part of a chain, franchise or cooperative buying group; whether the agent was accredited under any scheme; the availability of any insurance; and the availability of external dispute resolution. The proposed code also had conduct requirements to use fair and accurate advertising and disclosure rules for on-line traders.
- PwC noted that client accounts were used by 39 per cent of agents but there was low compliance with TCF guidelines for the operation of these accounts. It also noted that in the event of insolvency client account funds were not protected as they were not legal trust accounts.
- TCF 2011 annual report notes that 84 per cent of consumer funds are held for less than a month and only 6 per cent held longer than two months before being paid to suppliers.

2. *Assumptions:*
- WA would adopt a minimal code but possibility of an extensive code.

3. *Costs:*
- Loss of income from removal of licensing is $261,350.
- Currently the Department receives approximately 250 complaints per annum about the travel industry based on average of past three financial years. The TCF has received an average of 550 claims per annum from WA consumers (based on claims data from 2001-2012). It is assumed that all these inquiries would be directed to the Department once national deregulation occurs. This is a 220 per cent increase in inquiries likely to require some form of inspection, investigation or further action. During 2012 there were an unusually high number of claims to the TCF from WA and the average based on 2006 - 2011 data was 160 representing a 65 per cent increase in workload for WA. For modelling, a 100 per cent increase in workload is assumed. Current FTE costs for conciliation, proactive compliance and investigations are 1 level 4.3 and 0.5 level 2.4. On costs estimated at a minimum of 30 per cent. Due to an increase in the volume and complexity of work FTE requirements would be 2 level 5.4 and 1 level 2.4 costing $305,760 per annum. This would be a net new cost as licensing revenue fully recovers the current costs of this work.

- Extensive code costs based on the cost of licensing plus prudential supervision ($700,000 - $1,100,000) averaged across 332 licensed travel agents and rounded - $2,100 - $3,300. Prudential oversight is estimated to cost between $440,000 - $840,000.
- Option of maintaining registration of agents in order to keep track of players and to generate some income to help cover costs. If pursued this would require reinstatement of a regime very similar to licensing and cost the same.

4. ***Net Cost/Benefit:***
   - The impact of this option on consumers, industry and government has been assessed. The cost-benefit analysis concludes that the net impact of a mandatory code of conduct would be negative with the overall costs exceeding the benefits.

Option D – licensing and prudential oversight

1. ***Context:***
   - Potential for national operators to withdraw from WA market to avoid regulation but to operate via the internet and continue to attract WA consumers. The effect would be to take business from smaller WA agents, increase their likelihood of failing criteria for cover and reduce proportion of consumers covered.

2. ***Assumptions:***
   - Prudential oversight same or very similar to existing TCF regime.
   - Model presumes retain current licensing and add prudential oversight and that no savings in WA licensing costs.
   - Presume prudential oversight reduces risk of insolvency, however, PwC analysis estimated it is not a significant protection and it would take six times current rate of failure before TCF became cost effective.
   - PwC external administration rate was 1.8 per cent or approximately six businesses based on 332 licensed agents. However, history indicates an average of 1.3 failures per year in WA.

3. ***Costs:***
   - Model would increase costs for government as need to employ or engage accounting skills for analysis of annual financial statements, proactive compliance and enforcement.
   - Cost of providing prudential oversight. Limited information in TCF annual report to estimate costs – report states that claims are small part of work. Assume 10 - 30 per cent of expenses other than claims paid are for claims management. Estimate of prudential oversight is approximately $2.1 - $2.7 million. Assume 20 - 30 per cent for WA i.e. approximately $0.42 - $0.63 million to $0.54 - $0.81 million.
   - Allow 4 per cent for inflation of costs i.e. $0.44 - $0.66 million to $0.56 - $0.84 million to establish and operate prudential oversight in WA.
   - 332 licensed agents in WA as of 21 January 2013. Approximately $1,325 - $2,530 each to cover new costs. This would be in addition to existing WA licensing fees.

4. ***Net Cost/Benefit:***
   - The impact of this option on consumers, industry and government has been assessed. The cost-benefit analysis concludes that the net impact of regulation without compensation arrangements would be negative with the overall costs of regulation exceeding the benefits.

Option E – maintain key elements of the TCF in WA

1. ***Contexts:***
   - Potential for national operators to withdraw from WA market to avoid regulation but to operate via the internet and continue to attract WA consumers. The effect would be to take business from smaller WA agents, increase their likelihood of failing criteria for cover and reduce proportion of consumers covered.

- Decreasing use of credit cards by consumers to avoid fees and so less option for compensation through credit card chargeback – TCF reporting trend in decline of credit cards.

2. Assumptions:

Maintain the service provided by the TCF that includes:

- Licensed agents must meet the same range of prudential criteria and satisfy through annual financial returns that this is maintained.
- Field audits are carried out on selected agents that give cause for some concern against existing criteria (similar to proactive compliance).
- Recovery action taken to recoup expenses where possible. May take several years and involve litigation.
- Sophisticated electronic lodgement of financial returns that aids agents – the TCF system provides agents with immediate result of whether they meet criteria or not.

Costs of TCF based on 2012 Annual Report

Income		$M	WA 10 per cent
	Revenue from operations	5.12	
	Interest income	1.71	
		6.83	**0.68***
Expenses			
	Claims paid	6.03	
	Employee benefits expense	1.53	
	Consultancy	0.11	
	Legal	0.63	
	Occupancy expenses	0.29	
	Other	0.42	
		2.98**	**0.30**

*Based on WA share of funds no significant interest earning assumed.
**Claims paid excluded.

3. Costs:

- Assume TCF is operating efficiently and costs in its annual report are reasonable.
- WA would not earn significant interest income from the estimated $0.5 - $1.5 million available after the TCF meets its liabilities.
- It would take more than 10 per cent of existing TCF expenses to establish and operate a fund in WA, assume 20-30 per cent to establish and operate a fund in WA i.e. $0.9 - $1.2 million.
- Allow 4 per cent for inflation of costs i.e. $0.94 - $1.25 million to establish and operate a fund in WA.
- Assume that IT system development and financial and legal expertise consultancy costs are met within combined staffing and consultancy provision.
- 332 licensed agents in WA as at 21 January 2013. Approximately $2,830 - $3,765 each to cover costs.
- Some offset available from use of existing staff and licensing income, however, would need more specialist staff on payroll or through contract.

- Based on TCF claims data from 2006 - 2012 total compensation to WA consumers was $3,551,383. Payments to WA consumers due to WA agent collapses were $472,899 (13 per cent of total payments). It is important to note this is a volatile average figure. If the average was based on 2006 - 2011 data it would be 39 per cent of total payments due to WA agent collapses.
- During 2012 two large interstate travel agents collapsed and significantly increased the claims made by WA consumers. For modelling costs will be based on a range of 60 - 90 per cent reduction in compensation payments to WA consumers.
- The average TCF compensation payment for all WA consumers 2006 - 2012 is $507,340. 60 – 90 per cent is $304,410 - $456,615 and 10 - 40 per cent is $50,735 - $202,935.

4. Net Cost/Benefit:

- The impact of this option on consumers, industry and government has been assessed. The cost-benefit analysis concludes that the net impact of WA based regulation and compensation arrangements would be negative with the overall costs exceeding the benefits.

TRAVEL COMPENSATION FUND: COMPENSATION PAYMENTS SUMMARY

Up until 11 April 2013, the TCF has paid out compensation to consumers totalling: $62.3 million.

Total amount paid by jurisdiction (2001 to 2013)*

Year	ACT	NSW	NT	Oseas	QLD	SA	TAS	VIC	WA	(blank)	Total
2001	$302,636	$4,983,294	$50,141	$142,321	$1,239,941	$914,198	$187,913	$3,496,190	$530,795	$0	$11,847,429
2002	$84,054	$1,426,339	$400	$14,061	$422,247	$102,047	$11,583	$342,316	$206,432	$4,002	$2,613,481
2003	$2,900	$688,780	$38,500	$38,104	$90,900	$6,223	$0	$116,633	$13,741	$0	$995,781
2004	$74,853	$131,581	$0	$11,843	$73,653	$760	$0	$46,136	$20,855	$0	$359,681
2005	$2,646	$57,733	$0	$1,106	$38,970	$24,991	$1,574	$663,672	$0	$0	$790,692
2006	$200	$376,520	$0	$790	$23,014	$88,902	$710	$61,146	$7,949	$0	$559,231
2007	$58,594	$2,033,650	$12,166	$14,557	$512,692	$655,853	$27,040	$980,135	$148,419	$0	$4,443,106
2008	$1,598	$1,013,414	$1,110	$24,280	$154,977	$20,627	$2,735	$889,202	$220,247	$0	$2,328,190
2009	$45,516	$1,707,629	$0	$149,213	$358,150	$68,012	$13,651	$1,002,550	$42,214	$0	$3,386,935
2010	$1,564	$553,061	$3,918	$900	$428,629	$36,057	$0	$69,957	$170,800	$0	$1,264,886
2011	$12,430	$659,747	$2,514	$3,079	$430,241	$15,530	$0	$217,156	$6,792	$0	$1,347,489
2012	$84,619	$1,249,066	$19,565	$176,204	$809,417	$579,744	$79,757	$446,441	$2,613,747	$0	$6,058,560
2013	$0	$102,655	$1,868	$1,548	$24,558	$697	$0	$72,105	$14,829	$0	$218,260
Total	$671,610	$14,983,469	$130,182	$578,006	$4,607,389	$2,513,641	$324,963	$8,403,639	$3,996,820	$4,002	$36,213,721

*Please note that 2012 and 2013 are subject to change.

Travel agent failures and claims paid in Western Australia*

Year	Number of WA agent failures	Number of WA claimants	Amount paid to claimants in relation to WA agent collapses	Amount paid to claimants for collapses in other jurisdictions	Total paid to WA claimants	Median payment
2006	0	9	$0	$7,949	$7,949	$620
2007	0	184	$0	$148,419	$148,419	$1,000
2008	3	218	$155,178	$220,247	$375,425	$1,000
2009	0	52	$10,746	$42,214	$52,960	$1,799
2010	2	445	$171,223	$170,800	$342,023	$768.50
2011	0	34	$43,380	$6,972	$50,172	$3,396
2012	3	2348	$92,372	$2,482,063	$2,574,435	$1,163
2013	0	28	$0	$14,829	$14,829	$1,106

*Please note that 2012 and 2013 are subject to change.

SUMMARY OF CONSULTATION UNDERTAKEN DURING THE NATIONAL REVIEW

The following summarises the consultation which took place as part of the national review under the auspices of the Legislative and Governance Forum on Consumer Affairs (CAF) which was initially coordinated by the Commonwealth Treasury and more recently by Victoria and New South Wales' consumer protection agencies. The following summarises the outcome of consultation for the three stages of the review.

Stage 1: Study

The review process commenced in 2009, with a study conducted by PwC. The study sought views from a range of stakeholders through an issues paper. The issues paper was distributed to all TCF participants. It was also distributed to AFTA, the Australian Tourism Export Council (ATEC); Council of Australian Tour Operators (CATO); and other identified stakeholders.

A total of 32 formal submissions were received in response to the issues paper. In addition, numerous meetings with key stakeholders were held as part of the consultation review process.

Surveys

The study also included a second phase where a consumer survey was conducted on a range of issues relating to consumer protection in the travel industry and on consumers' willingness to pay for such protection. PwC surveyed a random sample of over 800 travel consumers.

The survey covered such matters as consumer behaviour in regard to booking travel, how frequently consumers used credit cards to pay for travel, consumer satisfaction with services offered by travel agents and awareness of protections offered via the TCF. The survey found that consumers appeared to value protection from travel agent insolvency, and were willing to pay $30 on a $1,000 fare for such protection.

In addition, PwC conducted a survey of Australian travel agents. The survey was distributed to all TCF members and covered a range of issues relating to consumer protection in the travel industry and the existing regulatory regime. The survey was distributed to all TCF members and attracted 415 responses.

The survey found that forty-five per cent of respondents viewed the national scheme as providing effective consumer protection. In addition, eighty-three per cent of respondents consider insolvency protection is an important measure to protecting consumers from the major consumer protection risks in the travel industry. A majority of respondents believed that suffering financial loss from the bankruptcy of a travel agent or travel service supplier represents a somewhat significant or very significant risk to consumers.

It is noted that the surveys informed the development of options for consideration.

Stage 2: Release of Consultation RIS

Following the completion of the PwC's study, the then Standing Committee of Officials of Consumer Affairs (SCOCA) issued a consultation RIS which proposed a number of alternative policy options.

All stakeholders who made submissions to the PwC review were provided with a copy of the consultation RIS and invited to make a submission. The consultation RIS received 17 submissions from a range of stakeholders.

WA based stakeholders were contacted in regard to the release of the Consultation RIS including: all licensed travel agents; the Minister for Tourism; Tourism WA; Tourism Council WA; Visitor Centre Association of WA; Consumers Association WA; WA Council of Social Services; and the WA Chamber of Commerce.

The following summarises the outcome of consultation in response to the C-RIS.

Consumers

The C-RIS resulted in limited input by consumers.

The Queensland Consumers Association and CHOICE were the only two consumer advocacy groups which made submissions. Both groups expressed concerns about the potential reduction in consumer protection resulting from the ending of the national scheme and the winding up of the TCF.

Queensland Consumers Association

The Queensland Consumers Association supported continued competency and conduct requirements and were of the view that the National Tourism Accreditation Framework (NTAF) did not represent a viable alternative as it had not been fully established and suggested consideration should take place once the NTAF's effectiveness could be assessed.

CHOICE

CHOICE believed that prudential regulation had been an effective mechanism for reducing failures in the industry. CHOICE expressed support for a phased approach to reform including a national system of registration, complemented by an industry-based accreditation scheme, code of conduct, broad industry ombudsman, prudential regulation and compensation.

CHOICE also expressed the view that industry-led regulation should be deemed effective prior to withdrawing the current scheme including insolvency protection.

Industry

Industry was generally in favour of comprehensive reforms which would see the removal of the current national scheme including competence and prudential requirements as well as the removal of the TCF compensation scheme. Industry instead appeared to support an industry-led regulatory approach.

Australian Federation of Travel Agents

The Australian Federation of Travel Agents (AFTA) outlined the development of the proposed AFTA travel accreditation scheme. It was AFTA's view that an industry-led scheme would be able to replace the TCF.

QANTAS

QANTAS was of the view that the proposed changes would result in cost savings for travel agents, while lowering the barriers to entry for the travel and travel related services market. It also supported reforms to update travel industry regulation and acknowledged that the TCF had shortcomings.

QANTAS, whilst not opposed to reform that reduced cost burdens and barriers to entry, was of the view that key outcomes of any reform should not result in an increase in cost to airlines or suppliers, or reduce travel agent service standards, or impact consumer protection.

House of Travel

The House of Travel highlighted the importance of the TCF's financial oversight function as a means of avoiding business failure. It also favoured a nationalised approach to regulatory supervision that brings it up to date with current technologies. The House of Travel expressed concern that because travel agencies require low start-up capital, businesses prone to misusing client funds may emerge. It suggested that the TCF retain its financial oversight function even if it ceases to provide compensation payments to consumers.

Others

Tourism WA

Tourism WA expressed some concerns in regard to the proposal for an accreditation or registration system in place of current arrangements on the basis that this may devalue the professional status of the industry. Tourism WA was of the view that compensation provisions should be retained to reflect national consumer protection. Tourism WA believed that further consideration needs to be given to removing training components.

Stage 3: Release of Draft Travel Industry Transition Plan

A draft Travel Industry Transition Plan (draft Transition Plan) was released for national public consultation in late August 2012.

WA based stakeholders were contacted by the Department of Commerce in regard to the release of the Transition Plan including: all licensed travel agents; the Minister for Tourism; Tourism WA; Tourism Council WA; Visitor Centre Association of WA; Consumers Association WA; WA Council of Social Services; and the WA Chamber of Commerce.

Whilst consumer and industry advocates broadly supported the need for reform, there were opposing views amongst stakeholders in regard to the nature and extent of these reforms.

Many industry advocates called for deregulation on the basis that the current arrangements were burdensome relative to the risk of consumer detriment. Consumer advocates on the other hand, supported the retention of the current arrangements.

The following summarises the outcome of stakeholder consultation in response to the release of a draft Travel Industry Transition Plan in August 2012. A total of 20 submissions were received.

Consumers

CHOICE (Australian Consumers Association)

CHOICE remained opposed to deregulation and believed that the abolition of the TCF would lead to considerable consumer detriment. CHOICE would prefer to see improvements to the TCF.

Queensland Consumers Association

Opposed to deregulation. Expressed support for CHOICE's submission.

Mr John Mackay, Assistant Project Manager GHD (WA based)

International engineering architecture and environmental consulting company with 600 employees based in WA. Opposed to deregulation and raised concerns about the impact on consumers when things go wrong.

Others

Several individual consumers expressed opposition to deregulation, seeing this is a step backwards for consumer protection. Called for all travel providers to be required to be registered and participants of the TCF. One consumer expressed support for deregulation and called for a shorter timeframe of six months for implementing reforms and immediate cessation of licensing requirements.

WA's Consumer Advisory Committee

The Minister for Commerce referred the Transition Plan to the Consumer Advisory Committee (CAC). The CAC is a statutory committee established in September 2011 to advise the Minister on matters relating to consumers. CAC members are appointed by the Minister.

CAC supported implementation of a national plan to deregulate Australia's travel industry and winding up of the TCF. CAC noted that the clear intention of the larger States to dismantle the current system was a significant factor in its support.

Industry

Australian Federation of Travel Agents (AFTA)

Strong advocate for deregulation and supportive of the five key recommendations made in the Transition Plan.

Council of Australian Tour Operators (CATO)

Supported AFTA's position (in principle). Supported an industry-led accreditation scheme sanctioned by the Australian Consumer and Competition Commission.

City of Greater Geraldton

Generally expressed support for reforms which support consumer confidence and reduction of unnecessary costs and complexity. Supported using residual TCF funds for education and communication strategies.

McLaren Vale Travel

Advocated for a reduction in licensing fees in recognition of time he has participated in the TCF and called for the return of his initial joining fee rather than residual funds being used for education programs.

Brisbane Transit Visitor Information Pty Ltd

Accommodation booking and inquiry service based in Brisbane CBD.

Supported reforms which reduce impost on business and reduces regulatory duplication. Raised specific issues which need to be addressed as part of the review.

Publishers' Advertising Advisory Bureau

Not clear as to position. Called for travel advertisers to be required to include their licence number in advertisements as a means of reducing number of dishonest industry participants.

Australian Tourism Export Council (ATEC)

Supported deregulation based on concerns about the current arrangements not providing a level playing field and potentially affecting the viability of businesses into the future. Also, questioned the need for inbound tour operators to be licensed as they do not transact directly with consumers.

Mobile Travel Agents

Although not expressly stated, appeared to support deregulation. Industry led accreditation scheme is not supported, but supportive of a national marketing campaign.

Others

Department of Resources, Energy and Tourism (Tourism Division)

Supported deregulation and suggested that an industry-led regulatory framework incorporate the Tourism Quality Council of Australia Accreditation using residual funding resulting from the winding up of the TCF.

Insurance Council of Australia

Opposed to deregulation on the basis that the TCF provides an important consumer protection which should be maintained with some improvements. Consumer redress via the ACL is not seen as viable.