

NATIONAL CO-OPERATIVE SCHEME FOR THE REGULATION OF TRAVEL AGENTS

**Working Party report to Ministers on the
National Competition Policy Review
conducted by the Centre for International Economics**

August 2002

1. BACKGROUND TO NATIONAL SCHEME

In September 1986, Ministers for Consumer Affairs in Western Australia, NSW, Victoria and South Australia signed a “Participation Agreement” in which the Participating States acknowledged the need for the establishment of a co-operative scheme for the regulation of travel agents (“National Scheme”).

The Participation Agreement required member States to enact legislation containing “uniform provisions”. These provisions included, inter alia, a requirement that travel agents be licensed and for those agents to become (and remain) members of the Travel Compensation Fund (TCF).

In December 1986 the TCF was established by Deed of Trust which made provision for payment of compensation to consumers who deal with travel agents that fail to account for money they receive.

Queensland, Tasmania and the ACT subsequently enacted legislation containing the “uniform provisions” and become signatories to the agreement.

In 1990 the Northern Territory (NT) also enacted legislation containing the uniform provisions, and signed the Participation Agreement. However, NT never became a functioning participant of the National Scheme because of other jurisdictions’ concerns that its legislation did not, in practice, require agents to become and remain members of the TCF.

2. REVIEW OF NATIONAL SCHEME

In December 1998 the Ministerial Council on Consumer Affairs (MCCA) appointed the Centre for International Economics (CIE) to conduct a review of the National Scheme, in accordance with National Competition Policy principles.

The terms of reference for the review required CIE to:

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

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

As part of the review, CIE was also asked to consider the sphere of activity relevant to the objectives of the National Scheme and:

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

The review was steered by a MCCA Working Party comprised of Government representatives from each participating jurisdiction as well as the Northern Territory.

CIE undertook extensive public consultation which included the preparation and distribution of a background paper to all travel agents, meeting with all state and territory regulators, key industry bodies and other interested parties. The review was also advertised in prominent newspapers in all jurisdictions.

CIE completed its review in March 2000. Its report was presented to MCCA in July 2000 and contained three key recommendations:

1. The introduction of a competitive insurance system so that private insurers can compete with the TCF (compulsory TCF membership to be abolished).
2. Abolition of mandatory qualification and experience requirements for travel agents as a condition of licensing.
3. Retention of the present licensing framework but modified so that it is limited to a "fit and proper person" test and a check to ensure that compulsory insurance requirements are satisfied.

CIE saw the complete removal of prescriptive licensing and mandatory TCF requirements, as the preferred model in the long term.

Other recommendations made by CIE include changes to the current licence exemption threshold and removal of the Crown exemption.

3. EVALUATION OF RECOMMENDATIONS

At the July 2000 meeting of MCCA, Ministers expressed concern that the report did not sufficiently consider the public benefit and whether that outweighed any possible anti-competitive effects of the existing scheme. MCCA resolved to refer the report to the Standing Committee of Officials on Consumer Affairs (SCOCA) for further consideration.

Following the July meeting, SCOCA arranged for the release of the CIE report and invited public submissions until the end of October 2000. Each jurisdiction was asked to consult stakeholders within their own jurisdiction and to provide details to the Department of Consumer and Employment Protection in Western Australia (DOCEP) as lead agency for the review. DOCEP agreed to consult with national stakeholders and prepare an analysis of submissions. That analysis was prepared and circulated to MCCA Working Party representatives in each jurisdiction.

The recommendations in this report represent the collective view of representatives of the MCCA Working Party having regard to the submissions received.

3.1 Reform of the consumer insurance model

As previously indicated, the TCF was originally established to compensate consumers who suffer financial loss as a result of a travel agent's failure to account for monies paid to them. It is condition of licensing for all travel agents, except those in the Northern Territory, to become, and remain, members of the Travel Compensation Fund.

The TCF monitors the financial health of all licensed travel agents in Australia, except those in the Northern Territory. To become a participant in the TCF, applicants must be able to demonstrate they have sufficient financial resources to carry on the business of a travel agent.

A total of almost \$9000 is payable on application for participation plus an additional \$2,079.00 for each branch location at which business is to be conducted.

All participants are required to renew membership annually, providing audited financial statements and a certified Annual Financial Review return to confirm that they have sufficient financial resources. To encourage applicants to be financially secure, a rebate of up to \$3,000 is made at the first renewal date, depending on a points score achieved in the TCF's financial ratio tests.

CIE found that the cost of compulsory TCF membership was around \$15 million per annum, generated by both direct cost imposts on agents, such as administration charges and contributions, and compliance costs, such as annual financial reporting and minimum equity requirements imposed by the TCF.

The benefits of compulsory TCF membership were more difficult to quantify by CIE, focussing on direct compensation payments made to consumers and avoided litigation costs. The total benefit was estimated to be \$2.7 million annually based on the number of agency failures and the average amount of compensation paid per failure.

CIE reported that the net cost of compulsory TCF membership was \$13 million less unquantifiable benefits. It concluded that costs exceeded the benefits flowing from existing arrangements.

CIE found that TCF's prudential and reporting requirements created a significant cost burden for business, especially small business, and considered three change options:

- Model 1 - Privately provided compulsory national insurance (two variations – models 1A & 1B);
- Model 2 - Compulsory insurance from (a modified) TCF; and
- Model 3 – Opening up the TCF to competition.

Under Model 1A, licensing would continue but the TCF would be abolished. In its place would be a statutory requirement for travel agents to hold private insurance. Model 1B is essentially the same as 1A but provides for the transformation of the TCF into a statutory agency to give advice to insurers on risk assessment.

Under Model 2 licensing and the TCF would continue but TCF's prudential and reporting requirements would be re-structured to provide for payment of annual contributions, scaled to funds at risk, and the fixed entry fee component would be reduced.

Under Model 3 licensing and the TCF would continue however travel agents would also be given a choice between taking out private insurance or joining the TCF (where the TCF would operate on a competitively neutral basis).

Evaluation of Options

Model 1 - Privately provided compulsory national insurance

CIE View

Under the present TCF fee structure, all applicants are required to pay the same up front application fee and branch fees, irrespective of risk or "type" of travel agent applying (including those agents that do not fit the conventional mould of a travel agent such as inbound tour operators and bus and coach operators).

In its evaluation of the *private insurance* model, CIE identified one of the key benefits as being the introduction of risk related premiums "so that well managed and low risk travel agents would not be unfairly penalised by a statutory system that, for all the efforts to accommodate the needs of different types of agents, still has many 'one size fits all' outcomes¹. CIE also felt that the model might also, to some extent, avoid the barrier imposed by the up front premium, especially for small firms².

CIE felt that private insurers would be better placed to assess the risks attaching to particular agents, resulting in a more accurate correlation between premium and risk. An independent assessment by a private insurer with a financial stake was also seen by CIE, as a way of preventing high risk agencies from participating in the industry.

CIE claimed that the model could be administered with lower overheads with significant savings over the costs of running the TCF. This view was endorsed by Zuellig Insurance Brokers, the broker administering the Northern Territory travel agents insurance scheme at the time.

Working Party View

In its assessment of the *private insurance* model, the Working Party expressed concern about its feasibility being predicated entirely on the assumption that there is a demand to provide TCF type compensation cover. Given recent developments in the insurance market, particularly in the area of home builders warranty insurance, the Working Party felt that a market to provide travel agents insurance cannot be readily assumed. Furthermore, even if a market for insurance was to materialise, there remains the on-going risk of insurers exiting the market should profitability prove unacceptable.

The Working Party was concerned that the feasibility of the private insurance model had not been tested in Australia and by CIE's admission that the cost of insurance under the private insurance model was "something of an unknown"³.

The Working Party also felt that the potential volatility of premiums was a major disadvantage, particularly given recent increases in insurance premiums throughout Australia, reportedly due to the September 11 attacks and other recent adverse claims experience of insurers.

The potential long term risks are perhaps illustrated by the position in the Northern Territory where provision was made for travel agents to subscribe to an alternative insurance scheme (commonly referred to as the "Zuellig Scheme"). Notably, the underwriters of the scheme, FAI Insurance, withdrew from the market in 1998 after only 3 years of operation. Another underwriter expressed interest in the scheme at a premium rate that was 20% greater than that charged by FAI. The underwriters' offer was not supported by agents and the scheme is now reported to be "operationally defunct".

In summary, the Working Party felt that a change to the private model should not be supported for the following reasons:

- the feasibility of the model is predicated entirely on the assumption that there is a willingness to supply private insurance (whereas supply is uncertain);
- there is a high degree of uncertainty surrounding the level of premiums that would be charged by insurers;
- there is no guarantee that private insurers would not impose requirements similar to that of the TCF, to minimize risk. If this occurred, compliance costs under the private insurance model would be similarly high;

- premium levels may prove to be volatile, which would have a significant adverse impact on smaller agencies; and
- there would be an adverse impact on the travel industry generally should insurers exit the market at short notice should profitability prove unacceptable.

Model 2 – Compulsory insurance from (a modified) TCF

CIE View

As previously discussed, the TCF contributions arrangement presently requires all applicants to pay the same up front application fee irrespective of risk or “type” of travel agent applying (including those agents that do not fit the conventional mould of travel agents). CIE were particularly critical of “up front” fees which it felt acted as a barrier to entry, particularly for smaller firms.

CIE believed that TCF’s strict reporting requirements placed an unreasonable burden on small firms. At an estimated cost of \$2700 per annum for the average firm in the \$1 million to \$3 million turnover bracket⁴, CIE believed that there was little scope for allowing smaller firms to opt out of the reporting requirement.

Although the reporting requirements were found to reduce risks to the fund, CIE felt that there was insufficient evidence to conclude that they had a significant impact on reducing the risks for a majority of agents that fail because the requirements did little to discourage fraudulent behaviour. This was considered highly relevant given TCF’s own findings in 1998, that 75% of agent collapses were due to misappropriations by agents or staff or to misleading audited financial statements⁵.

With respect to bank guarantees, CIE noted that such guarantees provide less than 20% of cover against failing agencies. There was also little evidence to suggest that guarantees target agencies that fail. If they did, a disproportionately large ratio of funds recovered to claims paid would be expected⁶.

Model 2 was not preferred by CIE as it felt that, in the absence of competitive pressures, the only scope for change was by application of pressure through the political process.

Working Party View

In its consideration of model 2, the Working Party reflected on CIE’s analysis of net benefits of the TCF, noting its focus on direct compensation payments made to consumers as a result of agency collapses.

In the Working Party's view, CIE's assessment of net public benefit gave insufficient weight to benefits that were unquantifiable or impossible to couch in dollar terms. These benefits include:

- reduced incidence of agency failure;
- enhanced demand based on consumer confidence;
- avoided losses by other businesses;
- consumer knowledge that funds are secure; and
- TCF's ability to make arrangements for emergency compensation or give undertakings to suppliers, company liquidators or administrators so that travel arrangements are completed as booked (thus alleviating consumer distress)

The Working Party also noted CIE's conclusion that consumer willingness to pay a 0.15% surcharge on their purchases from travel agents to preserve the security benefits of the TCF scheme would demonstrate benefit to them sufficient, when combined with the \$2.7M in directly quantified benefits, to balance the costs of the scheme. That is only 15 cents on every \$100 or \$2.40 on a payment of \$1,600 (the average claim figure used by CIE).

While it is dangerous to presume to know how people would decide if a particular choice were really available to them, it seems likely that most consumers would be willing to pay considerably *more* than this – indeed, at least twice as much would probably be thought reasonable – for the combined benefits of guaranteeing recompense should defalcation occur *and* maximising their chances of travelling as planned even if the agent fails to pay the principals.

Also, there are clearly *some* benefits in the current TCF scheme in terms of failures prevented, even if the TCF suggestion of \$11 million⁷ is inflated and CIE is correct in seeing \$5.4M as an arbitrarily generous estimate.

On this basis, it is reasonable to conclude that the benefits of current TCF arrangements in protecting pre-payments, outweigh its costs.

Notably, CIE acknowledged the difficulties arising in estimating benefits and costs, admitting that many were impossible to measure and that "*a fuller accounting might turn the finding around...*"⁸

Although the Working Party was persuaded that the benefit of retaining existing TCF arrangements outweigh its costs, it nevertheless concurred with CIE's view about the need for reform of the TCF premium structure and its prudential and reporting requirements.

Although it may be argued that reform of the TCF through the political process fails to test the potential benefits of open competition, it was the Working Party's view that in the current insurance environment, a review of current TCF requirements should be undertaken by direction of the Ministerial Council as this would provide a more certain outcome.

The Working Party supports model 2.

Model 3 – Opening the TCF to competition

CIE View

Under model 3, agents would be given a choice between taking out private insurance or joining the TCF. TCF would operate on a competitively neutral basis with respect to private insurers with all insurers being required to provide the same level of cover.

Model 3 was compared by CIE, to the Zuellig scheme which was partially implemented in the Northern Territory (in 1996). The scheme was never fully implemented as agents were ineligible to join the TCF.

Model 3, the preferred model of CIE, was viewed as enjoying all of the advantages of the private insurance model (model 1) while ensuring the continued operation of the TCF as a fall back position for governments should the private market not materialise. More particularly CIE felt that the TCF would be forced to respond to competitive pressures and adopt practices that are more risk reflective.

Working Party View

As with the private insurance model, the Working Party noted that the feasibility of model 3 is predicated on the assumption that there is a willingness to supply private insurance. As previously indicated, having regard to recent developments in the insurance market, particularly in the area of home builders warranty insurance, the Working Party felt that a market to provide travel agents insurance cannot be readily assumed.

The Working Party felt that CIE underplayed problems inherent in model 3. The most significant problem, in the Working Party's view, was the very real danger of private insurers providing cover for only those travel agents who present a lesser risk, leaving high-risk operators for the TCF to "pick up" thereby threatening TCF's long term viability. In the absence of Government support, the national compensation scheme would then be entirely dependent on private insurers remaining in the market. Inducements to remain in the market may compromise the rights of consumers either contractually or with Government support (such as statutory capping of claims) and could undermine consumer confidence in the travel industry.

The Working Party noted CIE's view that the collapse of the TCF as an outcome, was not considered likely however no evidence was advanced to support this view.

In summary, the Working Party felt that model 3 suffered similar problems to model 1 and should not be supported for the following reasons:

- the model is predicated on the (unsafe) assumption that there is a market to provide private insurance in competition with the TCF;
- there is a very real danger that private insurers would provide cover to low risk travel agents only;
- over exposure to high risk operators would threaten TCF's long term viability; and.
- a collapse of the TCF would threaten the future viability of the entire compensation scheme, compromising the rights of consumers and undermining consumer confidence in the travel industry.

Working Party recommendations:

- ***That MCCA direct the TCF to review its contribution arrangements for different types of travel agencies, with a view to establishing a risk based premium structure, and its prudential and reporting requirements, with a view to making these more equitable.***
- ***That the review be overseen by SCOCA.***

3.2 Abolition of mandatory qualification requirements

Travel agents are required by legislation to be personally qualified, in terms of training and experience, or employ someone who is so qualified, in order to carry on business as a travel agent.

CIE found that existing training and experience requirements, which relate primarily to air ticketing, were not relevant indicators of competence and created an unjustified burden in some cases. Particular reference was made to bus and coach operators and inbound tour operators who were "caught" by travel agents legislation. It was suggested that training and experience relating to airline ticketing, was irrelevant in those cases.

CIE suggested that even with conventional travel agents, training and experience did not deliver the diversity and complexity of skills necessary to be a successful consultant.

CIE reported that the cost of complying with mandatory qualification requirements was unquantifiable.⁹ However, it did note that the cost (to Government) of administering the licensing system and investigation activities must be recognised. To the extent that licence fees are cost reflective, CIE estimated the cost of compliance at \$1.2 million per annum.¹⁰

CIE concluded that competition in the market for travel agents services and better informed consumers, meant that the objective of ensuring a minimum standard of service in the travel agents industry could be met without explicit government regulation.¹¹

Evaluation

Mandatory qualification requirements seek to address the risks to consumers arising from information asymmetry ie. where consumers have limited access to information to allow them to assess and compare the competencies of different service providers.

Although it is not the role of Government to ensure that travel agents have the “diversity and complexity of skills” necessary to be successful consultants, Governments have imposed mandatory qualification requirements which demand a basic level of competency. The question, however, is whether the degree of risk that exists justifies, on balance, the imposition of any minimum qualification requirements.

The Working Party believes that consumers of travel services, especially those travelling overseas, are particularly vulnerable to unusual and potentially serious problems. Incorrect flight bookings, for example, could well result in consumers being stranded at foreign locations.

In 2000/2001, the Department of Foreign Affairs and Trade provided consular assistance to 65,000 travellers out of an estimated 3.5 million Australians who travelled overseas. In the same year, its 24 hour Consular Operations Centre handled a further 89,000 enquiries.¹²

In 2000/2001, an estimated 453 staff¹³ of the Department were engaged in providing consular services at an average unit cost of \$596.¹⁴ If incorrect flight arrangements due solely to untrained or inappropriately trained staff were to generate even a 1% increase in the number of persons seeking consular services, the additional cost to the Commonwealth Government each year would be about \$920,000. If those persons requiring assistance also lodged a complaint with their respective State or Territory Consumer Protection authority on their return to Australia, this would generate a further cost to State and Territory Government's of about \$570,000 based on a unit cost of \$369 per conciliation service.¹⁵

The potential cost to Governments would be in addition to the direct cost of claims against travel agents arising from consumer loss or damage suffered as a result of incorrect bookings. If those seeking consular services required an overnight stay at a foreign location, the total loss to travellers would be approximately \$460,000 each year.¹⁶

Other unquantifiable benefits flowing from the mandatory qualification requirements include:

- enhanced demand for services due to consumer confidence; and
- enhanced reputation of the travel industry-

CIE's estimated cost of compliance of \$1.2 million is \$0.29 million less than the potential cost to Government in terms of additional consular assistance and conciliation services (assuming an increase of just 1% in the number of consular services demanded). Accordingly, even without regard to the estimated savings from consumer losses avoided, and other unquantifiable benefits, the Working Party believes that current qualification requirements yield a net benefit to the community or, at least, are unlikely to result in a net cost.

The Working Party notes CIE's observation that the mandatory requirements are not, in some cases, relevant to the nature of business conducted by agents that do not fit the conventional mould of a travel agent.

Although the activities of entities such as bus and coach operators are dissimilar to that of conventional travel agents, in most jurisdictions the qualification requirements only apply to those entities that are engaging in activities involving air travel. In Western Australia, for example, a coach operator who holds a travel agents licence is not required to be qualified by either training or experience, if he is not engaging in activities involving the selling of air tickets (or international travel otherwise than by air).

The Working Party believes that the concerns that have been identified by CIE with respect to qualification requirements for different types of agencies, do not stem from a problem with mandatory qualifications but from a lack of uniformity amongst jurisdictions. It is apparent that the requirements, in some jurisdictions, do not have regard to the specific nature of activities engaged in by some agents.

Having regard to the issues identified by CIE, the Working Party supports a review of the qualification requirements of each jurisdiction to ensure that they are uniform, in keeping with the spirit and intent of the Participation Agreement.

The majority of submissions received following the release of the CIE report, supported the retention of mandatory qualification requirements.

Working Party recommendations:

- ***That mandatory qualification requirements be retained.***
- ***That qualification requirements in each participating jurisdiction be reviewed and amended so that they are uniform, in keeping with the spirit and intent of the Participation Agreement.***

3.3 Changes to the licensing framework

In its analysis of the licensing framework, CIE examined alternative regulatory arrangements ranging from full deregulation to the retention of the current National Scheme. The alternatives included consideration of industry accreditation, negative licensing and positive licensing models.

Industry accreditation, as proposed by the Australian Federation of Travel Agents (AFTA), was considered by CIE to be a better way of achieving one of the objectives of the National Scheme with respect to travel agent competencies. However, CIE expressed the view that the cost of running an accreditation scheme was unlikely to be cheaper than under the existing licensing system. CIE also expressed some concern about the compulsory nature of the accreditation scheme, which it felt might increase barriers to competition.

Negative licensing is a mechanism whereby potential entrants to an industry are prohibited from entering if certain conditions are not met or by excluding them if conditions are breached. Negative licensing was considered by CIE to display certain advantages with respect to reduced administration costs for both government and industry but shifted some of the cost on to consumers upon whom more of the responsibility would fall in bringing non-conforming agents to disqualification.

Positive licensing was identified by CIE, as the preferred model as it provided consumers with a simple means of identifying agents that satisfied regulatory requirements and provided greater opportunity for industry participants to identify non-compliant agents.

Under the current National Scheme, applicants for travel agent licenses are required to satisfy three key conditions:

- to be fit and proper persons to hold a licence;
- to be qualified (in terms of training and experience); and
- to become and remain members of the TCF.

As previously indicated, CIE recommended the retention of the positive licensing model for travel agents, but modified so as to limit it to a “fit and proper person” test and a check to ensure that compulsory insurance requirements are satisfied. CIE’s recommendation is dependent on two of its other key recommendations being supported ie. abolition of compulsory TCF membership and compulsory qualification requirements.

The “fit and proper person” test relates to the legislative requirement imposed on licensing authorities to refuse a licence where a person appears not to be of good reputation or character or is in any other way, not a fit and proper person.

CIE referred to this test as a screen that is intended to prevent “high risk” applicants from entering the travel industry. Although the overall cost of compliance with this test was found to be minimal (total cost approx \$11,000 Australia wide per annum) CIE said that it could be argued that its benefits were not well demonstrated, as it was not possible to screen for criminal intent.

Although an “imperfect” test, CIE expressed the view that given the low cost of compliance and the average loss per failed agency (\$62,000), the test would need to prevent only one incident of loss every five and a half years in order to generate net benefits. The retention of the test was also seen by CIE as necessary to keep risky operators out of the industry to encourage the participation of private underwriters.

Evaluation

Unlike most goods and services where payment is generally made at the time of receipt, travel services generally involve payment of money well in advance of services being provided. Furthermore, payments can be significant and are made to persons who are not the ultimate service providers.

Whilst conceding that a person’s criminal past is not a reliable indicator of future intent, the Working Party believes that consideration must be given to an applicant’s criminal past where significant amounts of money are involved. With gross ticket sales in Australia of \$8.5 billion per annum, it is highly plausible that frauds will be committed and that the rate of fraud would be greater in the absence of criminal record and other probity checks.

The Working Party agrees with the assessment of CIE in respect of the “fit and proper person” test but supports its retention as an integral part of the existing licensing framework. Many of the submissions received following the release of the CIE report, supported the retention of licensing in its present form.

As previously indicated, the Working Party also supports the retention of qualification requirements and compulsory TCF membership.

Working Party recommendation:

That the existing positive licensing framework be retained without modification.

3.4 Other recommendations

Increase in exemption threshold

Currently, in most jurisdictions, persons are exempt from travel agents licensing if the total value of travel arrangements made by the person, does not exceed \$30,000 in any one financial year.

The original purpose of the exemption was to allow small operators, such as social and sporting clubs, to conduct a modest amount of travel related business, incidental to their primary activities, without them having to obtain a licence. CIE remarked that an exemption based upon turnover was the most practical way of dealing with such matters.

Consumers who deal with persons operating within the scope of the general exemption, are at risk of losing money in the event of loss or defalcation. However, the relatively low exemption threshold means that the risk posed to individual consumers is minimal.

CIE examined the current exemption threshold having regard to changes in the Consumer Price Index between 1986 and 2000 and supported an increase in the threshold to \$50,000.

The overwhelming majority of submissions received in relation to the exemption, supported an increase in the threshold to \$50,000.

The Working Party is not aware of any detriment suffered by consumers as a result of dealing with persons operating within the general exemption. Accordingly, it supports the recommendation made by CIE.

Working Party recommendation:

That the current licence exemption threshold be increased to \$50,000.

Crown exemption

At present, Government owned businesses actively compete with travel agents in the same marketplace.

CIE found that the principle of competitive neutrality dictates that Government owned businesses should face the same regulatory environment as their private sector competitors. Accordingly, it recommended that the exemption for Crown owned businesses be removed.

The Working Party concurs with the recommendation of CIE.

Working Party recommendation:

That the exemption for Crown owned business entities be removed.

Definition of travel agent business

The legislative definition of travel agent business is essentially a function-based definition in that the functions performed by a person determine whether or not that person is subject to regulation.

CIE reported receiving submissions which suggested that the definition was too broad and, as a result, many businesses were regulated that were never intended to be covered when the legislation was introduced. CIE found that the definition did draw in a wide range of businesses but that those businesses did, to a varying degree, take and hold funds on behalf of other principals ie. in an agency capacity.

CIE indicated that there was no easy way around the issue and that the main alternative, was to identify specific occupations or business types. The alternative, however, posed administrative difficulties and provided greater scope for avoiding regulation by structuring activities in such a way as to fall outside a particular definition.

CIE suggested that the current function based definition remained the most appropriate under current regulatory arrangements.

The Working Party concurs with the recommendation of CIE.

Working Party recommendation:

That the current function based definition for travel agent business remain unchanged at this time.

NOTES

1. National Competition Policy Review of the National Scheme for the Regulation of Travel Agents, Centre for International Economics, Canberra & Sydney, March 2000, p92 (CIE report).
2. Ibid p(xix)
3. Ibid p91
4. Ibid p98
5. Ibid p88
6. Ibid p86
7. TCF Submission p12
8. CIE report op cit: p117
9. Ibid p58
10. Ibid p44
11. Ibid p114
12. Department of Foreign Affairs and Trade Annual Report 2000/2001, pp 143-145
13. Estimate based on the total average number of staff employed in providing consular and passport services (659.4) less the estimated number of staff members engaged in passport services. The number engaged in passport services was estimated by dividing the total number of passports issued (1,088,574) by the average number of passports issued per staff member (5274). (*Department of Foreign Affairs and Trade Annual Report 2000/2001, op cit, p282 & p155*)
14. Estimate obtained by multiplying the total cost of providing consular and passport services (\$133,734,000) by the estimated number of staff engaged in consular services (453), divided by the total average number of staff employed in providing consular and passport services (659) and dividing the result by the total number of consular services provided ie. 65233 units of consular assistance plus 89,000 consular related telephone calls. (*Department of Foreign Affairs and Trade Annual Report 2000/2001, op cit, p280, p145 & p144*)
15. Estimated unit cost of a conciliation service per WA Department of Consumer and Employment Protection 2000/2001 annual report, p 23.
16. Estimate based on 1542 additional travellers seeking consular services, at an average loss of \$300 for accommodation, per traveller.
