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Travel Agents Repeal Bill

Mr PEDERICK (Hammond) (16:14 :56): I advise the house that I will not be the lead speaker on this bill.

Dr McFetridge interjecting:

Mr PEDERICK: I thank the member for Morphett for his support. I rise to speak to the Travel Agents Repeal Bill 2014. This bill was introduced in the other place on 22 May 2014 by the Hon. Gail Gago as Minister for Business Services and Consumers. The bill proposes to repeal the Travel Agents Act 1986 as part of a national reform program to reduce red tape and promote efficient regulation.

In regard to the national scheme, in 1986 a cooperative scheme for uniform national regulation of travel agents was introduced. Under the national scheme travel agents are required to be licensed under state legislation and to be members of the Travel Compensation Fund (TCF). This scheme is funded by fees on travel agents and compensates consumers who have suffered financial loss because their travel agent has failed to pay for travel or a travel-related service provider on their behalf.

After two decades of operation, the following drivers for change have emerged. One is the growth of direct distribution channels. A large proportion of travel arrangements are now made online. Online bookings in Australia increased from 5 per cent in 2001 to almost 35 per cent in 2008 at an average annual growth rate of 34.6 per cent. Globally this figure is estimated at over 50 per cent. Two thirds of travel and travel-related expenditure ($18 billion out of $27 billion) is now made without relying on a travel agent, and most consumer transactions fall outside the scope of the existing scheme and are not covered by TCF compensation.

This brings to mind a conversation I had with a semi-retired travel agent the other day where he informed me of the issues of booking online with international carriers. This is quite relevant to the legislation we are debating at the minute because people who go online, who might be looking at Singapore Airlines or Air France, do not realise that they are actually booking with an operator who is based in either Singapore or Paris, which circumvents everything around compensation. When it comes to the TCF and wanting to claim some compensation for a trip that goes pear shaped, they cannot, and they end up in a world of strife.

The second driver that has emerged is globalisation and consolidation. As I just said, the industry is becoming increasingly globalised and many overseas players have entered the local market, bypassing the national scheme altogether, and complex ownership arrangements undermine the effectiveness of the TCF's prudential oversight.

As a result of consolidation, the market is largely dominated by a small group of large companies that collectively hold almost 60 per cent of the market share. The TCF is no longer able to guarantee to compensate consumers in the event that one of the major travel agent businesses collapse.

Part 3 is about compliance costs, where the cost to industry of complying with the TCF's requirements is estimated at $19.3 million, and this was quoted by PricewaterhouseCoopers in 2011, and $18.4 million was quoted by KPMG in 2012. Then we get to four: regulatory duplication. Travel agents, particularly those that are incorporated or publicly listed, are already subject to financial controls under the laws of general application, the Franchising Code of Conduct and under industry-led mechanisms, such as accreditation obtained through the International Air Transport Association, (I-A-T-A).

Ms Redmond: IATA.

Mr PEDERICK: IATA, thank you, member for Heysen. In practice, these controls cover the majority of the travel agent market, which is dominated by a small group of large companies. In regard to the reform plan, from 2009 state and territory consumer affairs agencies developed a travel industry transition plan, taking into account two independent cost-benefit analyses and two rounds of public consultation. The plan was approved by a majority of state and territory governments on 7 December 2012.

The reforms are taking effect in four phases. In phase 1, from 1 July 2013, travel agents were not required to lodge annual financial returns to the TCF. Phase 2 involves the repeal of travel agents' legislation by 30 June 2014. Phase 3 is the introduction of a voluntary industry accreditation scheme from 1 July 2014. Phase 4 will mean closure of the TCF by mid to late 2015 and final payments of any consumer claims by 30 June 2015.

In oversight beyond the TCF, travel agents will continue to be regulated and consumers have redress through the following measures. Australian consumer law and existing company laws will continue to apply existing levels of consumer protection to transactions with all travel agents and travel providers. The transition plan also supports industry-led accreditation. Many travel suppliers already insist that only an accredited agent can provide a particular service, such as issuing tickets or selling boutique travel products. A new accreditation scheme, the AFTA Travel Accreditation Scheme (ATAS), is being established and administered by the Australian Federation of Travel Agents (AFTA)—we have plenty of acronyms here—and commences from 1 July 2014.

AFTA has received a one-off grant of $2.8 million for ATAS, funded by the TCF. To become accredited, a travel intermediary must agree to abide by the code of conduct and charter, confirm that their corporate policies, procedures and any consumer marketing activity will comply with Australian consumer law, be a fit and proper entity, be a registered Australian

Business Number (ABN) holder, comply with relevant sections of the ASIC administered Corporations Act 2001 as required, and provide certified financial accounts to prove solvency.

They also must provide evidence of adequate public liability insurance and professional indemnity insurance, demonstrate an adequate level of staff education and training, and provide evidence of an adequate complaint handling policy and procedures. Other accreditation available includes the International Air Transport Association (IATA), the Cruise Lines International Association (CLIA) of Australasia and the National Tourism Accreditation Framework using the T-QUAL symbol.

Obviously within the industry there are some concerns about where we will be with consumer protection moving forward from 30 June 2014. Typically, current consumer travel insurance only covers the cost of cancelling or changing any travel arrangements for unforeseen reasons, lost luggage or travel documents, legal bills and overseas emergency medical expenses. Most policies do not offer protection when consumers' travel arrangements fail to go ahead as planned because the airline or other end supplier collapsed or became insolvent.

Just digressing a little bit, I cannot remember the name of the show (I think it was only on last night) about travelling to Bali and the disastrous—

Ms Redmond: *What Really Happens i n Bali*.

Mr PEDERICK: *What R eall y Happens i n Bali*. Thank you, member for Heysen. It certainly proves that insurance is vitally necessary, especially in regard to medically related expenses. I know that I have never gone overseas without having medical insurance for myself or my family, when they have accompanied me, because there can be massive costs. I think it was around $70,000 to get someone out of Bali with a medical evacuation. It might sound a lot for someone to pay for their emergency medical insurance at the start of the trip, but it is pretty cheap pocket money if something goes wrong while you are overseas.

ATAS accredited agents are only required to hold public liability and professional indemnity insurance. Agents can opt to take out three types of insolvency protection offered by international passenger protection, represented locally by Gow-Gates: travel agent and intermediary failure insurance, which is only available for ATAS accredited travel agents; scheduled airline failure insurance, which covers insolvency of an airline; and end supplier failure insurance, which covers losses arising from the insolvency of an airline and other end suppliers.

It is not compulsory for travel agents to be accredited or for accredited agents to have any of these insurances. TCF funds will also be used to support the creation of the consumer voice. Choice has been a successful tenderer to undertake this project. In regard to the winding up of the TCF, all jurisdictions party to the national scheme need to repeal their travel agents' legislation. South Australia is the last state to introduce the legislation.

The TCF funds at the end of 2013 were $27,071,647. The TCF trust deed requires any funds remaining after the TCF closes to be redistributed to participating jurisdictions. No portion of the TCF funds will be redistributed to agents; however, the transition plan approved a range of uses, including funding educational and informative material about the reforms for businesses and consumers. As I mentioned earlier, a travel agent came to me with some concerns, and there are criticisms about these proposed reforms.

Some people are saying that instead of abolishing the TCF, it could have been reformed and it should not be abandoned before an effective replacement is in place. That is one criticism and certainly a valid one in this case. Also, the fact that both accreditation and insolvency cover will be voluntary, even for accredited agents, it will lead to market confusion and consumer vulnerability.

While the United Kingdom and New Zealand have a voluntary approach, both provide some default protection against travel agents' failures. I think this is somewhere that the Australian legislation, as committed by the states and territories, could have—

Ms Redmond interjecting:

Mr PEDERICK: Yes; and we could have followed suit and put some protections in place. AFTA claims that the TCF program lacks consumer awareness, with 97 per cent of the public unaware of its existence, according to them. Yet, the new regime puts a greater onus on the consumer to be informed beyond accreditation to insurance cover. ATAS is not independently governed from AFTA as the plan intended. ATAS has been developed to benefit AFTA and the large operators that constitute the board, who are determined to avoid volumetric insurance under the TCF.

The market arrangements are said to be unfair, with AFTA members being told that they have to be ATAS accredited, and travel agent and intermediary failure insurance only available to ATAS accredited travel agents; also, fees are relatively high for smaller entities. The current fee for TCF is $425 per annum for a head office or sole location and $320 for each additional location. ATAS participation is subject to an annual fee and based on an entity's annual gross total transaction value. The fee for an agent with a turnover of $1 million would be $1,350 for a non-AFTA member. If the agent's turnover was $250 million, the fee would be $20,000 for a non-AFTA member, and that is 15 times higher for a 250 times increase in turnover. However, the accreditation does not relate to any form of insurance cover.

Without the protection of a statute, the client trust accounts held by travel agents are vulnerable to claims from financial institutions. We on the side of the house seek clarification—and we will hear back from the minister—about the security of agent-held client funds, with the repeal of the act, and the fairness of the market and governance arrangements. We think that there is need for a higher level of consumer awareness of the new arrangements, and the implementation of ATAS needs to be fair to small to medium operators.

I note that in the second reading speech made in the other place, the minister talks about the government's ongoing commitment to remove red tape. In the first instance, I think that is a great thing, but in the second instance, when you delve into the situation—I have had some feedback from some travel agents in my electorate—there could be some real issues in what happens in the actual running of the act if it does come into place in the near future. There are some real issues with whether people will have compensation.

You talk to people involved in the travel game, and they are very good operators. You can hear some of them advertising on the radio and they have their nightly shows, and they are very good operators, in the main. They have 24-hour call service—because obviously with the time zone differences you could be anywhere in the world—where you can ring your agent (if obviously they are one of these more reputable agents) and get service and get it all sorted out if something has gone wrong with some sort of tour, river cruise or a guided tour, or whatever tourism activity that someone is taking up. In talking to some of the operators in my area, what they are concerned about is that, under the new regime, someone can just set up shop across the road from someone who has been dealing with travel for the last 20, 30 or 40 years and decide to go into business with no accreditation and—

Ms Redmond: No knowledge.

Mr PEDERICK: Yes—no knowledge and no safety net, no fallback for the consumer. We all know how easy it is for people to go for the cheapest rate and think, 'Fantastic, I've stolen that trip. It's only cost me $2,000' where perhaps with the agent across the road who has been accredited for 20 or 30 years it might have been $2,300, but it might have come with all these protections and that client and operator service that you need when or if there are problems in regards to the tour.

If you are in Europe, North America, Canada, or anywhere in the world for that matter, you are a long way from home and the last thing you want when you are away is for something to go wrong. So, I seek assurance from the minister's comments to the house in regard to the protections that people will have under this scheme and the fairness that will be implemented for operators who have been involved in the travel industry for decades, who have done good work and who have looked after their clients and how that stacks up equitably with people who just pop up if this legislation is introduced and decide to run perhaps not such an honourable business venture.

Ms Redmond: Fly-by-night.

Mr PEDERICK: Fly-by-nighters—thank you, member for Heysen. As I said before, we on this side of the house are very keen to see red tape reduced, but we also want to see it reduced in a way that still gives people equity. We do not want to see thousands of people who are having distinct problems with new legislation, because what we have had in the past has done the job and next thing we have some fly-by-nighters or some not so honourable people setting up businesses.

Then when it all goes wrong when people are away on their holidays and they just want to enjoy that little bit of time they have got with the opportunity to travel, it can cost them many tens of thousands of dollars and not have any redress in regard to that. So, I will be very interested in the government's remarks on this bill and to see how it progresses through the house.