

14 NOVEMBER 2013

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## TRAVEL AGENTS REPEAL BILL 2013

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**Bill introduced on motion by Mr Anthony Roberts, read a first time and printed.**

### Second Reading

**Mr ANTHONY ROBERTS** (Lane Cove—Minister for Fair Trading) [3.42 p.m.]: I move:

That this bill be now read a second time.

I am pleased to introduce the Travel Agents Repeal Bill 2013, which repeals the Travel Agents Act 1986 and removes a significant red tape burden on this industry. The internet and e-commerce have transformed the way consumers purchase flights, hotels, tours and other travel-related products. The 1986 Travel Agents Act is based on an outdated concept of how this industry operates. The Australian Consumer Law, which commenced on 1 January 2011, has much more relevance to consumer travel purchases both now and into the future.

The Travel Agents Act came into being as a result of jurisdictions entering into the Participation Agreement for the Co-operative Scheme for the Uniform Regulation of Travel Agents in 1986. The participation agreement involved jurisdictions agreeing to pass a State Act regulating travel agents and to establish a compensation scheme called the Travel Compensation Fund. The participation agreement also established a ministerial council to oversee the operation of the cooperative scheme. The Travel Agents Act regulated the industry through a licensing requirement as well as a requirement to contribute to a compensation scheme, the Travel Compensation Fund. The scheme was designed for an era when travel agents controlled access to and information about travel.

It was established to protect cash prepayments to travel agents at a time when there were almost no alternative payment means. If an agent failed to account for a consumer's prepayment to the travel provider, a claim could be made on the Travel Compensation Fund. Given that payments are now frequently made directly to travel providers and/or by credit card, the Travel Compensation Fund and licensing has become increasingly redundant. However, the regulatory scheme has placed a costly administrative burden on the industry. Two different consultancies have estimated the financial burden on Australian business to be between \$19.57 million and \$25.3 million predominantly attributable to the Travel Compensation Fund requirements. It is further estimated that 39 per cent of agent enterprises and 47 per cent of industry revenue comes from New South Wales, making this a particularly important reform for the State.

The existence of the Travel Compensation Fund has also implied that there is a compensation option at large for travel purchases. This is not so. The fund covers failure to account for cash prepayments by a licensed travel agent. As this regulatory burden applies only to Australian-based agents, our local

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businesses are at a significant disadvantage when competing with offshore providers. Furthermore, if a travel consumer faces a problem these days, experience is showing that it is an issue that the Travel Agents Act does not address. The Act does not address supplier failure, pricing irregularities, poor service, misrepresentations or misleading information.

After a public consultation, the Council of Australian Governments Legislative and Governance Forum on Consumer Affairs approved the Travel Industry Transition Plan. The plan sets out reforms to travel agents' regulation and to the Travel Compensation Fund, to take effect in four phases: from 1 July 2013 there was a removal of the requirement to lodge Annual Financial Returns to the Travel Compensation Fund; travel agents legislation is due to be repealed by all jurisdictions by 30 June 2014; voluntary industry accreditation to commence in mid-2014; and closure of the Travel Compensation Fund and final payment of any consumer claims by mid to late-2015. The plan also makes arrangements to dedicate a proportion of remaining Travel Compensation Fund funds to a range of purposes, including but not limited to: stakeholder communication and education initiatives both as part of the implementation process for the recommended reforms and on a long-term basis; a one-off grant for consumer research and advocacy purposes; a one-off grant to fund development of an industry-led accreditation scheme by a national working party of government, industry and consumer representatives; and payment of the Travel Compensation Fund's legal fees for undertaking cost recovery action relating to these claims. Any remaining funds in the fund reserves will be redistributed to Australian governments according to the terms of the trust deed.

In implementing the plan, governments and agencies have agreed to work with industry to ensure there is appropriate disclosure of consumer risk in agency transactions and in developing commercial solutions to address business insolvency. Both industry and consumers can see the benefits from the more contemporary approach to the issues they face and for this reason they both support the reform package. New South Wales and Victoria are leading the coordination and cooperation across jurisdictions with industry, consumers and the fund to enable an orderly transition. To demonstrate this leadership role, both New South Wales and Victoria are this week introducing their repeal legislation—the Victorian legislation was introduced yesterday. I thank the Victorian Government, and in particular the Victorian Minister, Heidi Victoria, for its work on this transition process.

I will now explain the detail of the Travel Agents Repeal Bill 2013. The commencement of the legislation is 1 July 2014. The bill repeals the Travel Agents Act 1986 and the Travel Agents Regulation 2011. The savings provisions and transitional matters will commence on enactment of this legislation. The compensation scheme in the Travel Agents Repeal Bill is defined to be the compensation scheme known as the Travel Compensation Fund, which is prescribed under the Travel Agents Act 1986. The bill provides that there will be no compensation payable by or on behalf of New South Wales in connection with the repeal. A savings provision provides that a travel agent may apply for a review of a decision of the director general made before commencement of the legislation.

The bill provides that a consumer may appeal against a decision of the administrators of the Travel

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Compensation Fund and the tribunal will determine the appeal in accordance with the compensation scheme. Savings provisions preserve certain rights of the compensation scheme trustees, in particular, rights of subrogation in respect of a payment made to a claimant under the compensation scheme whether the payment was made or the act or omission concerned occurred before or during or after that repeal of the Travel Agents Act.

The bill provides that the compensation trustees can continue to take necessary legal action which is required to administer the Travel Compensation Fund. Savings provisions enable the director general to take action for any offence against the Travel Agents Act 1986 which occurred before its repeal. Savings provisions continue the effect of any disqualification from being involved in the direction, management or conduct of business as a travel agent immediately before the repeal of the Travel Agents Act 1986 for the duration of the disqualification period up until this repeal Act is repealed. A breach of this provision will have a maximum penalty of 50 penalty units.

The definition of "business as a travel agent" is continued for the purposes of this provision. The savings and transitional provisions will be repealed on a day to be appointed by proclamation and this date will be after the Travel Compensation Fund is closed, which is anticipated to occur after 1 July 2015 and before 31 December 2015. Consumers who purchased from a licensed travel agent up to and including 30 June 2014 will be able to make a claim for compensation to the fund within 12 months of the failure to account, that is, by 30 June 2015. The framework to wind up the Travel Compensation Fund is in place and the transition plan is well advanced.

**ACTING-SPEAKER (Mr Gareth Ward):** Order! There is too much audible conversation in the Chamber. People wishing to have conversations will take them outside or I will start placing people on calls. The Minister will be heard in silence.

**Mr ANTHONY ROBERTS:** NSW Fair Trading wrote to every licensed travel agent in June this year to set out the changes ahead. Communications for consumers will commence in late 2013 about how to make wise travel purchases. Officials from all jurisdictions are assisting the Australian Federation of Travel Agents to establish its accreditation scheme by providing feedback through every step. In the next few months, the outcome of a limited tender to consumer advocates for the development of a capacity-building voice will be determined. The well-considered transition plan replaces largely redundant institutions and approaches in favour of market-based mechanisms capable of accommodating all parties' needs for future travel transactions. This bill is a core part of the transition plan and will encourage growth and employment opportunities for this important industry in New South Wales. I commend the bill to the House.

**Debate adjourned on motion by Ms Tania Mihailuk and set down as an order of the day for a future day.**