The Tourism Services Bill 2003 (Qld) was introduced into the Queensland Parliament by the Hon Merri Rose MP, Minister for Tourism, on 27 May 2003. The main features of the Bill are –

- the requirement for inbound tour operators (ITOs) to be registered unless exempt;
- for ITOs and tour guides to adhere to a mandatory Code of Conduct;
- for ITOs and tour guides to refrain from engaging in unconscionable conduct.

The Bill will protect overseas tourists who are vulnerable to exploitation by unscrupulous ITOs and tour guides due to cultural and language barriers and will enhance the reputation of Queensland’s tourism industry which generates $14 billion in revenue each year. A number of consumer issues involving overseas tourists have been the focus of government and media attention in recent times. Those include –

controlled shopping;
misrepresentations;
overcharging for goods and services; and
unconscionable conduct.

The new laws will endeavour to discourage the entry of, and remove existing, dishonest operators that compromise the reputation of the industry as a whole.

Nicolee Dixon
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1 INTRODUCTION

The Tourism Services Bill 2003 (Qld) (the Bill) was introduced into the Queensland Parliament by the Hon Merri Rose MP, Minister for Tourism, on 27 May 2003. The main features of the Bill are –

- the requirement for inbound tour operators (ITOs) to be registered unless exempt because only a small part of their business is the overseas market; and
- for ITOs and tour guides to adhere to a mandatory Code of Conduct and
- for ITOs and tour guides to refrain from engaging in unconscionable conduct.

The Bill will protect overseas tourists who are vulnerable to exploitation by unscrupulous ITOs and tour guides due to cultural and language barriers and will enhance the reputation of Queensland’s tourism industry which generates $14 billion in revenue each year. A number of consumer issues involving overseas tourists have been the focus of government and media attention in recent times. Those include –

- controlled shopping;
- misrepresentations;
- overcharging for goods and services; and
- unconscionable conduct.

The new laws will endeavour to discourage the entry of, and remove existing, dishonest operators that compromise the reputation of the industry as a whole.

2 SOME TOURISM STATISTICS

From July 2002 to April 2003, 4,078,200 visitors arrived in Australia, a 0.5% drop on the corresponding period in 2001-2002. In the 2001-2002 financial year, there were

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1 Also the Minister for Racing and Minister for Fair Trading.

2 Hon Merri Rose MP, Minister for Tourism, Minister for Racing and Minister for Fair Trading, Tourism Services Bill 2003 (Qld), Second Reading Speech, Queensland Parliamentary Debates, 27 May 2003, pp 2075-2079, p 2079.

3 Hon Merri Rose MP, Second Reading Speech, p 2075.
4,768,294 visitor arrivals in Australia, representing a 2.5% increase on 1999-2000 where there were 4,651,785 arrivals.4

Around 1.3m visitors (26% of the total of short-term overseas tourists) returning home from Australian holidays nominated Queensland as the state where they had spent the most time.5 Around 1.9m international tourists spent some time in Queensland during 2001-2002, with 43% being from Asia (particularly Japan).6 Overall, in the year to December 2002, international visitor numbers fell, with concerns about terrorism influencing travel decisions.

During 2000-2001, most overseas tourists to Australia were from New Zealand (17%) while 14% were from Japan and 13% came from the United Kingdom. Most (66%) were on holidays, particularly from the aforementioned countries, but 62% of Asian visitors came to Australia for ‘education’ purposes. Inbound tourists tend to stay for long periods, with 43% staying at least 2 weeks and 22% staying for at least 1 month during the 2001-2002 financial year.7 From July 2002 to March 2003, the top ten source countries for inbound tourists were China (increase of 19% compared with the corresponding previous period), Korea (up 12%) and Japan (up 11%), Singapore (down by 7%), Hong Kong (down by 6%), Germany (down by 1%) and New Zealand (down by 1%).8

A number of events have jolted the inbound tourism industry. The terrorist attacks in the USA on 11 September 2001 and the collapse of Ansett Airlines impacted on international tourist numbers in the December 2001 quarter but arrivals increased again in the March 2002 quarter. Further downturns were caused by the international tensions following the October 2002 bombings at a Bali nightclub. Then, in early 2003, Severe Acute Respiratory Syndrome was detected in a number of Asian countries causing the World Health Organisation to issue an emergency travel warning and, in March, military action against Iraq began. The ABS reported that the seasonally adjusted preliminary

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7 ABS, ‘Tourism – International Inbound Tourism, Year Book Australia 2003, Cat No 1301.0.

8 ABS, Overseas Arrivals & Departures Data, Australia, Cat No 3401.0.
estimate of short-term visitor arrivals for April 2003 – at 327,000 – was the lowest in over 5 years. There has been a 40% decline in South East Asian tourist arrivals and a 28% drop in arrivals from North East Asia for April 2003.\textsuperscript{9} International travel to Australia is expected to fall by 5.3% during 2003 but with a recovery forecasted to occur in 2004.\textsuperscript{10}

The Queensland Treasury’s Office of Economic and Statistical Research (OESR) reports that, after six quarters of annual growth, guest nights in Queensland fell by 2.5% to June 2002 – more than for the rest of the country (1% decline) but rose again (by 1.1%) in the September 2002 quarter.\textsuperscript{11} The drop in tourist numbers appears mainly attributable to the events indicated above.\textsuperscript{12}

International visitors to Queensland totalled 1,349,230 for the year ended March 2003, down by 0.3% from the previous period.\textsuperscript{13} However, compared to the previous period, Queensland experienced the largest increase in overseas visitors of all the states and territories (up by 6%). The State’s biggest market was Japan (25%), followed by the UK (14%), and New Zealand (14%). 79% of visitors came for a holiday.\textsuperscript{14}

The Tourism Satellite Account, used by the ABS to measure economic contribution of tourism,\textsuperscript{15} revealed that over $70b worth of tourism goods and services were consumed in 2000-2001. It is estimated that in that period, direct tourism gross value contributed 4.3% to total industry gross value added. The indirect impact to tourism on gross value added was 4.4%. Inbound tourism makes a significant contribution to national economic growth. In 1999-2000, visitors from all countries spent an average of $4,066 on each trip with the Chinese visitors spending the most.\textsuperscript{16}

\begin{itemize}
  \item \textsuperscript{9} ABS, \textit{Overseas Arrivals & Departures Data, Australia}, Cat No 3401.0.
  \item \textsuperscript{12} OESR, \textit{Queensland Economic Review} 2002/4, p 10.
  \item \textsuperscript{13} ABS, \textit{Overseas Arrivals & Departures Data, Australia}, Table 1.
  \item \textsuperscript{14} Tourism Queensland, citing data from Bureau of Tourism Research, \textit{International Visitor Survey}.
  \item \textsuperscript{15} It allows tourism to be compared to conventional industries by creating a broad picture. See ABS, \textit{Year Book Australia} 2003, ‘Tourism – the economic contribution of tourism’.
  \item \textsuperscript{16} ABS, \textit{Year Book Australia} 2003, Tourism – international inbound tourism – expenditure.
\end{itemize}
A detailed study of the Contribution of Tourism to Queensland’s Regions 1998-1999 published by the OESR shows, as at June 1999, that domestic and international tourism contributed $6.1 billion to the Queensland economy and accounted for 6.2% of Gross State Product. It is the seventh largest industry and is comparable to the contribution made by agriculture, forestry, fishing and mining and it is also the second largest export earner (generating $3.5 billion annually). Expenditure by international visitors was $3.5 billion. As well as spending on accommodation, international tourists also spend large amounts on shopping, gifts and souvenirs. Tourism also accounts for the employment of around 9% of employed Queenslanders and one job is created for every 65 international visitors. It has also played a large part in the construction boom at popular tourist destinations.

China is anticipated to be one of Australia’s largest source markets for inbound tourism and grew by around 20.3% between 2001 and 2002. Economic growth has been strong, despite general global downturn, and has a favourable impact on travel. The Chinese Government has recently expanded its Approved Destination Status (ADS) system but Australia has the advantage of having been one of the first western countries to have received ADS approval for holiday travel. A number of campaigns and promotional activities are currently being directed at the Chinese market and initiatives to enhance the holiday experience through improvement of the quality of tourism products and services provided. It is anticipated that around 623,000 Chinese visitors will visit Australia each year by 2012, although there has been a 28% drop in April 2003 from the number of arrivals in April 2002.

3 INBOUND TOUR OPERATORS AND TOUR GUIDES

Inbound Tour Operators (ITOs) are vital to the promotion and success of the international tourism market. It is understood that over two thirds of international tourists (mainly Asian visitors) use ITOs’ services and spend over $1.3b on such services.

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ITOs contract with local product suppliers (e.g., accommodation establishments, tour guides, local tour operators) for the supply of ‘package’ tours (containing transport, accommodation, tour guides, attractions, restaurants, etc.) to sell to mainly overseas-based tour wholesalers or retailers. The ITOs will usually ‘package’ the tour and plan an itinerary incorporating the products. They might also act as brokers for overseas-based travel companies to provide services such as coordination of travel arrangements and provision of tour guides and translators. Some ITOs aim packages at the domestic market also.

ITOs work on a commission basis. Most services sold tend to have 25%-30% margins.

The national industry association for tourism export is the Australian Tourism Export Council (ATEC) to which around 50% of ITOs belong, with 31 members based in Queensland. ATEC’s role is to lead, represent and offer advice to its members and to the industry as a whole. It is difficult to determine the number of ITOs but ATEC estimates that there are approximately 300 operating in Australia at the present time.

In terms of regulation, many ITOs need to be licensed under the Queensland Travel Agents Act 1988 (or its counterpart in other jurisdictions apart from the Northern Territory) as they fall within the definition of ‘travel agent’ as defined by s 9 of the Act. A person carries on the business of a travel agent if the person, in the course of a business, sells or arranges for the sale of or advertises that he or she is willing to sell or arrange for the sale of (a) rights to travel; or (b) rights to travel and accommodation. However, it is unclear how many ITOs are actually licensed to operate; the lack of clarity may be because some ITOs do not fall within the definition while others may be exempted by falling beneath the minimum turnover threshold required to be a travel agent; or, more worryingly, some ITOs may be in breach of the legislation.

Tour guides are generally individuals who take tourists on guided tours in a specific location. They interpret and deliver information in the language of the visitor and provide general assistance with matters such as arrival and departure and touring details. They might also provide a range of services such as driving and equipment.

A tour guide can be an employee, independent freelancer, an owner/operator, or a volunteer guide. The main professional associations include the Institute of Australian Tour Guides (ITAG) and the Professional Tour Guide Association of Australia. A new umbrella organisation, the Guiding Organisation Australia, seeks to establish a national

21 Public Benefit Test Report, pp 5-6.


23 Public Benefit Test Report, p 18.
tour guide registration scheme which is receiving government support. There are currently no laws specifically directed at tour guides in any jurisdiction in Australia but the Public Benefit Test Report review process found much stakeholder support for some type of regulation.\(^{24}\)

4 PROPOSALS TO REGULATE TOURISM SERVICES IN QUEENSLAND

It would seem that the holiday ‘experience’ is the factor that will determine whether the overseas visitor will return to the destination or recommend it to family and friends. Thus, a bad holiday experience caused by the practices of unscrupulous ITOs in a tourist destination and the resulting poor reputation of the Australian tourism industry will have an adverse impact on potential tourism growth. That outcome is not good for the industry as a whole or for the economy of states such as Queensland where tourism plays an important part.

4.1 PROBLEMS IN THE INBOUND TOURISM INDUSTRY

As a recent Queensland Government Public Benefit Test Report ‘Proposed Regulation of Tourism Services in Queensland’ noted, the problems in the tourism industry relating to dishonest and unfair practices are not confined to Queensland or even to Australia.\(^{25}\) However, a number of newspaper reports indicate that the problems appear to be highlighted in certain areas such as the Gold Coast and in Sydney.

The Public Benefit Test Report examined the outcome of Tourism Queensland’s consultation with a number of stakeholders including tourism industry associations, tourism operators, retailers, government and tourists to ascertain the main problems associated with the provision of tourism services.\(^{26}\) Discussions with stakeholders indicate that, while the practices and problems to be described below apply across all markets, they tend to be most noticeable in less mature markets such as South Korea, Taiwan and China where tourists are not very familiar with Australia, have little experience in travel, and have limited access to independent advice.

\(^{24}\) Public Benefit Test Report, p 7.

\(^{25}\) Public Benefit Test Report, p 7.

\(^{26}\) Public Benefit Test Report, p 8-12.
It appears that most of the problems identified have been caused by ITOs whose primary business is to sell travel packages overseas rather than those catering to the domestic market.\(^\text{27}\)

The dishonest or unfair practices identified appear to be as follows –

1. **controlled shopping** – where ITOs are provided with fees and commissions (sometimes up to 40%) from retailers for taking tourists to the store or restaurant to shop for goods and services. This provides the incentive for the more unscrupulous operators to restrict tourists to the ‘preferred’ trader by engaging in practices that take advantage of international tourists’ language barriers and lack of local knowledge. The disadvantage to the tourist is that the ‘preferred’ traders’ prices are often inflated. There are some reports of physically impeding tourists from shopping at other retail outlets by blocking doorways or taking tourists’ credit cards, travel documents and wallets by stating that it is unsafe to carry them (meaning the operator will tend to materialise only when a purchase is to be made from the ‘preferred’ outlet). Other tactics include operators informing visitors that the area containing the non-preferred traders is unsafe.\(^\text{28}\) Conversely, retailers may be coerced into paying large commissions by operators threatening to take tourists elsewhere.

It appears that the above practices are particularly prevalent where the travel package is sold at bargain basement prices or below cost with any losses to be recouped through commissions received as a result of tourists’ shopping sprees. This appears to be marked in the Korean and Taiwanese markets.

The consultation process informing the *Public Benefit Test Report* confirmed that the above tactics were continuing. The Surfers Paradise Traders’ Association has recently claimed that loss of business through refusal to pay the commissions to operators has been a large reason for the closure of 74 tourist outlets on the Gold Coast in 3 years and for the demise of others in Sydney, Melbourne and Cairns.\(^\text{29}\)

2. **misrepresentation and defamatory remarks** – a practice generally associated with controlling shopping choices where the operator makes misleading or untrue statements about non-preferred traders and/or their products to discourage the relevant tourist group from visiting them. A group of international tourists may be told, for example, that the relevant trader’s goods or accommodation services are of

\(^{27}\) Hon Merri Rose MP, Minister for Tourism, Second Reading Speech, p 2077.


poor quality or are made in such a way that they will be confiscated by Customs. They might be told that only certain retailers (the preferred ones) will accept travellers’ cheques or certain types of credit cards. There are also reports of tourists being told that certain retailers do not have ‘Government approval’!

3. **overcharging for goods and services** – some operators inflate prices of sightseeing packages and items such as theme park tickets and restaurant meals for tour groups. In a recent newspaper report, it is stated that a booking receipt for one operator, Kintetsu International, showed that a group of Japanese tourists were charged $110 each for a Gold Coast ‘beach tour’ and $150 each for a seafood meal which was available to the general public at $50. It was also claimed that Asian tourists paid $150 each, including dinner, to view glow-worms at a fake cave when they should have been told that they could be seen for free at a nearby Gold Coast national park. 

4. **low standards** – those include issues such as low quality tourism packages and poor professional standards. Sometimes this can be prompted by having sold the package at low cost in order to compete, where quality is correspondingly compromised. A related issue is that some operators will cut short the time available at advertised attractions (which will often be attractions of natural or cultural heritage offering a sense of the Australian ‘experience’ to overseas visitors) in order to maximise shopping opportunities. Sometimes a less lucrative activity may be significantly shortened so that a group may be herded through a theme park, which should be covered over a day, in under an hour.

5. **other practices** – those include operators changing activities without notice and changing itineraries so that there is little free time (in case the visitor goes to a non-preferred trader to shop) or informs the tourists only about shopping, not about other attractions or activities. There are also reports of operators having certain bodies such as port authorities tell a tourist arriving in Australia without a prearranged package certain information (including restricting information about the real price of comparative packages) that will steer the tourist toward the operator’s package.

It has been found that Korean visitors have been dissatisfied with a number of aspects of their holiday experience, mentioning issues such as poor quality service, lack of operators skilled in the Korean language, too much shopping in itineraries, insufficient cultural and

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30 Greg Roberts, ‘Get off the bus: price rorts hit Gold Coast tourists’.

31 *Public Benefit Test Report*, p 11.
wildlife content in the itineraries, restriction of tours to particular areas (eg Sydney or Gold Coast), and cost of goods.\textsuperscript{32}

An Australian Tourism Commission study revealed that of the Malaysian tourists asked about the quality of their tour guide service, 20\% expressed dissatisfaction. Other studies of Hong Kong and Taiwanese tourists found that 32\% and 38\% respectively were not satisfied with the service provided.\textsuperscript{33}

Recently, it has been reported that the Chinese inbound tourism market, which is predicted to become Australia’s largest by 2010, has been the target of unscrupulous operators. One incident that has been reported as under police investigation concerned a busload of Chinese tourists who had gone outside a restaurant to smoke and saw a shop nearby selling T-shirts at prices much less than they had been paying. When the tourists went to purchase them, they were rounded up by guards employed by the tour operator and ‘manhandled’ out of the shop. In another instance, a number of tourists were taken into a souvenir shop, where there were no price tags on the items, and told that a small kangaroo souvenir cost $33 and a sheepskin rug $1,650 but a nearby shop had identical items for $13.50 and $700 respectively.\textsuperscript{34}

While the fact that international tourists take home a negative experience as a result of such unfair practices is a concern in itself, a growing number of dissatisfied tourists has consequences for the Australian economy. Various studies have suggested that the number of international tourists who choose Australia as a destination is very much dependent upon advice they get from friends and relatives who have visited in the past.\textsuperscript{35}

A poor image of Australia as a holiday destination has implications for growth of the tourism industry and its ability to retain staff and generate further employment in sectors that rely upon tourism (eg bars, restaurants, cafes, accommodation, and retail). Some businesses reliant upon tourism may collapse. There is also the potential for a decline in State taxation revenue if there is a drop in tourism earnings (which tax base is already compromised by tax evasion and cash in hand dealings practised by some operators). With the reduction in international travel that has followed the terrorist attacks on September 11, the global economic downturn and general safety fears in the current

\textsuperscript{32} Public Benefit Test Report, p 11 citing earlier Visitor Satisfaction Surveys.

\textsuperscript{33} Public Benefit Test Report, p 12, citing an Australian Tourist Commission visitor satisfaction study at \url{http://www.atc.net.au/home.asp}

\textsuperscript{34} Greg Roberts, ‘Get off the bus: price rorts hit Gold Coast tourists’.

\textsuperscript{35} Public Benefit Test Report, p 12.
climate, Australia cannot risk losing overseas tourists to other markets as a result of bad practices within the tourism industry itself.

The potential for harm to the inbound tourism market, as the above study results suggest, has prompted government intervention. The need for a proactive response is necessary because it is difficult and costly for individual tourists to appraise themselves of the quality of their travel package and any potential pitfalls in advance of payment. However, while there is an apparent need for some form of regulation of ITOs and tour guides, it is difficult to determine the best way in which to do this so as to address the issues but minimise administrative and regulatory costs and other side effects.\(^\text{36}\)

### 4.2 BACKGROUND TO DEVELOPMENT OF LEGISLATION

The *Travel Agents Act* (*TAA*) in each jurisdiction (or the *Agents Act 1968* in the ACT) requires ITOs to be licensed and to contribute to a Travel Compensation Fund (the Fund). Licensing is intended to maintain industry standards and focus on the person being ‘fit and proper’ and having the relevant experience or qualifications. The Fund provisions are aimed at protecting consumers from financial loss in event of default by an agent. The *TAA*s are integral to a National Cooperative Scheme for the Regulation of Travel Agents which was established to achieve a coordinated approach to regulation across all states and territories (apart from the NT). The definition of ‘travel agent’ is very broad and encompasses many different business types but those businesses with low turnovers are exempted.

The Queensland *TAA* requires any individual, partnership or company whose business involves arranging or selling travel or travel and accommodation to be licensed. It covers general sales agents, tour operators, wholesalers, consolidators and retail agents. If the gross annual turnover of the business is less than $30,000 and it sells only domestic packages, it need not be licensed. Anyone who sells only day tours need not be licensed. To be eligible to be licensed, the applicant must be a ‘fit and proper’ person, and a manager of the agency must meet specified qualification and experience requirements. The application fee is $94.00 with an initial annual fee of $380 for a person and $914 for a corporation. Licensees must be members of the Fund. A person conducting business as a travel agent without a licence is liable to be fined up to $75,000. In some jurisdictions (eg Victoria, WA) such conduct may attract a 12 month term of imprisonment.\(^\text{37}\)

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\(^{37}\) Centre for International Economics, *National Competition Policy review of the National Scheme for the Regulation of Travel Agents*, CIE, Canberra & Sydney, March 2000, Appendix C.
However, it appears that the TAA has not been effective in preventing unscrupulous activities of ITOs. As noted, there are many ITOs who either fall outside the ambit of the Act or are merely disobeying the law. ITO failures do not usually prompt calls on the Fund because they do not usually receive payment until the tourist has left Australia. Apart from that type of protection, there is very little regulation of the conduct and activities of ITOs under the Act. Thus, there is an argument that the Act merely creates inequity between those ITOs who obey the law and incur licence and Fund contribution fees and those who flout it, yet does little to address the issues of main concern, identified earlier.\footnote{Public Benefit Test Report, pp 18-19.}

The Fair Trading Act 1989, aimed at protecting consumers against misleading and deceptive conduct and misrepresentation, may offer little recourse to tourists. That is because most ITOs do not deal directly with the tourists when arranging tours but through an agent in the tourist’s home country and, even in the ‘controlled shopping’ cases where defamatory and untrue comments may be made directly to the tourist, language barriers, lack of knowledge of legal rights and short length of the stay are impediments to action. Moreover, many tourists may be unaware that they have been misled or the victim of unfair practices. The provisions of the Act are quite general and difficult to apply to the specific problems in the ITO industry. These suspicions are supported by the few complaints that the Office of Fair Trading has received from overseas tourists.\footnote{Public Benefit Test Report, p 19.}

### 4.2.1 Action at National Level

Following two reviews of inbound tourism in 1997 in Queensland and New South Wales, where the issues raised above were featured, the Tourism Ministers Council (TMC) decided to support a national approach to the regulation, or improving the quality, of ITO services. The TMC accordingly commissioned the Centre for International Economics to report on options for regulation of the industry and a Report was delivered in March 2000.\footnote{Centre for International Economics, National Competition Policy Review of the National Scheme for the Regulation of Travel Agents, Report for the Ministerial Council on Consumer Affairs, March 2000.} Among its findings were that the TAA was not a suitable vehicle for regulating ITOs nor would any prescribed code of conduct under the consumer protection...
legislation be feasible. It considered that state-based industry specific regulation would be more appropriate. The TMC endorsed the Report and agreed that all governments should work with the ATEC to establish an industry based Code of Conduct.

The result was the establishment of a National Inbound Tourism Task Force which, together with the ATEC, has developed a number of initiatives to improve ITO operations across the nation. The Queensland Office of Fair Trading (OFT) and Tourism Queensland has been particularly supportive of various initiatives. In particular, a Voluntary Industry Tourism Export Code of Conduct (voluntary ITECC) and associated accreditation scheme are being developed. The voluntary Code aims to raise and regulate the standards practices and services of ITOs as a voluntary, industry based process. However, its ability to improve the conduct of ITOs depends upon its uptake and the level of adherence by those operators. The voluntary ITECC is being complemented by more consumer education of international tourists, extra research and surveying and initiatives to improve the enforcement of other legislation in areas such as immigration to overcome abuse of visa conditions and to prevent flouting of taxation laws by some tour operators (eg cash payments to tour guides).

In July 2002, the Federal Government indicated that it would consider tightening the voluntary ITECC and establishing a national accreditation scheme for the tourism industry. It is understood that the implementation of the ITECC has been suspended given that the June 2003 Tourism Green Paper advocates a possible new approach to industry standards. The Green Paper provides a foundation for the development of strategic directions for the forthcoming White Paper. It contains options for the restructure of the Commonwealth’s responsibilities for, and strategic approach to, the tourism industry. It also contains constructive suggestions for the way the states and territories, regions and the industry can best cooperate with the Commonwealth. The Green Paper suggests a framework within which all levels of government would work together to provide a more coordinated approach to regulation and to reduce duplication across agencies.

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41 Public Benefit Test Report, p 19.

42 Information received in an electronic communication from ATEC on 6 June 2003.


44 Green Paper, p 69.
4.2.2 Action by the Queensland Government

The Queensland Labor Government’s ‘New Directions Statement, 1998’ made an election commitment to introduce licensing for ITOs. The Centre for International Economics (an independent consultant) released the *Regulatory Options for Inbound Tourism Operators* in March 2000 which provided a cost/benefit analysis of proposed regulations. This was followed by the publication of the *Policy Paper on Proposed Regulation of Inbound Tourism Operators by the Office of Fair Trading* in May 2001. Both were the subject of extensive community consultation. In compliance with Queensland’s National Competition Policy obligations, the Government released a draft *Public Benefit Test Report* and Regulatory Impact Statement (RIS) and policy proposal regarding the proposed regulation of ITOs and tour guides in August 2002. The release of the final *Public Benefit Test Report* (PBT) in November 2002 took into account stakeholder comments received in response to the draft.45

The PBT did not believe that the current legislative framework had adequately addressed the inappropriate conduct and poor services within the ITO industry for the reasons this Brief outlined earlier. While it considered that the voluntary ITECC might effectively complement legislative action, it did not believe that, on its own, it will address ITO industry problems as unscrupulous operators will not be among those who voluntarily take up or adhere to the Code. The Review noted that deregulation, including removing licensing requirements and compulsory contributions to the Fund, would decrease barriers to competition from new entrants. While it may have those benefits for the industry, deregulation would not achieve the aim of improving the standards of conduct and service of ITOs.46

The PBT considered that the best option to address problems in the industry was the enactment of new and separate legislation. The legislation would require ITOs to be registered and contain a general provision prohibiting unconscionable conduct in a similar way to the provisions in consumer protection legislation but would be industry specific. The Act would require adherence to a mandatory Code of Conduct, which would be prescribed as subordinate legislation, and would complement the voluntary ITECC. It was recommended that this approach should be adopted as it would allow for the greatest scope and flexibility to target the specific issues in the industry while meeting the objectives of protecting consumers and businesses that are currently aggrieved by the unscrupulous conduct of some ITOs. It noted that many stakeholders had expressed

45 *Public Benefit Test Report*, Terms of Reference, Appendix A.

support for this option during the PBT consultation process, albeit indicating some concerns which the Review had attempted to address.\(^{47}\)

The PBT states that a resulting increase in standards from ITOs’ adherence to the Code and the unconscionable conduct provisions in the new Act would enhance Queensland’s share of the inbound tourism market, particularly visitors from China (forecast to be our largest source of visitors by 2010). However, Queensland stood to lose this opportunity if more Chinese tourists became dissatisfied with the quality of ITO services and the excessive shopping focus of their itineraries. It has been reported that the number of Chinese visitors has dropped since April 2002 and that the Chinese Government is beginning to receive complaints about inflated prices on shopping trips and the excessive amount of retail experience in visitors’ itineraries.\(^{48}\) Indeed, recent legislation in China seeks to protect tourists’ legal rights when visiting overseas countries and impacts on the Approved Destination Status arrangements which allow Chinese to travel approved countries for leisure purposes.\(^{49}\)

The PBT anticipated that, overall, Government would benefit from the tighter laws that would raise standards and, consequentially, repeat and referred visits to Queensland. Those gains would be derived through greater employment in the tourism and tourism related industries and a larger tax revenue. The industry specific nature of the unconscionable conduct and like provisions make enforcement easier and, also, enable better directed assistance to operators in avoiding the proscribed conduct.\(^{50}\)

In March 2003, the Government released for public comment a consultation draft Tourism Services Bill 2003 (Qld), a consultation draft Tourism Services Regulation 2003 (Qld) and a consultation draft Tourism Services (Code of Conduct) Regulation 2003 (Qld). The finalisation of the Bill took account of responses to the draft legislation, particularly regarding the definition of ‘inbound tour operator’ and the financial impact of registration on some existing operators.\(^{51}\)

The introduction of the Tourism Services Bill 2003 (Qld) has been welcomed by many operators in the tourism industry and the Chamber of Commerce but the general manager of the Gold Coast Tourism Bureau considers that a national approach is necessary

\(^{47}\) Public Benefit Test Report, p 34.


\(^{49}\) Public Benefit Test Report, pp 31-32.

\(^{50}\) Public Benefit Test Report, p 33.

\(^{51}\) Tourism Services Bill 2003 (Qld), Explanatory Notes, pp 4-5.
because unscrupulous operators are found everywhere.\textsuperscript{52} Indeed, the abovementioned draft legislation was forwarded to fair trading and tourism agencies in other Australian jurisdictions.\textsuperscript{53} It appears that the NSW Government supports the approach and may follow the Queensland lead.\textsuperscript{54}

\section{TOURISM SERVICES BILL 2003}

The Tourism Services Bill 2003 (Qld) (the Bill) was introduced into the Queensland Parliament by the Hon Merri Rose MP, Minister for Tourism, Minister for Racing and Minister for Fair Trading, on 27 May 2003.

\subsection{OBJECTIVES}

To achieve the purpose of providing for fair trading in the tourism services industry, the Bill –

\begin{itemize}
  \item provides a registration system for ITOs;
  \item provides a Code of Conduct which will set minimum standards for ITOs and tour guides;
  \item prohibits unconscionable conduct by ITOs and tour guides; and
  \item promotes sound business practices: cl 4.
\end{itemize}

\subsection{APPLICATION OF THE LEGISLATION}

The unconscionable conduct and mandatory Code provisions of the Bill apply to both ITOs and to tour guides but only ITOs will have to be registered under the Bill. Tour guides will not, at this stage, be required to be registered under the new laws. To do so would require a rigorous consultation process and a National Competition Policy public benefit test, delaying the implementation of the Bill. However, the Bill is drafted so as to enable further regulation of tour guides under a registration system and/or

\begin{flushright}
\textsuperscript{52} ‘Gold Coast welcomes draft tour operator legislation’, ABC news, \textit{ABC Online}, 5 March 2003.

\textsuperscript{53} Tourism Services Bill 2003 (Qld), \textit{Explanatory Notes}, pp 4-5.

\end{flushright}
mandatory code of conduct if required in the future. However, the unconscionable conduct and code of conduct provisions will apply to tour guides.\textsuperscript{55}

An \textbf{inbound tour operator} (ITO) is defined as a person who alone or with others carries on the business of selling, for an inclusive price, travel packages\textsuperscript{56} that include visiting a place, or travelling, in Queensland to overseas entities (ie entities that have their main place of business outside Australia) that are wholesalers or retailers of travel packages; or corporate buyers of travel packages such as an overseas corporation that buys packages for employees: \textbf{cl 9}. Note that the focus is upon ITOs whose primary business is selling travel packages overseas as it is this market in which the main problems have been identified.

A person will also be an ITO if they hold themselves out in any way as carrying on such a business as described above, or is entitled to share in the income of such a business (except as a mere shareholder).

It does not matter that the person whose activities fall within the definition of an ITO has a place of business in Queensland or not, so long as the services provided have some connection with visiting or travelling in Queensland. That is because ITOs in other jurisdictions can still contract with product suppliers in Queensland and arrange for tourists to visit Queensland.

A \textbf{tour guide} is an individual who, for reward (thus excluding volunteers or family, friends or business colleagues), personally supplies guiding services (ie accompanying tourists and coordinating or leading their activities etc) to tourists while in Queensland. It does not matter who provides the payment or benefit to the individual and it covers an individual even if they provide the guiding services for only part of the tour within Queensland: \textbf{cl 10}.

The legislation does not apply to persons who provide prearranged travel packages or guiding services if it is on a not for profit basis or is for a community purpose. Thus, volunteer guides, for example, will not be subject to registration requirements or other obligations under the Bill.

\textsuperscript{55} Hon Merri Rose MP, Second Reading Speech, p2078; Tourism Services Bill 2003 (Qld), \textit{Explanatory Notes}, p 5.

\textsuperscript{56} Defined in the Bill’s \textit{Dictionary} in Schedule 2 as the prearranged provision of a combination of at least 2 of the following: accommodation; guiding services; food, tourism activities; translation services; visiting or introductions to retailers; transport; visiting tourist attractions (eg theme parks, entertainment, national parks, and beaches); and other prescribed activities.
The Bill’s definition of tourist is broad and is an individual who visits or travels in Queensland using either a travel package arranged by an ITO or the services of an ITO or a tour guide: Sch 2 Dictionary. It appears that the proposed definition will not only protect international visitors who are disadvantaged by cultural and language barriers but also domestic tourists so that both have the same level of protection. It will overcome difficulties where a tour group subjected to bad conduct or poor services contains both international and Australian tourists.\textsuperscript{57}

Note that the definitions of ‘inbound tour operator’ and ‘carry on the business of an ITO’ must be reviewed by the Minister within 18 months after the legislation commences: \textsuperscript{cl 98}. This requirement arose from the consultation process where it appeared that the nature of this currently unregulated industry is such that many operators are unclear about the reach of the intended definition.\textsuperscript{58}

5.3 REGISTRATION REQUIREMENTS FOR ITOs

Part 3 of the Bill imposes registration requirements upon ITOs. It will be necessary for ITOs to be registered before they can conduct the business of an ITO in Queensland. It will be an offence carrying a maximum fine of $15,000 not to have current registration: \textsuperscript{cl 12}. This provision must also be reviewed in 18 months time: \textsuperscript{cl 98}.

However, as a result of consultation on the draft Bill, not all ITOs will have to be registered. Industry consultation indicated that most of the problems in the industry were in relation to those ITOs selling travel packages overseas. There is industry acceptance that ITOs whose main business is domestic, and overseas sales of travel packages that represent only a very small part of the operator’s business, should not have to be regulated to the same extent as ITOs whose main focus is the overseas market. It was also suggested that requiring those ITOs to register would be an onerous obligation.\textsuperscript{59}

Consequently, it will be a defence to a charge of failing to register where the ITO also sells travel packages to the Australian market and their overseas sales of travel packages account for less than 20\% of the total packages sold during the 12 months prior to the

\textsuperscript{57} Public Benefit Test Report, Appendix D, ‘Proposed Regulation of Tourism Services in Queensland – Policy Proposal’, p 43. See also Tourism Services Bill 2003 (Qld), Explanatory Notes, p 33.

\textsuperscript{58} Tourism Services Bill 2003 (Qld), Explanatory Notes, p 5.

\textsuperscript{59} Hon Merri Rose MP, Second Reading Speech, p 2077.
alleged offence.\textsuperscript{60} Note, however, that these exempt ITOs must still comply with the proposed minimum standards of conduct even if not registered.

5.3.1 Suitability for Registration

Registration or renewal of registration may be granted only if the Commissioner for Fair Trading is satisfied that the applicant is suitable to hold registration and in making that decision, the Commissioner may have regard to any issue relevant to the applicant’s ability to carry on the business in a competent and ethical way: cl 13. Regard may also be had to any penalties, orders or convictions under the Bill, the FTA, the TAA, the Trade Practices Act, or corresponding law within the last 5 years. In addition, the Commissioner can make inquiries, including a confidential criminal history check, to assist in assessing suitability. A person will not be suitable to be registered if the applicant or associated person (a person in effective control of the relevant business: see cl 8) –

- is under 18; or
- is an insolvent under administration (eg an undischarged bankrupt); or
- has been convicted, within the last 5 years, of an offence involving fraud or dishonesty incurring a prison term of at least 3 months or various, or against a provision of the Criminal Code in Schedule 1 of the Bill;\textsuperscript{61} or
- has breached an undertaking given to the Commissioner under the Bill or the FTA within the last 5 years; or
- is an externally-administered body corporate under the Corporations Act (eg a company that is being wound up or has a receiver in place etc): cl 14.

5.3.2 Applications for Registration

Clauses 20 and 21 of the Bill deal with applications for registration (cls 22-24 applies to licence renewals).

Application can be made to the Commissioner for registration for a term of 1 year or 3 years. The prescribed once-off application fee ($47) and annual registration issue fee

\textsuperscript{60} See cl 12(3) for situations where the ITO has been operating for less than 12 months.

\textsuperscript{61} Schedule 1 includes a number of Criminal Code provisions covering offences such as stealing related offences, fraudulent practices and behaviour, conspiracy etc.
($470)$^{62}$ must accompany the application. The fees are intended to be similar to those under the TAA.\(^{63}\) Note, however, that persons who hold a licence under the TAA, under which they are required to pay fees, are exempted from paying the prescribed fees under the Bill. During consultation for the NCP Review, a number of stakeholders expressed concern about the ‘doubling up’ effect of being required to pay licence fees under the new scheme as well as under the TAA and to contribute to the Fund under the TAA. In response, the Bill provides that no fee need be paid if the applicant holds a licence under the TAA (or equivalent legislation in other states or territories): cl 20(6). Thus, all ITOs operating in Queensland should be paying the same fee, whether under the TAA or the Bill. ITOs required to be licensed under the TAA will still need to pay TAA fees in their own jurisdiction and the relevant Fund contribution.

Registration may be granted or renewed or refused: cl 21. It can also be granted or renewed on conditions and those conditions can be changed (subject to inviting submissions from the registrant): cls 16-19.

Decisions about refusing to register or renew an applicant’s registration, and to impose conditions on registration, may be reviewed by the Commercial and Consumer Tribunal (the Tribunal) (see Part 11).

A registrant can surrender their registration in accordance with cl 25 of the Bill.

### 5.3.3 Register

Once the Commissioner has granted registration or renewal of registration, he or she must give the registrant a registration certificate (cl 26) and enter onto a Register names, addresses and other details about registrants, including whether a registration is conditional (cl 28). These provisions enable the keeping of a record of operators which is available for public inspection on payment of a fee. The information is important in relation to renewal requirements and where there are changes in an ITO company or partnership structure.\(^{64}\)

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\(^{62}\) As proposed in the Schedule to the draft Tourism Services Regulation 2003 (Qld).

\(^{63}\) Public Benefit Test Report, p 30.

\(^{64}\) Public Benefit Test Report, p 28. Clause 33 makes it an offence if registrants fail to notify the Commissioner about changes in circumstances within 30 days of the change.
5.3.4 Suspension and Cancellation of Registration

Clauses 29-31 deal with immediately suspending registration for 28 days if the Commissioner believes, on reasonable grounds, that the registrant has contravened or is contravening the Bill, the FTA, the TAA, the Trade Practices Act, or corresponding law if, as a consequence, tourists may suffer, or have suffered, detriment. The ITO must return the registration certificate and cannot operate during the suspension period, otherwise an offence is committed. The suspension continues if disciplinary proceedings are commenced.

A person’s registration is immediately cancelled if they are convicted of a serious offence (ie an offence under the trade practices provisions of the FTA, or a corresponding law where the maximum penalty is at least $7,500 or imprisonment) or if a civil penalty order, compensation order, or other order for unconscionable conduct is made against the registrant under Part 9: cl 32. The registration certificate has to be returned and the ITO can no longer operate.

Decisions to suspend or cancel registration are reviewable (see Part 11).

5.4 UNCONSCIONABLE CONDUCT

Part 4 of the Bill sets out the unconscionable conduct provisions that will apply to ITOs (whether registered or not) and to tour guides in providing services to tourists.

Engaging in unconscionable conduct will be a ‘relevant contravention’. The ITO or tour guide can be made subject to an undertaking or an injunction (see below) or action can be taken in the District Court for a civil penalty or compensation order or disciplinary proceedings may be instituted before the Tribunal. In the case of an ITO this may be in addition to suspension or cancellation of registration. Note that the disciplinary provisions do not take away any other common law rights or remedies: cl 35.

Clause 36 sets out matters that may indicate unconscionable conduct on the part of the ‘service provider’. For the purposes of the provision, a ‘service provider’ is an ITO, a tour guide, an employee, or a person with whom the ITO or tour guides has a contract relating to tourists (eg a retailer, hotelier, restaurateur). To subject to scrutiny the conduct of the other persons whom ITOs and tour guides employ or deal with helps to ensure that ITOs and tour guides will deal with scrupulous persons who observe appropriate standards of conduct. 65

Any one or more of the following may be taken into account to establish the offence –

65 Public Benefit Test Report, Appendix D, p 45.
• the bargaining strengths between the service provider and the tourist;

• whether any undue influence or pressure or unfair tactics were used against the tourist;

• the extent to which the service provider unreasonably failed to tell the tourist about conduct that might affect their interests or any apparent risks therefrom;

• the extent to which the service provider unreasonably failed to tell the tourist about a relationship with an entity (e.g., a retail outlet from whom commissions are received by the service provider in return for taking tourists to the outlet for shopping; or accommodation owned by an ITO which is to be provided to the tourists);

• whether the tourist’s ability to protect their own interests was compromised by cultural, language or religious characteristics;

• the availability and cost of identical or equivalent goods or services elsewhere;

• any action of the service provider to prevent or dissuade the tourist from going elsewhere to eat, shop, stay or visit;

• similarity of dealings with respect to each tourist by the service provider;

• whether the service provider misled or deceived the tourist;

• whether a code of conduct was contravened;

• the provisions of any applicable industry code.

5.5 **Mandatory Code of Conduct**

**Part 5 (cl 38)** of the Bill provides for a prescribed Code of Conduct for ITOs and a Code for tour guides, relating to supplying services to tourists. It states that the Code may set minimum standards of conduct; establish principles that encourage and facilitate fair dealings; or provide for a system of dispute resolution by requiring an ITO or tour guide to have a written policy concerning how disputes are to be resolved. Those minimum standards will complement the voluntary ITECC (once implemented) which sets out ‘best practice’ guidelines.

It is likely that a Tourism Services Code of Conduct (the Code) applying to ITOs will be provided by Regulation which will make contravention an offence.

The consultation draft Code of Conduct, released for in March 2003, sets out matters that the Code might contain. Those are set out in an Appendix to this Brief.
5.6 **ENFORCEMENT PROVISIONS**

Complaints about conduct of ITOs or tour guides can be made by persons who are aggrieved by the conduct to the Commissioner for Fair Trading who may investigate and begin offence or other proceedings (see cl 91) but a person may also bring their own civil action if they wish to do so. Most complainants are likely to be tourists (hence provision in cl 92 for a complaint to be made in another language) but there is ability for other traders, such as those who are ‘non-preferred’ by the ITO, to make complaints.

5.6.1 **Public Warning Statements**

Pursuant to cl 93 the Minister or Commissioner can, if it is in the public interest to do so, issue public warning statements or information about ITOs and tour guides who have engaged in unconscionable conduct, or who have contravened the legislation resulting in disciplinary action.

5.6.2 **Actions and Proceedings**

The type of enforcement action to be taken depends upon the nature of the contravention involved. While contraventions may primarily be dealt with by the Commissioner by way of undertakings, injunctions, or imposing conditions on registration, disciplinary proceedings may be pursued in the Tribunal or, if an offence against the Bill has been committed, the Commissioner may take prosecution action. Even former ITOs and tour guides can be the subject of a proceeding. Note that an ITO or tour guide cannot be both prosecuted and dealt with by way of disciplinary proceedings for the same contravention: cl 97.

A breach of the Code or contravention of the Bill can be dealt with in a number of ways. The Commissioner may, under Part 7, ask the ITOs or tour guide to give the Commissioner a written **undertaking** that the relevant contravention will not be continued or repeated. If the undertaking is accepted, no offence or disciplinary action can be commenced. The undertaking can be varied or withdrawn in certain circumstances outlined in cl 70 and can be enforced by the Commissioner applying to the District Court for an order against the ITO or tour guide. A range of orders can be made such as requiring refunds or compensation to the disadvantaged tourist or trader or directing payment to the State of any profits derived from the contravention: cl 71. The Commissioner must keep a register of undertakings that is available for public inspection: cl 72.

An **injunction** may be sought under Part 8 by the Commissioner or an aggrieved person against an ITO or tour guide in the District Court. It may be granted if the Court is
satisfied that there has been, or will be, contravening conduct on the part of the ITO or tour guide: cls 73-75. The injunction may operate to restrain a person from carrying on their ITO business for a stated period or to do so only under certain conditions: cl 76.

**Part 9** of the Bill applies if an ITO or tour guide is alleged to have engaged in unconscionable conduct. The Commissioner or a person who claims to have incurred financial loss as a result of the contravention may apply to the District Court for a **civil penalty order**, or a **compensation order**: cl 78. A joint application can also be made. Note that unconscionable conduct is also a ground for commencing disciplinary proceedings but cl 97 requires a choice to be made between instituting such proceedings and bringing an action for civil penalties and orders because it is not possible to take both.

Under cl 79, if the Court is satisfied that the ITO or tour guide has engaged in unconscionable conduct, it can impose a penalty of an amount up to $250,000 (the limit of the Court’s civil jurisdiction) for each contravention. If satisfied that a person has suffered loss, the Court can make a compensation order in favour of the person up to $250,000. A number of criteria are set out in cl 80 to help the Court to determine the amount to be ordered (eg whether the conduct was deliberate; the period over which it happened; amount of financial loss caused; past conduct; action taken to remedy the contravention). If the ITO is registered, the District Court can make any order that could be made by the Tribunal in a disciplinary proceeding (see below).

If the ITO or tour guide is unable to pay both a penalty and compensation, the Court must prefer a compensation order. However, if it is a corporation, the executive officers will be liable for any outstanding amounts unless the defences of due diligence or not being in a position of influence apply (see cl 79(6)).

**Part 10** will enable the Commissioner to bring **disciplinary proceedings** to see if a ground for starting such proceeding is established. If the action is against a registered ITO, the grounds are contravention of the Bill or of a condition of registration; registration having been obtained due to a materially false or misleading statement; the ITO is no longer a suitable person to be registered; or a contravention and detriment relating to a suspended registration. If the proceeding is against an unregistered ITO or a tour guide, contravention of the Bill is the relevant ground. If the Tribunal decides that the ground is made out, it may make any number of **orders** under cl 83. Those may range from a reprimand, a penalty of up to $15,000, suspension, or cancellation of registration, imposing or changing conditions of registration, compensation to the person suffering loss of up to $50,000 (the limit of a Magistrates Court’s civil jurisdiction), or another appropriate order. In determining the amount of penalty or compensation, the Tribunal may have regard to the same criteria as the District Court may in working out the amount of civil penalties and compensation orders under Part 9 (see cl 84). Again, if the ITO or
tour guide cannot pay both compensation and the penalty, the former order must be preferred (cl 83).

Under **Part 12**, the Commissioner may commence summary proceedings for an offence against the Bill, generally within 1 year of the offence being committed. If the person is convicted of an offence, the penalty applying to the relevant offence applies, in addition to which the Court may make any number of orders including suspending, cancelling, or imposing conditions on an ITO’s registration; or for payment of compensation to a person suffering loss.

To ensure that evidence of an offence against the Bill can be obtained from a place (eg a ITO’s place of business), inspectors appointed under the FTA are given a range of entry, search and seizure powers and power to require information that are similar to powers given under many other pieces of legislation: see **Part 6**. Note that, to avoid inconvenience to tourists, the power to seize will not apply to things belonging to a tourist: cl 54.

### 6 PROTECTION OF TOURISTS IN OTHER JURISDICTIONS

It appears that Queensland is one of the first jurisdictions in Australia to enact industry-specific legislation directed at ensuring that ITOs and tour guides comply with minimum standards of conduct and behaviour and providing aggrieved tourists and others with forms of redress against unscrupulous operators. It is understood that the New South Wales Government is intending to follow the Queensland approach in laws to be introduced in the near future.

#### 6.1 LAWS IN OVERSEAS JURISDICTIONS

Three **Canadian** provinces have travel industry specific legislation that requires registration of travel agents and wholesalers which may be suspended or cancelled or have conditions imposed. A compensation fund is provided and there are provisions allowing claimants to seek reimbursement. In the **United States** there are 13 states with legislation directed at the travel industry, many taking a similar approach to the Australian TAAAs.

In **Asia**, a number of countries have legislation to regulate tourism. While **Malaysian** laws require persons undertaking tourism and tourism-related activities to be licensed, the

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Japanese Travel Agency Law specifically ensures professionalism and fair practices by operators and provides consumer protection. While Hong Kong has laws that call for outbound travel agents to be licensed (subject to suitability requirements and establishes a compensation fund), there is no similar regulation of ITOs. The industry has asked the Government to take action, including introducing a training and industry entrance examination and, in the meantime, tourism associations are developing codes of conduct for members. In Singapore, there is regulation of outbound tourism and inbound travel agents and inbound tour guides must be licensed. However, there appears to be little in the way of consumer protection provisions. As noted earlier, China’s Outbound Travel Administration Law commenced in July 2002; its key elements are that outbound travel agents must protect tourists’ legal rights, give precise and reliable information, and must not engage in false advertising or under-cost pricing.
APPENDIX A – DRAFT TOURISM SERVICES CODE OF CONDUCT

See the Consultation Draft Tourism Services (Code of Conduct) Regulation 2003

The minimum standards that apply to ITOs are –

- ITOs to have a reasonable knowledge and understanding of the Act, FTA, Trade Practices Act, and the Code;

- ITOs to have, and inform tourists about, a written dispute resolution policy that will account for the short duration of the tourist’s stay in Australia and which will readily inform tourists about their right to complain to the Commissioner if they are concerned about the ITO’s conduct;

- ITOs must carry on their business honestly, fairly and professionally;

- ITOs must exercise reasonable care and skill and diligence;

- ITOs must not use, or encourage or engage others to use, or condone the use of, high pressure tactics or harassment in dealing with a person in relation to a travel package;

- ITOs must not make, or encourage or engage others to make, or condone the making of, false or misleading representations to a tourist;

- ITOs must ensure that quotes in a travel package disclose the total cost of the relevant good or service, including taxes and charges and that any advertisements etc discloses any conditions or restrictions applicable;

- ITOs must ensure that the tour is not dominated by shopping trips unless otherwise by predetermined agreement or at the tourist’s request;

- ITOs must not charge tourists for goods or service that are free to the public;

- ITOs must ensure that goods and services are provided in accordance with any representations made about them (unless unavailable due to circumstances beyond the ITO’s control in which case similar goods or services or a refund is provided);

- ITOs must also, as far as reasonably practicable, ensure that a tour guide supplying services authorised by the ITO wear clearly readable and prominent identification (in English and in the predominant language of the group) and does not obstruct tourists from going to or seeing advertisements for other retail outlets and services, or engage in conduct as described earlier such as confiscating travel documents or making false representations about rival suppliers or their products etc.;
• ITOs must, as far as practicable, ensure that employees or persons engaged to supply goods or services are legally entitled to work (e.g. holds a visa or an appropriate licence); complies with workplace health and safety obligations; and is sufficiently fluent in the language used by the tourists. If that person is a tour guide, the guide must be employed under the relevant State award.
APPENDIX B – MINISTERIAL MEDIA STATEMENT

Hon Merri Rose MP, Minister for Tourism and Racing and Minister for Fair Trading

27 May 2003

Regulation of tour operators near

Tourists travelling in Queensland will be protected from shonkey inbound tour operators and tour guides under a Bill introduced to Parliament today by Tourism and Fair Trading Minister Merri Rose.

Ms Rose said the new Tourism Services Bill 2003 would regulate the conduct of inbound tour operators in Queensland.

"The Bill will target operators who prey on unsuspecting visitors and threaten the reputation of the entire Queensland tourism industry," she said.

"Some inbound tour operators and tour guides, either alone or in cooperation with providers, inflate the price of goods and services such as tickets to tourism attractions and restaurant menus for tour groups.

"Consultation with industry has revealed that some sightseeing packages are being sold to overseas-based tourists at double or triple actual prices.

"Some inbound tour operators and their tour guides have been charging for goods and services that are available at no cost to the general public.

"Other unprofessional or unconscionable conduct that may lower the quality of a tour includes coercing traders to pay excessive commissions by threatening to exert influence over their tour groups not to use that trader and changing itineraries to reduce free time or tour time to increase the amount of shopping time, often altering itineraries without notice or consultation."

Ms Rose said the Tourism Services Bill 2003 would:

- require all inbound tour operators to be registered - except for those operators who also sell travel packages to the domestic market and whose overseas sales account for less than 20% of the total number of travel packages sold during a 12 month period;

- require all inbound tour operators (whether or not they are registered) to adhere to an enforceable Code of Conduct, which will complement a draft industry-based voluntary Code of Conduct; and

- prohibit unconscionable conduct by all inbound tour operators (whether or not they are registered) and tour guides when providing services to tourists.
Ms Rose said the new legislation gave the Office of Fair Trading the power to seek injunctions, registration restrictions, fines, orders directing the refund of money and to prosecute traders who did not comply.

Operators found to have contravened the prohibition on unconscionable conduct face District Court-imposed fines of up to $250,000, or $15,000 in the Commercial and Consumer Tribunal per offence, or may be ordered to pay up to $50,000 compensation.

The Office of Fair Trading will be able to seek injunctions, registration restrictions, fines and orders directing the refund of money and to prosecute traders who did not comply with the legislation.

Operators found to have acted unconscionably face District Court-imposed fines of up to $250,000, or $15,000 in the Commercial and Consumer Tribunal per offence, and may be ordered to pay up to $50,000 compensation.

Ms Rose said only a small minority of operators were involved in such conduct, but the problems impacted heavily on the tourism industry.

"Tourists who do not enjoy their holiday as much as they should have and who leave with negative and distorted view of Queensland are tourists who won’t be coming back to this state," she said.

"And neither will their friends, relatives or anyone else they talk to on their return to their country of origin."

Ms Rose said tourism as an industry was worth more than $14.6 billion to Queensland each year.

"There is no place in the industry for those whose unconscionable conduct has tarnished our hard-won international reputation for quality of product and service," she said.

"These new laws should help ensure tourists take home great memories of their Queensland experience."

Ms Rose said the Office of Fair Trading had consulted extensively with industry and community representatives on the new legislation.

"More than 25 submissions were received from tourism associations, retailers and industry bodies on the draft Bill," she said.

"There were some concerns about the definition of an inbound tour operator and its scope, but these have been resolved in conjunction with Tourism Queensland and Australia’s peak tourism export body, the Australian Tourism and Export Council (ATEC).

"We were very pleased with the feedback we received and remain confident the Bill will be an effective deterrent to shonky inbound operators and tour guides."
It is proposed that the new laws will come into effect in September.

Inquiries: David Smith 3225 1005/ 0409 496 534
APPENDIX C– NEWSPAPER ARTICLES

Title Running scared – new laws drive tour operators over border
Author Peter Gleeson
Source The Gold Coast Bulletin
Date Issue 28 March 2003
Page 4

Asian tour operators are relocating to Tweed Heads to thwart new Queensland laws aimed at stopping secret kickbacks at duty-free shops.

Earlier this year The Bulletin revealed that as many as 60 shops had closed in Surfers Paradise because they could not afford to pay shonky Asian tour guides as much as $80 per tourist as a ‘fee’ for entering their store.

The State Government, under Tourism Minister Merri Rose, is expected to introduce laws in July aimed at curbing the rort.

Surfers Paradise Traders Association spokesman Stuart Cowen said yesterday there was evidence that many Asian tour companies were 'now running scared'.

"We believe some are relocating over the border to Tweed Heads to escape the upcoming tough laws," he said.

"I believe Merri Rose should be applauded for taking such a tough stand."

"It has certainly got a lot of people’s noses out of joint."

"Why should people from other countries come here to Australia and impose such extraordinary measures aimed at lining their own pockets?"

"When a Japanese tourist buys an opal in Surfers Paradise for $7000 and then has it valued at $1000 when they get back, they blame Australia, not the tour operator." Tweed Mayor Cr Warren Polglase said the shonky Asian tour operators 'are certainly not welcome here'.

"We've got enough problems with brothels," he said.

"If they come down here and capture a captive market it will affect good, honest local shopkeepers." Mr Cowen will meet Federal Tourism Minister Joe Hockey today to outline his concerns.

Mr Hockey will announce the distribution of a brochure, printed in four languages, which warns people to 'shop around'.
It warns that some tour guides are paid 'retainers' to take tourists to certain shops.

The kickbacks issue first hit the headlines two years ago at George's Gift and Souvenir shop, in Hanlan Street, Surfers Paradise.

Owner George Qiao claims he received death threats after a tour group was rounded up and forced back outside by tour guides.

He had refused to pay a kickback.

The 20 burly tour guides knocked stock from the shelves to stop people buying.

Broadwater State MP Peta-Kaye Croft, a former tour guide, said last month local tour guides working for inbound tour companies took direction from the tour companies.

"Certain duty-free shops have partnerships with certain inbound companies," she said.

"There is a requirement that the guide sign them in.

It has become a desperate situation for many of the shops who rely on tourism in Surfers Paradise.

"The aim is to outlaw the rogue element and improve the ethical standards of these inbound tour companies.

"I've got no doubt that there are some tour operators that are effectively undercutting the value of our tourism.

"This ties in closely with the conditions endured by tour guides, many of whom are paid a pittance.

"There is no place in Queensland for these shonky operators; they are giving a bad name to those making an honest living." Mrs Croft said fees and secret commissions were common.

"Many of these tourists do not speak English and rely upon the honesty and trustworthiness of their tour operator."

Tour operators in Australia are hustling Asian visitors into trips to retailers that earn kickbacks for tour guides and tour companies, according to tourism officials.

Chinese tourists have complained to their government and tourism authorities about their treatment in Australia, saying tours were just extended shopping trips.

The Australian Tourist Commission managing director, Ken Boundy, said only a small percentage of operators were involved in "these sub-standard tours", but they threatened a crucial and growing sector of the industry.

"Along with the Australian Tourism Export Council we are taking a lot of steps to manage the situation and an audit of delivery of product," Mr Boundy said.

"The sustainability of the Chinese market is the most critical thing." Queensland will become the first state to try to regulate the tour guide industry when it introduces legislation into state parliament later this year.

The Queensland legislation is likely to include compulsory registration for all tour operators, an enforceable code of conduct and fines of up to $15,000 for unconscionable conduct.

Despite severe acute respiratory syndrome, China is still expected to be one of Australia's strongest inbound markets with a predicted 623,000 visitors annually by 2012.

However, figures out this week from the Australian Bureau of Statistics reveal Asian markets are becoming increasingly vulnerable.

According to the figures, Chinese arrivals dropped 28 per cent in April compared with the previous year.

South-East Asian arrivals were down 40 per cent compared with April 2002.

The chairman of ATEC's Asian advisory panel, Peter Colahan, said Australia was risking future growth in key markets unless it moved to control the industry.
"The ATC has identified China as a high yield market, however our [lack of] licensing laws is undermining this market," he said.

He said rogue operators were offering cheap tour prices and making up the difference with commissions, or kickbacks, from stores.

"Because we have no licensing mechanism in Australia, these inbound rogue operators can under-cost the price of a tour and the only way they make up their profit is on shopping commissions," Mr Colahan said.

"Due to the lack of trained guides, the duty free shops supply Chinese-speaking guides who rely for their income solely on shopping commissions."

The principal consultant with tourism management firm Project Portfolio, Margot Homersham, said Australia’s reputation was being tarnished as the Chinese government and tourism authorities were starting to receive complaints about the practice.

Ms Homersham said Chinese visitors had been complaining back home about the shopping trips.

She said it was becoming increasingly common for inbound operators to create "shell itineraries", where more shopping time could be slotted into the schedule.

"They sell the wholesalers a very basic itinerary, which might include accommodation, transfer and guiding services and very little substance in terms of touring arrangements," she said.

"When they get out here they have enormous holes in the itinerary, which are filled in with a retail experience rather than a tourism experience.

"Some people do want to shop, [but] they don’t want to shop 100 per cent of their stay in Australia."

Angela Chang, a consultant who specialises in Chinese cultural issues, said rogue operators were failing to give Chinese tourists the Australian Western cultural experience.

"The Chinese want specialised Australian products like lanolin and sheepskin products.

They can buy everything else in their own country at far cheaper prices," she said.
Tour operators are accused of duping Chinese tourists with price hikes and kickbacks, writes Greg Roberts.

A convoy of buses converges on the premises of a sprawling, box-shaped building covered in graffiti on the Gold Coast Highway.

Dozens of Chinese tourists disembark to be herded briskly by guides through the doors past burly guards.

Inside, there are no price tags on the thousands of souvenirs on display. The tourists are told that a small kangaroo toy costs $33, a sheepskin rug $1650.

Down the road, in a Surfers Paradise shop, identical items cost $13.50 and $700.

Shoppers of Western appearance, if they make it past the guards, are ignored by a small battalion of Cantonese-speaking shop attendants, who focus solely on Chinese shoppers.

Controversy has previously surrounded inflated prices paid by Japanese and South Korean tourists taken to shops, restaurants and other venues which pay lucrative commissions, or kickbacks, to inbound operators. Now, the increasingly important Chinese inbound tourism market is being targeted.

The manager of the Gold Coast Tourism Bureau, Bob Brett, said the industry had repeatedly warned the Federal Government of the need to crack down on operators who were damaging Australia’s image in sensitive and valuable Asian markets.

The Surfers Paradise Traders’ Association claims that loss of business through refusals to pay kickbacks has been a key factor in the closure of 74 tourist outlets on the Gold Coast in three years; others have closed in Sydney, Melbourne and Cairns.

"Certain operators are going to great lengths to protect their dominance of the inbound industry and this is seriously affecting Australian-owned businesses,” the association’s secretary, Stuart Cowen, said.
Venues paid up to $180 a tourist in kickbacks, he said. "Now some Chinese operators are positioning themselves for rorting on a scale we haven't seen before."

Mr Cowen said the movements of Asian tourists from hotels were strictly controlled so they could not compare prices. "They're told it's not safe to venture out by themselves. Imagine what that does for our reputation."

One tour report for the Japan Travel Bureau showed that a guide received a commission of $185 at a Surfers Paradise shop for a purchase of opals for which two Japanese tourists had paid $740.

The travel bureau's Australian assistant manager, Riho Okagami, said she was unaware of any commissions being paid to JTB guides. "We would not accept that if it was happening," she said.

A booking receipt for Kintetsu International showed a group of four Japanese tourists paid $110 each for a "Gold Coast beach tour" and $150 each for a seafood dinner. The price to the public for the same meal was $50.

A spokeswoman for Kintetsu, Lisa Tanaka, said the cost of transfers and guides' wages had to be taken into consideration.

"We are not ripping people off," Ms Tanaka said.

Another document shows items ranging from toothpaste to fishing rods are sold illegally to Chinese tourists on buses travelling between Gold Coast venues.

Asian tourists in buses pay $150 each, including dinner, to view glow-worms at a fake cave in the Gold Coast hinterland. They are not told they can see them for free in a nearby national park.

In an incident investigated by Surfers Paradise police, a busload of Chinese tourists was dining in a restaurant recently when several went outside to smoke. They saw prices for T-shirts in a shop owned by a Chinese man, George Qiao, which were much less than what they had been paying.

When the tourists went to buy some they were rounded up by guards employed by their tour operator and manhandled out of the shop. Mr Qiao told police he was threatened with death.

The Hong Kong Association of Registered Tour Co-ordinators has called for federal legislation to regulate inbound tour operators in Australia. The Queensland Government will legislate soon to require the operators to be registered with the Office of Fair Trading and to abide by a code of conduct.

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