

REGULATIONS

SUBMISSION

REVIEW OF REGULATIONS UNDER TOURISM SERVICES ACT 2003

GUIDELINES

**AUSTRALIAN TOURISM
EXPORT COUNCIL**

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1. ABOUT THE AUTHOR

The Australian Tourism Export Council (ATEC) is the peak industry body representing the thousands of companies throughout Australia that provide tourism services to foreign visitors. Whilst the tourism export sector is experiencing positive growth, ATEC's role is to maximise opportunity for Australian businesses in both existing and emerging markets, and to ensure any impediments to that growth are managed and kept to a minimum.

ATEC is the only, singularly-focused national body with inbound tourism at its core. Our membership represents the depth and breadth of our industry and includes more than 1,000 large national and multinational companies as well as small-and medium-sized enterprises, many of whom are based in regional and remote parts of Australia. In this way, we have a solid connection to the 'grass-roots' of our industry. We see and hear their direct experiences and we work alongside these businesses to alleviate the pressures and provide support. Our core functions are to:

- Connect buyers and sellers and deliver commercial opportunity
- Support, train and mentor for export excellence
- Advocate for policy that supports growth
- Promote inbound tourism's contribution to the broader Australian community

2. BACKGROUND TO REGULATION IN AUSTRALIA'S TOURISM INDUSTRY

Regulation of Australia's tourism industry has evolved over many years. Historically, inbound tour operators were required to comply with the various state-based Travel Agents Acts – legislative frameworks which required operators to pay contributions to the Travel Compensation Fund (TCF) in addition the licence fee. The TCF was a pool of funds available to compensate consumers in the event of agency collapse. For inbound tour operators (ITOs), the Travel Agents' Licence and the TCF offered little to no benefit given that consumers are international visitors in the inbound context and were often protected by insurance/schemes in their home country. The only perceived benefit to an ITO was that the legislation offered competitive advantage in the form of commercial credibility – an unlicensed operator was less likely to obtain business than a licensed one. Additionally, the processes of the TCF did require that businesses – regardless of their operational engagement in the travel industry - could demonstrate solvency and that their financial management systems were prudent and sound.

In 2003, the Queensland government passed legislation to regulate inbound tour operators and tour guides. The accompanying code of conduct was based on ATEC's industry code which was designed to deliver a self-regulation model to the inbound sector given the lack of benefit delivered by the Travel Agents' Act for ITOs.

At the time, ATEC advocated that the Tourism Services Act should target operators outside the self-regulatory framework, rather than posing an impost and regulatory burden on quality operators 'doing the right thing'. ATEC maintains that government regulation should be applied to penalise rogue operators rather than revenue-raise from quality businesses.

In May 2009, the then Ministerial Council on Consumer Affairs (MCCA) – now the Consumer Affairs Forum Australia and NZ (CAFCANZ) announced a review of consumer protection measures in the travel industry.

Following the decision to de-regulate the industry, it was agreed that the Travel Compensation Fund (TCF) be wound up by 30 June 2015 and the Travel Agents' Acts across the states and territories be repealed.

ATEC was actively engaged in the review process for many years as inbound tour operators had long bemoaned their involvement in the TCF as it offered no commercial protection for their business model and yet imposed significant cost and compliance burdens.

The Tourism Services Act remained in place in Queensland. No other state or territory has replicated Queensland's legislation.

In recent years, ATEC has reviewed its membership code of business practice to ensure it is relevant in today's commercial environment. Distribution has changed dramatically in the past five years which means the sources of business for any destination are many and varied. Understanding distribution and its globalisation is critical to any structure or scheme that attempts to 'regulate' the business practices of distributors (ITOs). It is far more important to build commercial partnerships between buyers and sellers of international travel and to facilitate best practice and capability-building programs which deliver real benefit and competitive advantage over those disengaged or unscrupulous operators.

3. DISCUSSION

ATEC has long supported programs which have the objective of ensuring best practice and quality service delivery. We have numerous mechanisms in place for our membership which are underpinned by quality, standards and compliance. Our membership criteria, coupled with the Code of Business Practice and the Health and Safety Checklist are all indicative of our commitment to quality tourism experiences.

These programs are all supported by the trade, Tourism Australia and the state and territory tourism organisations.

The scope of the regulations, particularly the code, are somewhat dated and are characteristic of the industry landscape in the early 2000s. Travel distribution was relatively simple with traditional relationships between international wholesaler, inbound tour operator and Australian product maintained. Today, travel distribution is global, dynamic and complicated, with digital platforms and multi-channel aggregators all selling destination Australia – and destination Queensland. The regulations in their current form cannot possibly reach all distributors of Queensland tourism products and experiences.

It is clear that whilst the regulations were well-intended in 2003, the commercial environment in which travel and tourism operates today is vastly different and therefore cannot satisfy the objectives for which they were meant. There is little or no compliance mechanisms for the regulations – and more importantly, even if there were, it would be impossible to monitor the activities or compliance of the entities that sell Queensland globally.

The reality is that whilst some operators do comply with the regulations (and pay the associated fees), many do not – in fact, a survey conducted by ATEC showed that more than 30% of operators were unaware of the requirements of the legislation. However, 73% of respondents believe that measures to address rogue operators were important and that they supported government intervention for those operating unscrupulously. Other important observations from the survey included a majority of respondents reporting that the current regulations did little to address rogue operators, that there is no return or benefit to operators that do comply, and that any scheme that is not national cannot be effective.

The resounding position from the trade was that those operators that are active and current members of ATEC should be exempt from any regulatory process or cost given the standards and compliance considerations they meet as part of the membership process.

Another example of the regulations being superfluous is the Approved Destination Status scheme (ADS). ADS is a bi-lateral agreement with the People's Republic of China which allows for group leisure travel on a specific visa class for Chinese citizens. It has been operating successfully for some 19 years and focuses on the delivery of quality tourism experiences. Since its inception, the China market has matured and evolved and now, Chinese citizens can travel to Australia on an ordinary tourist visa (sub-class 600) as well as via the ADS scheme. ADS has always incorporated a Code of Conduct for participating ITOs and its compliance has been actively managed and maintained by Austrade. The instances of breaches have dramatically reduced over the years and now are largely only centred around itinerary changes – which is hardly an issue of quality service delivery.

This highlights the growing irrelevance of the regulations under the Tourism Services Act – particularly given that the regulations were largely crafted to address issues like commissioned shopping and coercion – practices long competed-out of the now hugely successful Chinese tourism market. A much broader and richer consumer knowledge, thanks to communication and technology advancements have also enabled a greater understanding of destinations, experiences and expectations.

It can also be argued that the regulations impact Queensland's attractiveness as a destination to the trade (ITOs). A widely held view is that the regulations are effectively a 'tax' on selling Queensland products and experiences – and one which does not deliver any tangible benefit to those operators who comply. Rather, it increases the cost of doing business in Queensland which could negatively impact itineraries favouring Queensland.

4. CONCLUDING REMARKS

ATEC is an organisation that strongly upholds the importance of delivering a quality tourism experience to our international visitors. Our membership criteria, codes of practice and development programs are all examples of how we empower the inbound tourism trade to grow, develop, share knowledge and build their businesses. Imposts such as archaic legislation targeting behaviour not demonstrated by the very operators required to comply, only hinder growth and put Queensland in a compromised competitive position. Governments should partner with industry to grow the number of export-ready, trade-ready and service-ready businesses to cater to our valuable and growing inbound tourism market.

ATEC recommends to the Queensland Department of Justice and the Attorney General that the regulations under the Tourism Services Act are NOT imposed on inbound tour operators compliant with the programs administered by the Australian Tourism Export Council.

Thank you for the opportunity to make a submission.

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