



Australian Government

**Department of Industry
Tourism and Resources**

**The Department of Industry, Tourism and Resources Additional Submission on
Unethical Practices in the Tourism Industry to the House of Representatives 'Inquiry
into the Current and Future Directions of Australia's Service Industries'**

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SUMMARY

At the industry roundtables on 15 and 21 November 2006, the issue of unethical operators in the tourism industry was raised. A figure of around 40 per cent dissatisfaction by Chinese inbound tourists was raised. We understand the figure to be sourced from the *ADS Visitor Experience Study 2003* generated from interviews conducted during the Chinese New Year period with 456 Chinese visitors under the Approved Destination Status (ADS) scheme only. Dissatisfaction was reported with the amount of free time; level of Australian experiences and activities; opportunities to interact with the Australian people and culture; the standard of accommodation; greater opportunity to buy Australian products; and the undertaking outdoor activities. While the report highlighted the importance of focussing on providing quality tourism experiences, it did not identify unethical practices in the industry.

Separately, Tourism Research Australia (TRA) prepared a *Report on dissatisfied visitors on guided group holiday tours: Responses by visitors from Japan, Korea, China and Taiwan* which was released in July 2004. The TRA report was based on data from the International Visitor Surveys (IVS) conducted in 2001 and 2002 and sought to measure the extent of dissatisfaction among guided group holiday tour visitors. While this report identified similar quality concerns, the percentage of dissatisfaction of those tourists in the guided group holiday tour market from China (which includes, but is not limited to ADS visitors), was 22 per cent in 2002. It should be noted that the methodologies between the two surveys differ and as result a direct comparison is not possible.

Since 2003, in relation to the China Approved Destination (ADS) scheme the Australian Government has:

- strengthened the scheme through increased focus on tourism quality, in addition to the original focus of facilitating compliance with visa requirements;
- required all registered operators to re-apply in 2005 when inviting new applications, with an annual process for reapplication by existing operators following this;
- taken on a greater role in the administration of the scheme, through an additional \$3.9 million in the 2006 Budget over four years;
- implemented compliance monitoring in 2006 with 132 checks (including 36 random checks) being done to end October this year;
 - while there were administrative breaches identified in the compliance checks, only three operators were found to have seriously breached the ADS code. These three operators have received warning letters and if the breaches are not remedied, follow up action can include suspension from the scheme; and
- hosted an Australia-China Tourism summit at which a Memorandum of Understanding with the China National Tourism Administration was signed demonstrating commitment by both Australia and China to quality measures on both sides. This MOU was signed by Minister Bailey and by the Chairman of the China National Tourism Administration, Mr Shao Qui-Wei.

In addition to these initiatives in relation to the China market, to address the issue of unethical practices and improve the quality of tourism experience, the Australian Government has:

- promoted national, voluntary, industry-led tourism accreditation through funding the development of the Quality Tourism portal at www.qualitytourism.com.au to facilitate obtaining accreditation online;

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- assisted in the development of industry codes for both the Australian Tourism Export Council and Guiding Organisations Australia to cover inbound tour operators and tour guides respectively at a national level;
- established the Inbound Tourism Compliance Taskforce which provides a forum for enforcement and tourism agencies at a federal and state/territory level to share information on unethical practices; and
- provided in-language consumer rights information on Tourism Australia's website and is currently exploring in-market promotion through Tourism Australia's *Aussie Specialist* travel agent network and the feasibility of an in-language complaint mechanism.

Results from the IVS in 2005 indicate a very high level of satisfaction by international visitors across the board. In particular for China, the level of satisfaction was 98.5 per cent. The IVS is based on the holiday and visiting friends and relatives segment of the market. As with the previous IVS figures noted above for 2002, this includes, but is not limited to visitors here under the ADS scheme.

While the issue of unethical operators cannot be ignored, the current focus, not only of the Australian Government but also of the entire Tourism Ministers Council, is on mechanisms to assist with enforcement of existing legislation and to utilise non-legislative measures to address the issue.

BACKGROUND

This additional submission has been prepared by the Department of Industry, Tourism and Resources (DITR) to the House of Representative's Economic, Finance and Public Administration Committee's 'Inquiry into the Current and Future Directions of Australia's Service Industries'. The focus of this submission is to provide the inquiry with additional detail in relation to the issue of unethical practices in the Australian inbound tourism industry, as this issue was raised at the Industry Roundtables in Sydney, on 15 November 2006, and Brisbane, on 21 November 2006.

The context of this submission is to provide details on the nature of unethical practices in the Australian tourism industry, while highlighting the Australian Government's commitment to address this issue. In essence, the Australian Government's position is that existing legislation needs to be enforced, which can only occur if complaints are provided to enforcement agencies, and non-legislative measures, such as industry codes of conduct, need to be fully explored before considering any additional regulatory options that could impact on small business. It should be noted that this view was the consensus at the Tourism Minister's Council meeting in August 2006 when the issue of unethical practices was discussed.

An overview of current regulation applying to the tourism industry is provided below, however, some key themes which emerge are:

- the China Approved Destination Status (ADS) scheme is strongly targeted to eliminating unethical practices from the China ADS market segment. Since the ADS scheme commenced in 1999 this market segment has represented around 17 per cent of arrivals from China. In 2005 this segment represented 18 per cent of all visitor arrivals from China and 34 per cent of the holiday segment. There is no scope to extend this scheme to other China market segments or to other inbound markets, as it is based on unique visa requirements imposed by the Chinese Government on its travelling citizens, aimed at minimising absconder rates; and
- the misleading or deceptive conduct and false representation areas of the Commonwealth *Trade Practices Act 1994* and State and Territory fair trading legislation provide mechanisms for action to be taken against unethical operators in inbound tourism. However, obtaining complaints and evidence sufficient to support enforcement action has proved problematic.

REGULATION RELATING TO TOURISM

A number of Acts and regulations which already exist are relevant, or in some cases, directly applicable, to the conduct of inbound tourism industry participants. These arise both under Commonwealth and State/Territory legislation, and at common law.

Travel Agents Acts

Each state and territory (excluding the Northern Territory) has enacted legislation¹ under the National Scheme for the Regulation of Travel Agents that establishes a licensing regime for travel agents. The legislation also provides for compensation to travelers who suffer loss as a result of the default of a travel agent or tour operator under the relevant legislation.

¹ *Travel Agents Act 1968* (ACT); *Travel Agents Act 1986* (NSW); *Consumer Affairs and Fair Trading Act 1990* (NT) Pt 11; *Travel Agents Act 1987* (Tas); *Travel Agents Act 1986* (Vic); *Travel Agents Act 1985* (WA).

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The applicability of the Act to addressing unethical practices in inbound tourism is limited. The Act is primarily oriented to protecting domestic consumers. The Acts licensing conditions include broad requirements that the applicant is likely to carry on a business as a travel agent honestly and fairly, and is a fit and proper person to hold a licence.

Queensland Tourism Services Act 2003

The *Tourism Services Act 2003* (the Qld Act) aims to eliminate unfair practices from the industry such as:

- controlled shopping (eg restricting the choice of shopping venues;
- deceptive or misleading conduct (eg claiming highly over-priced products are good value); and
- unconscionable conduct (eg operators who exert pressure on tourists to act in a way which is not in their best interest).

The Qld Act is not binding on tour guides, or 'tax-free shops' - which are considered to be the key players driving unethical or illegal behaviour. Nor does it apply to business that is conducted outside Queensland.

Consumer Protection Regulation

Consumer protection legislation exists at both the Commonwealth and State/Territory level. At the Commonwealth level, Parts IVA, IVB and V of the *Trade Practices Act 1974* (Cth) ("TPA") contain provisions aimed at protecting consumers (and some corporations) from unconscionable conduct and unfair trading practices.

Each State and Territory has also enacted Fair Trading legislation² which contains provisions based on the unconscionable conduct and unfair trading provisions of the TPA.

The Fair Trading legislation applies to "any person", whereas the TPA applies only to corporations. In this regard, the Fair Trading legislation has a potentially wider scope in its application to inbound tourism industry participants than the TPA.

Unconscionable conduct

The term "unconscionable conduct" is not defined in either the TPA or the Fair Trading legislation. However, the legislation sets out a list of factors to which a court may have regard for the purpose of determining whether a breach has occurred as follows:

- the relative bargaining strengths of the parties;
- whether the consumer was required to comply with conditions which were not reasonably necessary for the protection of the legitimate interests of the supplier;
- whether the consumer was able to understand the documentation;
- whether undue influence or pressure was exerted or unfair tactics used; and
- the availability and amount of comparative prices.

While the prohibition against unconscionable conduct is broad in potential application, proving that a contravention has actually occurred is often very difficult due to a lack of evidence.

² *Fair Trading Act 1992* (ACT); *Fair Trading Act 1987* (NSW); *Consumer Affairs and Fair Trading Act 1990* (NT); *Fair Trading Act 1989* (QLD); *Fair Trading Act 1987* (SA); *Fair Trading Act 1990* (TAS); *Fair Trading Act 1999* (VIC); *Fair Trading Act 1987* (WA).

Misleading or deceptive conduct, false representations

The types of misleading or deceptive conduct that may be caught under the TPA or the State/Territory Fair Trading legislation provisions could include, for example:

- where a shop incorrectly represents that a product is made in Australia, or that the shop is a licensed duty free store;
- where a shop, a tour guide or an ITO claims that certain prices for products are the lowest prices in town, when the prices are inflated compared with equivalent products sold by other retailers;
- where a shop, a tour guide or an ITO falsely claims that inbound tourists will receive a special discount compared with members of the general public; and
- where inbound tourists are taken to a destination or shop that is not on the itinerary for the inbound tour, and the tour guide or ITO allows the inbound tourists to believe that the destination or shop is as specified in the itinerary.

The TPA and fair trading legislation have strong application to addressing unethical conduct in inbound tourism, if suitable evidence can be provided to support enforcement action. Enforcement agencies report low levels of complaints by the tourism industry or international tourists visiting Australia.

Criminal law

Threats and coercive behaviour

Each State and Territory has enacted criminal legislation which addresses (in some way) threats and other coercive behaviour. While the exact nature of the offences and penalties vary from jurisdiction to jurisdiction, the legislation for each State and Territory essentially makes it an offence to engage in the following types of conduct:

- making a threat to destroy or damage property, or to kill or inflict bodily harm;³
- sending (or causing to be sent) a document containing a threat to kill or to inflict bodily harm;⁴ and
- making a demand (for example, for property, a benefit or the performance of a service) accompanied by a threat.⁵

Other relevant offences include, for example, using threats or intimidation to alter the mode of carrying on trade or business, or the management thereof.⁶

Prosecutions for these offences would ordinarily be undertaken by the Director of Public Prosecutions in the relevant State or Territory. Threats (physical or economic) and coercive behaviour used in the course of trade or commerce by an inbound tourism industry participant may also constitute 'unconscionable conduct' for the purpose of a civil action under the relevant consumer protection legislation.

Taxation and Customs Legislation

A suite of Commonwealth taxation and customs legislation imposes a range of obligations on shops and ITOs. Relevant issues arising under this legislation may include ABN; PAYG withholding provisions; GST; inclusion of commission's receipts in assessable income; customs duty on imported goods; and duty free licensing.

³ For example, *Crimes Act 1900* (NSW) s 199; *Criminal Code Act 1899* (Qld) s 75; *Crimes Act 1900* (ACT) ss 30, 31; *Crimes Act 1958* (Vic) ss 20, 21.

⁴ For example, *Crimes Act 1900* (NSW) s 31; *Criminal Code Act 1899* (Qld) s 308.

⁵ For example, *Crimes Act 1900* (NSW) s 100; *Criminal Code Act 1899* (Qld) s 415; *Crimes Act 1900* (ACT) s 32; *Crimes Act 1958* (Vic) ss 27, 28.

⁶ *Criminal Code Act 1899* (Qld) s 534.

This legislation specifies illegal conduct in the various business operational areas covered and could be applied to addressing unethical practices in inbound tourism if businesses are not meeting their regulatory obligations.

Other Regulation

Shops or ITOs may also need to comply with regulation in the following areas, depending on their business operations:

- immigration regulation, if temporary residents are hired and visa conditions apply;
- workplace and employment legislation, if staff are employed; and
- transport and driver licensing regulation, if tour coaches are operated.

AUSTRALIAN GOVERNMENT INITIATIVES

China Approved Destination Status (ADS) Scheme

In the 2006 Budget, the Government committed \$3.9 million over four years to continue strengthened administrative arrangements for the China Approved Destination Status (ADS) scheme. Unethical business practices, on the part of a limited number of tour operators, prompted reforms to the ADS scheme. These reforms include implementing a strengthened ADS Code of Business Standards and Ethics, assessing all scheme applicants against a “fit and proper person” test, and implementing a compliance monitoring program.

The Scheme

The China ADS scheme is a bilateral tourism arrangement between the Chinese Government and a foreign destination. Countries with ADS status are permitted by China to host Chinese tourists undertaking leisure travel in groups on specified itineraries. Australia and New Zealand were the first western destinations to be granted ADS by the Chinese Government in 1999.

The Australian Government strengthened the administrative arrangements for the ADS scheme in June 2005. At this time all existing operators were required to reapply to remain in the scheme, and new applications were invited. The Australian Government opens the scheme to new applicants in April of each year. At this time, existing operators are subjected to a less complex reapplication process.

The strengthened China ADS Scheme has two main goals:

- immigration related:
 - provide greater opportunities for Chinese citizens to visit Australia – given the growing Chinese visitor market;
 - ensure that only genuine Chinese tourists come to Australia and have an enjoyable and rewarding visit; and
 - maximise confidence that Chinese tourists will comply with visa conditions and return to China at the end of their tour itinerary; and
- tourism quality:
 - provide for integrity, competition and fair trading in the operation of China ADS inbound market, especially in relations between operators and shops, and operators and tourists; and
 - assist in the protection of Australia's reputation as a desirable tourism destination, and the related healthy growth of Chinese inbound tourism by minimising economically damaging activities by businesses.

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There is no question of Australia not having a China ADS scheme – it is a requirement of the Chinese authorities. Australia cannot receive ADS tourists without an ADS scheme. In addition, without ADS, the Australian Government, through Tourism Australia, would not be able to promote Australia as a leisure destination in China.

How the scheme operates

In China, the scheme regulates the outward travel of Chinese group leisure tourists to approved destinations. In Australia, it regulates inbound tour operators that service this market.

Travel agents approved by the China National Tourism Administration (CNTA) submit visa applications to the Department of Immigration and Multicultural Affairs (DIMA) for tourists who they have vetted as genuine group travellers. These businesses are also Tourism Australia (TA) 'Aussie Specialist' agents. Australian ADS-approved inbound tour operators may only conduct ADS business through CNTA approved outbound travel agents. The final itinerary must be lodged with both DITR and DIMA prior to the commencement of travel.

DITR has an administrative and governance role in the scheme. It:

- coordinates the application process each year;
- administers the ADS Code of Business Standards and Ethics and monitors ADS operators' compliance with this Code;
- contracts a Vetting Agency and Compliance Monitoring Agency (CMA):
 - The CMA, conducts compliance, financial and random checks to ensure that ADS-approved operators are complying with ADS itinerary and operational requirements, including ensuring compliance by their staff and contractors. The CMA also undertakes investigations into suspected breaches of the ADS Code of Business Standards and Ethics;
 - For this calendar year to October end, the number of checks conducted has been 132 (65 compliance checks, 36 random checks and 31 financial checks);
 - A number of ADS compliance checks have uncovered breaches that could be considered administrative in nature. These breaches have been dealt through the issue of Direction Advice Notices to operators. Follow up compliance checks will be used to determine if the operators have taken appropriate remedial action;
 - Breaches by three ADS operators are of a more serious nature, and these operators have received warning letters from either the Government Coordination Group for the scheme or the Minister for Immigration and Multicultural Affairs, Senator Amanda Vanstone. Again, follow up checks will be conducted to determine if the operators have taken appropriate remedial action. In the case of the operator that received a warning letter from Minister Vanstone, failure to take appropriate remedial action will result in a suspension of their licence to operate in the ADS scheme.
- provides secretariat support to the Government Coordination Group (GCG) and the Joint Monitoring Group (JMG); and
- provides advice to the Minister for Small Business and Tourism on the industry-related aspects of the scheme.

DITR and DIMA share responsibility for the scheme, although its legal basis is with the *Migration Regulations 1994*.

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Australia-China Tourism Summit and Memorandum of Understanding

On 2 August 2006 at the Australia-China Tourism Summit, the Minister for Small Business and Tourism, the Hon Fran Bailey MP, signed a Memorandum of Understanding with Chairman Shao of the CNTA relating to the China ADS scheme. Key principles of the MOU are to:

- share information through regular interaction and information exchange between the relevant authorities;
- cooperate to ensure the efficient and effective administration of the ADS scheme in both countries; and
- build a successful and sustainable ADS scheme, to ensure Chinese visitors travelling to Australia under the scheme enjoy a quality holiday experience.

Australia will now work with China on progressing the principles of the MOU.

Industry Codes of Conduct

The Australian Government is working with industry to develop and implement a range of voluntary Codes of Conduct that promote ethical practices in inbound tourism:

- ATEC has developed a Tourism Export Code of Conduct voluntary accreditation program for tourism operators dealing in any inbound market. The Code was made available online in July 2006 through the Quality Tourism Portal at www.qualitytourism.com.au;
- Guiding Organisations Australia (GOA) has developed the Guides of Australia national tour guide accreditation framework, which was launched in June 2006. The framework provides minimum benchmarks for tour guide professional standards and links to existing specialist accreditation programs and professional development. Information is available through the Quality Tourism portal at www.qualitytourism.com.au;
- a voluntary Code of Conduct is being developed specifically for inbound tour operators in the Korea market, and will provide a voluntary industry standard accreditation framework administered by the Korean Inbound Tour Operators Council of Australia (KITOCA). There was discussion regarding progressing the Code at a Korean Tourism Industry Forum hosted by Australia in Seoul on 24-25 October 2006.

More widely on accreditation, the Australian Government has funded the development of the Quality Tourism portal at www.qualitytourism.com.au to facilitate business in completing accreditation, and accreditation scheme owners in managing the process, through streamlined on-line application processes. The Quality Tourism portal was launched in August 2006 by Minister Bailey and is the key deliverable under the Tourism White Paper towards the development of national, voluntary, industry-led tourism accreditation.

As these initiatives have only recently been made available to the market, or are still in development as is the case for the Korean inbound code, it is premature to judge their effectiveness at this point.

Inbound Tourism Compliance Taskforce

In 2004, the Australian Government established a Compliance Taskforce to focus on unethical practices in inbound tourism, particularly from North Asian markets. In mid 2006, membership was expanded to tourism, fair trading and police agencies nationally, in recognition of increased inbound travel to all states and territories from

North Asian markets. The Taskforce builds cross-jurisdictional relationships between relevant agencies.

One outcome to date from Taskforce member agency investigations in the inbound tourism sector was the Australian Competition and Consumer Commission (ACCC) investigation of various t-shirt importers in 2005. The ACCC issued a warning to the souvenir industry to comply with country of origin labelling rules, with particular concerns over the industry practice of adding embroidery or screen printing in Australia to a t-shirt made overseas, and then illegally attaching a 'Made in Australia' label. Following the investigation, the relevant company cooperated with the ACCC and gave court-enforceable undertakings that it will avoid such conduct in future.

All enforcement agencies on the Taskforce, including the ACCC, have at all times indicated their willingness to thoroughly investigate any matter regarding unethical practices in the tourism industry that is brought to their attention.

Tourism Industry Compliance Guide

As an action agreed at the August 2006 meeting of the Inbound Tourism Compliance Taskforce, DITR is coordinating development of an information guide for use by the tourism industry to outline compliance requirements, and to encourage and facilitate the provision of industry intelligence to enforcement agencies.

The Compliance Guide will include contact information to allow anyone with information on alleged illegal conduct in the tourism industry to directly speak to a nominated tourism officer or contact point in enforcement agencies.

Consumer Education

In line with the recommendations of the February 2006 Korea Action Plan Implementation Group (KAPIG) Report, the Australian Government is developing multilingual web-based material for consumer education for international visitors in Chinese (simplified and traditional), Korean and Japanese. Shopping Guidelines information along these lines is now available on Tourism Australia's consumer site www.australia.com mirrored in a range of languages.

The feasibility of providing an online tourist complaint form in the targeted languages, to facilitate lodgement of complaints with State and Territory Fair Trading Agencies, is also being investigated.

As recommended by KAPIG, wider promotion and distribution of these resources is envisaged through Tourism Australia's Aussie Specialist travel agents network and other high-use consumer websites in each targeted market.

CONCLUSION

To address the current concerns regarding unethical practices in the tourism industry, by a small number of operators in relation to targeting North Asian markets, achieving increased complaint activity to facilitate greater enforcement under existing legislation, and pursuing industry-based and non-legislative solutions is appropriate. The Australian Government is actively involved in a range of initiatives outlined above, particularly in relation to the Chinese market.