

## Queensland



### Explanatory Notes for SL 2003 No. 283

#### *Tourism Services Act 2003*

## **TOURISM SERVICES (CODE OF CONDUCT FOR INBOUND TOUR OPERATORS) REGULATION 2003**

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### **GENERAL OUTLINE**

#### **Authorising Law**

The *Tourism Services (Code of Conduct for Inbound Tour Operators) Regulation 2003* (the Code) is a mandatory code of conduct made under section 38(1) of the *Tourism Services Act 2003* (the Act). Section 38 of the Act provides that a regulation may prescribe a code of conduct for inbound tour operators and a code of conduct for tour guides.

This Code applies to all inbound tour operators regardless of whether they are registered under the Act.

#### **Objectives of the Regulation**

The objectives of the Act are to address problems in the inbound tourism industry such as controlled shopping, misrepresentations, overcharging for goods and services and unconscionable conduct. These practices have a negative impact on the State's tourism industry because tourists do not enjoy their holiday as much they should and leave with a negative and distorted view of Queensland. One of the ways the Act addresses these undesirable and unfair practices is by requiring all inbound tour operators to adhere to this Code.

In accordance with the authorising section of the Act, the policy objectives of the Code are to:

- set minimum standards for inbound tour operators in the carrying on of the business of an inbound tour operator;
- establish principles to encourage and facilitate fair dealings between—
  - inbound tour operators and tourists;
  - inbound tour operators and businesses with which tourists come in contact; and
- require inbound tour operators to have a written policy about resolving disputes.

The Code achieves these policy objectives by requiring inbound tour operators to:

- know about the Act, this Code and fair trading legislation;
- have a written policy about dispute resolution processes;
- carry on their business with honesty, fairness and professionalism;
- exercise skill, care and diligence in the carrying on of their business;
- refrain from using high pressure tactics or harassment against clients;
- refrain from making false or misleading representations;
- ensure tours not dominated by shopping unless requested by the client;
- not charge for free goods or services;
- ensure products and services are provided in accordance with itineraries and quotations;
- ensure any tour guides they engage behave appropriately; and
- ensure their employees and others supplying goods or services to their clients maintain certain specified standards and comply with the law.

Compliance with the Code will be mandatory for all inbound tour operators. Breach of some provisions in the Code are punishable by fines

of 20 penalty units. Also, breach of the Code may indicate that the inbound tour operator has engaged in unconscionable conduct, which is prohibited under section 35 of the Act.

The Code is consistent with the policy objectives of the Act and is a reasonable and appropriate way of achieving the policy objectives outlined above. The Code provides an industry-specific response to address undesirable and unfair trading practices unique to the inbound tourism industry. This approach is required because existing laws have both failed to curb exploitation of tourists and have failed to protect tourism-based businesses shunned by rogue inbound tour operators because they do not participate in unfair trading practices.

### **Administrative Costs**

The introduction of a registration system for inbound tour operators will place an additional administrative burden on the Office of Fair Trading which, to some extent, will be covered by the registration fees required under the Act. The fees payable are specified in the *Tourism Services Regulation 2003*.

On 18 December 2002, the Honourable the Treasurer advised that, as a result of the 2002-03 Mid-Year Review, the Cabinet Budget Review Committee had approved additional funding of \$200,000 for 2002-03 and \$400,000 ongoing to support the implementation of new marketplace regulatory regimes, including the regulation of inbound tourism.

### **Fundamental Legislative Principles**

The Code does not infringe Fundamental Legislative Principles.

### **Consultation**

On 12 August 2002, the policy proposal underpinning the Act and the Code together with a draft Public Benefit Test and Regulatory Impact Statement (henceforth jointly referred to as “the policy proposal”) were released for public comment. The policy proposal was also forwarded to interstate tourism and fair trading agencies.

The availability of the policy proposal was extensively publicised through media releases, newspaper advertisements and the websites of

Tourism Queensland and the Office of Fair Trading. Approximately 270 stakeholders received a notice of the availability of the policy proposal.

Following consultation on the policy proposal, the draft Bill, together with a draft Regulation and draft Code were released for public consultation during March 2003.

A letter advising of the availability of the draft proposed legislation on the Office of Fair Trading website was sent to approximately 300 community and industry stakeholders, including those who had provided feedback in August 2002 on the policy proposal.

The draft Bill, the draft Regulation and draft Code of Conduct was also forwarded to the Commonwealth and to fair trading and tourism agencies in the other States and Territories.

More than 35 responses were received from community, industry and Government stakeholders and these responses have substantially informed the development and finalisation of the Act, the Regulation and this Code.

The draft proposed legislation was generally supported and in some cases received strong support from community and industry stakeholders.

A number of stakeholders suggested that tour guides should also be subject to further regulation. If the current rogue elements in the inbound tour industry are not removed through action taken under the Act, the Act is drafted in such a way as to facilitate, if required, the future further regulation of tour guides by way of a registration system and/or a mandatory code of conduct similar to this Code for inbound tour operators.

## **NOTES ON PROVISIONS**

*Clause 1* sets out the short title of the Regulation.

*Clause 2* provides that the Regulation will commence on 1 December 2003.

*Clause 3* provides that the schedule to the Regulation states the code of conduct made under section 38 of the *Tourism Services Act 2003* for inbound tour operators.

## **SCHEDULE**

### **TOURISM SERVICES CODE OF CONDUCT**

*Clause 1* provides the short title of the Code is the Tourism Services Code of Conduct for Inbound Tour Operators (the Code).

*Clause 2* notes two definitions for the Code.

*Clause 3* requires that an inbound tour operator must have a reasonable knowledge and understanding of the Act, this Code and of the *Fair Trading Act 1989* and the *Trade Practices Act 1974* in so far as they are relevant to carrying on the business of an inbound tour operator.

*Clause 4* obliges an inbound tour operator to have a written policy for resolving disputes between the inbound tour operator and tourists using a travel package arranged by the inbound tour operator, including goods and services supplied by the inbound tour operator. A penalty applies to contravention of this requirement.

The policy must allow for the fact that the tourist may only be in Australia for a short time and must state that:

- the tourist may contact the Commissioner for Fair Trading if the tourist is concerned about the conduct of the inbound tour operator; and
- the tourist is not prevented from exercising other legal rights merely because of participation in dispute resolution processes.

A penalty applies to contravention of this requirement.

The inbound tour operator must also inform tourists who use travel packages arranged by the inbound tour operator about the policy, before the tourists enter Queensland. If the tourist asks, the inbound tour operator must provide the tourist with a copy of the policy in the tourist's first language. A penalty applies to contravention of this requirement.

*Clause 5* requires inbound tour operators to act honestly, fairly and professionally in carrying on the business of an inbound tour operator. A note in the clause refers to section 9(3) of the Act, which provides the definition of "carry on the business of an inbound tour operator". Without limiting this requirement, an inbound tour operator must treat tourists honestly and fairly.

*Clause 6* provides that an inbound tour operator must exercise reasonable skill, care and diligence in carrying on the business of an inbound tour operator.

*Clause 7* provides that an inbound tour operator must not, in dealing with a person in relation to a travel package arranged by the inbound tour operator, use high pressure tactics or harassment in dealing with the person or encourage or engage another person to use, or condone the use of such

tactics. Examples are provided of high pressure tactics or harassment used against persons to help in interpretation of the clause.

*Clause 8* requires that an inbound tour operator must not, in dealing with a tourist using a travel package arranged by the inbound tour operator, make a false or misleading representation to a tourist, or encourage or engage another person to make, or condone the making of such representations.

Without limiting the above, an inbound tour operator must not make, encourage or engage another person to make, or condone the making of false or misleading representations about travel packages including:

- the mode and standard of transport used for transfers and sightseeing;
- the existence or location of, or accessibility to, a place or attraction;
- the time required or route used to get to such a place or attraction;
- the standard, style and price of any accommodation;
- the standard or price of food or beverages;
- guiding services;
- the price of tourist attractions, tours, entertainment or other activities including whether the cost of these activities is included in the package;
- restrictions applying to the package, including for example, restrictions about baggage, children, seat allocation or smoking;
- conditions as to reservations, payment, refunds or cancellations; and
- the management of tours included in the travel package.

A sub-clause also provides that an inbound tour operator must ensure a quotation for goods and services in a travel package discloses the total cost of the package, including any taxes or other charges payable by a tourist. This does not require the amount of commissions to be specifically identified and disclosed, but does require that the total price quoted to the tourist includes any commissions to be paid by the tourist. The inbound tour operator must ensure that advertisements or promotional material about goods or services included in a travel package arranged by the

inbound tour operator discloses any conditions or restrictions applying to the supply of the goods or service. A penalty applies to breach of this sub-clause.

*Clause 9* provides that an inbound tour operator must not use undue influence or high-pressure tactics to have a tourist go shopping instead of undertaking all or part of another activity which the tourist may have reasonably expected to do as part of the travel package.

An inbound tour operator must ensure that a travel package is not dominated by shopping excursions, unless this is agreed by the tourist and the inbound tour operator, before the travel package starts or the tourist consents to this during the course of the travel package.

*Clause 10* states that an inbound tour operator must not charge a tourist for a product or service that is available free of charge to the public. Examples are provided to help with interpretation of the clause. A penalty applies to a breach of this clause.

*Clause 11* requires an inbound tour operator to ensure that any goods or a service provided as part of a travel package arranged by the inbound tour operator are provided in accordance with any representations made in an itinerary, quotation or promotional material for the package.

Where, because of circumstances beyond the inbound tour operator's control, a product or service included in a package becomes unavailable when required to be provided under the package, the inbound tour operator must provide, as far as reasonably practicable, goods or a service of comparable type, value and quality, or provide a refund where such substitution is not possible.

If goods or services of a similar type are not available, the inbound tour operator may, with the informed consent of the tourist, substitute another product or service of comparable value and quality.

*Clause 12* provides that an inbound tour operator must, as far as is reasonably practicable, ensure that a tour guide providing guiding services arranged by the inbound tour operator, displays the tour guide's identification so it is clearly visible to other persons. A penalty applies to a breach of this requirement.

An inbound tour operator must also ensure, as far as reasonable practicable, that a tour guide:

- does not obstruct a tourist from:
  - shopping in a retail outlet;

- having access to or buying goods or a service, including for example, a travel service offered by an alternative supplier; and
- does not:
  - obstruct a person lawfully advertising or informing a tourist about travel or other services;
  - obstruct a tourist from having access to an advertisement or information about travel or other services, including, for example, travel services offered by an alternative supplier;
- does not confiscate or withhold a tourist's money, passport, personal documents or other property;
- does not exert or use unfair pressure, undue influence or unfair tactics on a tourist;
- does not make false or misleading representations to a tourist about the various matters listed in the clause.

The clause also clarifies that “identification” of a tour guide means a form of identification in English and in the language used predominantly by the tourists being provided with the guiding services. The identification must include the tour guide's full name and business address, the inbound tour operator's name and business name or trading name and a recent colour photograph of the tour guide.

The clause also clarifies that reference to “obstruct” in this clause includes hinder and attempt to obstruct.

*Clause 13* provides that an inbound tour operator must, as far as reasonably practicable, ensure a person including, for example, a tour guide employed or engaged to provide goods or a service to a tourist:

- is entitled, under the laws of the Commonwealth or the State, to work or provide the goods or the service in Queensland – examples are provided to help with interpretation of this part of the clause; and
- is aware of and carries out his or her obligations under the *Workplace Health and Safety Act 1995*;
- has a level of fluency in a language used by the tourist appropriate for supplying goods or services to the tourist; and



- if the person employed or engaged by the inbound tour operator is a tour guide, the inbound tour operator must ensure, while the tour guide is working in Queensland, that the tour guide is employed under the Tour Guides Award - State, or on conditions not less favourable to the tour guide than the award.
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#### ENDNOTES

1. Laid before the Legislative Assembly on . . .
2. The administering agency is the Department of Tourism, Racing and Fair Trading.