

FT302

TRAVEL AGENTS ACT 1985

TRAVEL AGENTS AMENDMENT REGULATIONS 1995

Made by the Governor in Executive Council.

Citation

1. These regulations may be cited as the *Travel Agents Amendment Regulations 1995*.

Principal regulations

2. In these regulations the *Travel Agents Regulations 1986** are referred to as the principal regulations.

[* Published in Gazette of 19 December 1986 at pp. 4926-38.
For amendments to 31 October 1995 see 1994 Index to Legislation
of Western Australia, Table 4, pp. 291-2.]

Regulation 4A amended

3. Regulation 4A of the principal regulations is amended by deleting "incidental arrangements" as defined in clause 1.1. of Schedule 3 " and substituting the following —

" "travel-related arrangements" as defined in Schedule 14 ".

Regulation 15 amended

4. Regulation 15 of the principal regulations is amended by deleting "3 to 10." and substituting the following —

" 3 to 14. ".

Schedules 11 to 14 added

5. After Schedule 10 to the principal regulations the following Schedules are added —

“

SCHEDULE 11

[Regulation 15]

RESOLUTION OF THE TRUSTEES**Amendment resolution**

The Travel Agents Compensation Trust Fund Deed set out in Schedule 2 and amended in schedules 3 to 10 is amended —

- (a) by deleting clause 5.2 and substituting the following clauses —

“

5.2 The Fund shall consist of all moneys and property (of whatever nature and kind) received or held by the Trustees for the purposes of the Trust and shall include, but without limiting the generality of the foregoing : —

- (a) all contributions fees and levies referred to in clause 6.1.
- (b) all investments for the time being in the name of the Trust;
- (c) the income earned on moneys invested by the Trust;
- (d) moneys paid by an insurer pursuant to a contract of insurance or indemnity entered into by the Trustees pursuant to this Deed;
- (e) moneys donated to the Trustees for the purposes of the Trust;
- (f) moneys recovered by the Trustees pursuant to the exercise of a right or power under this Deed or to some other action lawfully taken by them;
- (g) all moneys rights and property of any description transferred to or acquired or received by the Trustees in their capacity as such; and
- (h) all other moneys lawfully paid into the Fund.

5.3 The Trustees may cause the books of account of the Fund to show separately moneys and property received and held for the purposes of meeting : —

- (a) claims;
- (b) the administrative expenses of the Fund;

but such separate accounts shall not preclude the Trustees from transferring funds or property between those accounts if they shall deem this to be appropriate.

”;

- (b) by deleting Part 6 and substituting the following Part —

“

6. CONTRIBUTIONS TO THE FUND, FEES AND LEVIES

6.1 The Trustees shall determine whenever and as often as they consider appropriate the amount, method of calculation and manner of collection of all contributions, fees and levies payable to the Fund by participants and by other persons applying to be contributors to the Fund and, in particular, but without limiting the generality of the foregoing, the Trustees may charge : —

- (a) an initial contribution payable upon application;
- (b) an additional contribution or special levy where the Trustees are of the opinion the Fund is insufficient to meet the existing or potential liabilities of the Trust;
- (c) an application fee;
- (d) an administration fee;
- (e) an annual renewal fee, and
- (f) an additional or late filing or penalty fee for participants who fail to meet their obligations under this Deed and in particular Part 11 hereof.

6.2 The Trustee may refund in part or whole and in such manner as they shall decide any contributions, fees or levies received by them if they consider circumstances warrant such refund.

6.3 The Trustees may fix as the additional fee an amount that is a specified amount or that is an amount calculated in a specified manner. The amount so specified or calculated shall not exceed 100% of the current administration fee.

”.

and

- (c) by deleting all of Part 7.

MADE by resolution of the Trustees on 26 March 1992 and resolved by the Trustees that the amendments come into operation on 7 May 1992.

SCHEDULE 12

[Regulation 15]

RESOLUTION OF THE TRUSTEES

Amendment resolution

The Travel Agents Compensation Trust Fund Deed set out in Schedule 2 and amended in schedules 3 to 11 is amended —

- (a) by deleting clauses 4.1 to 4.16 and substituting the following clauses —

“

4.1 Each State shall nominate two Trustees one of whom shall have knowledge of the travel industry.

- 4.2 The Trustee nominated pursuant to Clause 4.1 who is required to have knowledge of the travel industry shall be selected from the persons whose names are submitted to the Minister pursuant to Clause 4.4.
- 4.3 In addition to the Trustees nominated under Clause 4.1, there shall be at least one and not more than two Trustees, nominated by the Ministers acting jointly, who have knowledge of the interests of travel consumers.
- 4.4 When a Trustee is to be nominated in accordance with Clause 4.2, the Trustees shall submit to the relevant Minister the names of two persons whom they consider to be suitable for nomination within four weeks of the occasion for the nomination arising.
- 4.5 A person nominated as a Trustee pursuant to the criteria referred to in Clause 4.1, 4.2 or 4.3, may not at the same time be nominated pursuant to another of those clauses and any such nomination shall not be invalidated by reason of the person's knowledge of the matters referred to in those clauses.
- 4.6 Subject to this Part, a Trustee shall hold office for three years from the date of appointment and shall be eligible for reappointment.
- 4.7 A Trustee may resign by notice in writing to the Trustees.
- 4.8 Where a Trustee —
- (a) becomes bankrupt or makes any arrangement or composition with the Trustee's creditors generally;
 - (b) becomes of unsound mind or the Trustee's estate is liable to be dealt with in any way under the law relating to mental health which applies in the State where the Trustee resides;
 - (c) is subject to any penalty contained in and imposed pursuant to section 21 (1) of the Act in New South Wales or the equivalent provision in an Act in another State;
 - (d) being a participant, is found by the Trustees not to be eligible to remain a contributor to the Fund;
 - (e) is convicted of a criminal offence punishable on conviction by imprisonment for 2 years or more; or
 - (f) is for some other reason unfit to continue to be a Trustee

the Minister or Ministers entitled to nominate the Trustee may by notice in writing to the Trustees cause the Trustee to be removed.

- 4.9 When the Trustees receive a notice nominating a person as a Trustee or causing a Trustee to be removed and signed by the Minister or Ministers entitled to nominate the Trustee or to cause the Trustee to be removed, the Trustees shall, as soon as practicable, by deed executed by no less than two Trustees appoint or remove the person as Trustee in accordance with the notice.
- 4.10 Upon execution by the Trustees of a deed pursuant to Clause 4.9 —
- (a) an appointment referred to in the deed takes effect when the deed is executed and when the person appointed to act as Trustee consents in writing so to act; and
 - (b) a removal referred to in the deed takes effect forthwith
- and the Trustees shall immediately after the deed takes effect serve a copy of it on the person appointed or removed.
- 4.11 A Trustee shall be deemed to have resigned from office as a Trustee at the close of the third successive meeting of the Trustees from which the Trustee is absent without leave of the other Trustees.
- ”;
- (b) in clause 8.4 by deleting “Subject to clause 8.5,” and substituting the following —
- “ Subject to Clauses 8.5 and 8.6, ”;
- (c) after clause 8.5 by inserting the following clause —
- “
- 8.6 The Trustees may determine that any three persons whose names appear of a list of persons approved in writing by the Trustees (being persons employed by the Trustees to administer or assist in administering the Trust) shall be authorised jointly to make withdrawals from, and jointly to sign cheques drawn on, accounts designated “clearing accounts”, but only where the amount of all withdrawals and the payee or recipient of the funds have been previously approved in writing by the Trustees or a duly constituted Committee of them.
- ”;
- (d) by deleting clause 11.5 and substituting the following clause —
- “
- 11.5 (a) The Trustees shall on receiving information pursuant to clause 11.1 or 11.4, and may at any other time, determine whether a participant remains eligible to be a contributor to the Fund.
- (b) Where a participant fails to provide information pursuant to clause 11.1 or 11.4 the Trustees may determine that a participant is not eligible to be a contributor to the Fund.
- ”;

- (e) by deleting clause 12.2 and substituting the following clauses —

“

12.2 The Trustees may make it a condition of their determining that a person is or is to remain eligible to be a contributor to the Fund that the person comply with any one or more of the following —

- (a) that the person maintain and operate the person's business as a travel agent in a manner specified by the Trustees and, in particular, but without limiting the generality of the foregoing, the Trustees may require the person : —
 - (i) to maintain a trust account in respect of moneys received from clients;
 - (ii) to increase the capital of the travel agency business;
 - (iii) to reduce debt of the travel agency business.
- (b) that the person's business be guaranteed in a way, or by a person or class of person, specified by the Trustees.
- (c) that the person maintain and operate the books of account and other accounting records of the travel agency business in a manner specified by the Trustees.
- (d) that a report be obtained at the expense of the person from a duly qualified auditor or accountant nominated by the Trustees stating that the accounting records of the travel agency give a true and fair view of the financial position of the business.
- (e) that a report be obtained at the expense of the person from a duly qualified auditor or accountant nominated by the Trustees providing such information as will permit the Trustees to determine whether the person has sufficient financial resources to carry on business as a travel agent.

12.3 The Trustees may —

- (a) determine a date or period of time for compliance with any condition referred to in Clause 12.2.
- (b) authorise payment of the cost of obtaining any report referred to in Clause 12.2 from the Fund notwithstanding any other provision of this Deed to the contrary.

and

”;

- (f) in clause 13.2 by inserting after paragraph (f) the following paragraph —

“
(g) if the person was an applicant or participant in the Australian Capital Territory, appeal to the Australian Capital Territory Administrative Appeals Tribunal.
”

MADE by resolution of the Trustees on 16 July 1992 and resolved by the Trustees that the amendments come into operation on 1 September 1992.

SCHEDULE 13

[Regulation 15]

RESOLUTION OF THE TRUSTEES

Resolved amendments

The Travel Agents Compensation Trust Fund Deed set out in Schedule 2 and amended in schedules 3 to 12 is amended —

- (a) in clause 6.1 by deleting paragraphs (e) and (f) and substituting the following paragraphs —

“
(e) an annual renewal fee;
(f) an additional or late filing or penalty fee for participants who fail to meet their obligations under this Deed and in particular Part 11 hereof; and
(g) where a participant carries on business as a travel agent in more than one location, an additional contribution or special levy for each location at which a participant carries on business as a travel agent additional to the participant's first location.
”

- (b) by deleting clause 6.2 and substituting the following clause —

“
6.2 The Trustees may waive or refund in part or whole and in such manner as they shall decide, any contributions, fees or levies charged by them if they consider the circumstances warrant such waiver or refund.
”

- (c) by inserting after clause 9.8 the following clause —

“
9.9 Where the Trustees make a written request to the applicant to supply information and the applicant does not respond to the written request within 3 months of the date of the written request the application shall lapse.
”

- (d) by deleting clause 11.8 and substituting the following clause —

“

11.8 The Trustees may determine that a participant who fails to pay any contribution, fee or levy at a time when it is due is no longer a participant.

”;

- (e) by inserting after clause 11.9 the following clauses —

“

11.10 Where the Trustees determine that a person is no longer a participant they may within 2 months after the date of the determination and on the written application of the terminated participant determine to reinstate that person as a participant and the reinstatement shall operate from the date of the determination to reinstate the person.

11.11 Where a person is reinstated as a participant under clause 11.10 the Trustees shall notify the relevant Licensing Authority and the person of the Trustees' determination.

11.12 Before the Trustees determine to reinstate a person as a participant pursuant to clause 11.10 they may require :

- (a) the person to pay part or all of the current application and administration fees payable by persons applying to be a contributor to the Fund pursuant to clause 9.3; and
- (b) the person to provide the Trustees any information that they may reasonably require about the person's financial resources.

11.13 Apart from the fees that may be imposed by the Trustees under clause 11.12(a) no other fees shall be imposed by the Trustees as a condition of the Trustees exercising their discretion under clause 11.10.

”;

and

- (f) by deleting clause 22.3 and substituting the following clause —

“

22.3 The Trustees may not delegate their powers, duties and obligations under clauses 4.4, 6.1, 6.2, 12.1, 20.8, 22.1, 22.5, 24.1, 24.2, 25.1, 28.1, 30.1

”.

Typographical/Cross-reference amendments

The Travel Agents Compensation Trust Fund Deed set out in Schedule 2 and amended in schedules 3 to 12 is amended as follows —

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NOW THIS DEED WITNESSES as follows -
(Amendment to cross-references):

- II. (i)
- (ii) Reference to clause 4.2, should now
- (iii) read 4.1
- (iv)

II. (v) Reference to clause 4.3, should now read 4.1

II. (vi) Reference to clause 4.5, should now read 4.3

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1.1 Paragraph 7 "Incidental arrangements" - delete the word "to"

1.1 "Incidental arrangements" means arrangements which are entered into in conjunction with travel arrangements and which in the opinion of the Trustees, are reasonably incidental to travel arrangements.

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1.1 Paragraph 2 "Travel arrangements" - insert the word "in"

1.1 "Travel arrangements" means arrangements entered into in a State for the provision of services which in that State constitutes the carrying on of business as a travel agent in the State.

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WHEREAS

A. Paragraph 1 - delete the word "carrying" and insert the word "carry"

WHEREAS

A. The Governments of the States of New South Wales, Victoria, South Australia and Western Australia have entered into a Participation Agreement dated the 19th day of September 1986 (hereinafter referred to as "the Participation Agreement") relating to the licensing of persons carrying on or intending to carry on business as travel agents and the regulation of their operations;

MADE by resolution of the Trustees on 24 March 1994 and resolved by the Trustees that the amendments come into operation on 31 May 1994.

SCHEDULE 14

[Regulation 15]

RESOLUTION OF THE TRUSTEES

Resolved amendments

The Trustees made the following resolutions on 30 March 1995, resolutions 2, 3, 4 and 5 of which relate to the amendment of the Travel Agents Compensation Trust Fund Deed set out in Schedule 2 and amended in schedules 3 to 13 —

1. PARTICIPATION AGREEMENT

The Participation Agreement be amended in accordance with clause 10.1 of the Participation Agreement so as to alter clause 5.1 to indicate that there will be established a single fund to be known as the Travel Compensation Fund:

"... for the purpose of compensating certain persons who have suffered or may suffer pecuniary loss in respect of travel arrangements or travel-related arrangements made by a person who carries on, or carried on, business as a travel agent..."

2. TRAVEL-RELATED ARRANGEMENTS

That the following definition of travel-related arrangements be adopted, and incorporated into Section 1.1 of the Trust Deed:

'Travel-related arrangements' means arrangements which are or normally are in the opinion of the Trustees incidental to travel arrangements, including but not limited to arrangements in respect of the provision of:

- accommodation,
- car hire, or
- travellers cheques which are to be drawn against someone other than the person providing them.

3. AMENDMENT TO CLAUSE 2.2(b) OF THE DEED

Clause 2.2(b) be amended to read:

- "(b) Every person who entrusts money or other valuable consideration to another person, who carries on business as a travel agent (or an employee or agent of the other person) in connection with travel arrangements or travel-related arrangements or both in a State if either:...."

4. CONSEQUENTIAL AMENDMENTS TO THE DEED

- 4.1 delete the definition of "incidental arrangements" in clause 1.1;
- 4.2 replace the term "incidental arrangements" with "travel-related arrangements" where it appears in the definition of "client" in clause 1.1 and in clause 1.3(b); and
- 4.3 insert "or travel-related arrangements" after "travel arrangements" where it appears in the definition of "principal" in clause 1.1 and in clauses 1.4, 3.1(b) and 15.4.

5. CONSEQUENTIAL LOSS

- 5.1 Clause 15.2 be amended to read:

"The Trustees may, in their absolute discretion:

- (a) pay compensation to a beneficiary under Clause 15.1 in relation to any consequential loss suffered by reason of a failure to account; and
- (b) pay compensation, including compensation in relation to any consequential loss suffered by reason of a failure to account, to a person to whom they are not required to pay compensation under clause 15.1"

- 5.2 Delete Clause 17.2, and replace with:

"The Trustees may in their absolute discretion determine the amount of pecuniary loss suffered directly by the person by reason of the failure to account in respect of which the claim was made."

RESOLVED by the Trustees that the amendments come into operation on 15 May 1995.

By Command of the Governor,

J. PRITCHARD, Clerk of the Council.