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at 22 April 1997

WESTERN AUSTRALIA

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# TRAVEL AGENTS ACT 1985

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## TRAVEL AGENTS ACT 1985

AN ACT to provide for the licensing of travel agents and generally for the regulation of their operations; and for matters connected therewith or incidental thereto.

### PART I — PRELIMINARY

#### Short title

1. This Act may be cited as the *Travel Agents Act 1985*<sup>1</sup>.

#### Commencement

2. This Act shall come into operation on a day to be fixed by proclamation<sup>1</sup>.

#### Interpretation

3. (1) In this Act, unless the contrary intention appears —

“**application**” means application made under section 9 (1);

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**“applicant”**, except in section 33, means person who makes an application;

**“appointed day”** means day on which this Act comes into operation;

**“bank”** means bank —

- (a) as defined by section 5 of the *Banking Act 1959* of the Parliament of the Commonwealth; or
- (b) that carries on banking business on behalf of the State under the authority of the laws of the State;

**“books”** means books within the meaning of the *Companies (Western Australia) Code*;

**“condition”** includes limitation, restriction and term;

**“director”**, in relation to a body corporate, includes any person occupying or acting in the position of director of the body corporate, by whatever name called and whether or not validly appointed to occupy, or validly authorized to act in, that position;

**“exempted person”** means person to whom, by reason of section 5 (2) or an order under section 6, section 7 does not apply;

**“inspector”** means person for the time being holding or acting in the office of inspector under section 42;

**“licence”** means licence in force under Part II;

**“licensee”** means person for the time being holding a licence;

**“moneys”** includes instrument for the payment of moneys in any case in which that instrument may be paid into a bank;

**“officer”**, in relation to a body corporate, includes person who is an officer of the body corporate within the meaning of the *Companies (Western Australia) Code*;

**“records”** includes accounts, books, deeds, writings or documents and other records of information however compiled, recorded or stored, whether in written form or on microfilm or in any other manner or by electronic process or other means;

**“the Chairman”** means the holder for the time being of the office of Chairman of the Tribunal;

**“the Commissioner”** means the person for the time being holding or acting in the office of the Commissioner for Consumer Affairs under the *Consumer Affairs Act 1971*;

**“the Compensation Scheme”** means the scheme prescribed by regulations made under section 59 (2) (h);

**“the Compensation Trustees”** means the trustees by whom the Compensation Scheme is administered

**“the Registrar”** means the Commercial Registrar referred to in section 11 (1) of the *Commercial Tribunal Act 1984*;

**“the Tribunal”** means the Commercial Tribunal of Western Australia established under the *Commercial Tribunal Act 1984*.

(2) A reference in this Act —

(a) to carrying on business as, or carrying on the business of, a travel agent is a reference to carrying on

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business as a travel agent within the meaning of section 4; or

- (b) to a licensee or the holder of a licence includes a reference to a successful applicant under section 33, or to a person referred to in section 34 (1), who is lawfully carrying on the business of a travel agent in respect of which a licensee or such a holder holds or held a licence, notwithstanding that that applicant or the person so referred to is not himself the holder of a licence.

### **Business of travel agent**

4. (1) Subject to this section, a person carries on business as a travel agent for the purposes of this Act if he carries on the activity (whether or not in the course of, or incidentally to, or in connection with, any other activity) of —

- (a) selling tickets entitling other persons to travel, or otherwise arranging for other persons rights of passage, on conveyances which are not prescribed conveyances;
- (b) selling to, or arranging or making available for, other persons rights of passage to, and hotel or other accommodation at, places —
  - (i) which are within or outside; or
  - (ii) some of which are within, and others of which are outside,

Western Australia;

- (c) purchasing for resale the rights of passage on conveyances which are not prescribed conveyances;
- (d) carrying on an activity which is prescribed for the purposes of this paragraph; or



- (e) holding out or advertising that the person is willing to carry on any activity referred to in paragraph (a), (b), (c) or (d).

(2) An individual does not carry on business as a travel agent by reason only of carrying on in the course of his employment any activity referred to in subsection (1) (a), (b), (c), (d) or (e).

(3) A person does not carry on business as a travel agent —

- (a) in respect of an activity referred to in subsection (1) (a) if he carries on that activity in respect of a conveyance of which he is the owner;

- (b) in respect of an activity referred to in subsection (1) (b) if he carries on that activity in respect of —

- (i) a conveyance; and

- (ii) a place of accommodation,

of which he is the owner;

- (c) by reason only of carrying on —

- (i) an activity; or

- (ii) an activity in circumstances,

prescribed for the purposes of this paragraph; or

- (d) by reason only of holding out or advertising that he is willing to carry on any activity referred to in paragraph (a), (b) or (c).

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- (4) In subsection (3), a reference to —
- (a) the owner of a conveyance —
    - (i) includes a person who has lawful possession of, but not the property in, the conveyance; and
    - (ii) does not include a person who has the property in the conveyance but does not have possession thereof by reason of its being the subject of a mortgage, bill of sale, hire-purchase agreement or other hiring agreement, lease, licence or bailment;
- and
- (b) the owner of a place of accommodation is a reference to the person who is in possession of the land that is, or on which is situated, the place of accommodation.

**Application of Act**

**5.** (1) Subject to this section and to section 6, this Act binds the Crown.

- (2) This Act shall not be construed as requiring —
- (a) any Minister of the Crown;
  - (b) any department of the Government or any statutory corporation representing the Crown;
  - (c) any prescribed public statutory authority; or
  - (d) any officer or employee of the Crown or of any Minister, department, corporation or authority referred to in this subsection in the performance of his functions as such an officer or employee,

to hold a licence.

**Variation of application of Act**

**6.** (1) The Governor may by order declare that the provisions of this Act, or such of those provisions as are specified in the order —

- (a) do not have effect in relation to a specified person or to a specified class of persons;
- (b) have effect in relation to a specified person or to a specified class of persons to such extent as is specified;
- (c) do not have effect in relation to a specified transaction or matter or to a specified class of transactions or matters;
- (d) have effect in relation to a specified transaction or matter or to a specified class of transactions or matters to such extent as is specified;
- (e) do not have effect in relation to a specified transaction or specified class of transactions entered into by a specified person or specified class of persons, or in relation to specified associated matters; or
- (f) have effect in relation to a specified transaction or specified class of transactions entered into by a specified person or specified class of persons, or in relation to specified associated matters, to such extent as is specified.

(2) An order made under subsection (1) may —

- (a) specify the period during which that order shall remain in force; or
- (b) provide that its operation is subject to such conditions as are specified in the order.

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(3) The Governor may by order revoke or vary an order made under this section.

(4) An order made under this section shall be deemed to be a regulation for the purposes of section 42 of the *Interpretation Act 1984* and the provisions of that section shall apply accordingly.

(5) An order in force under this section, including an order that is varied under this section, has effect according to its tenor.

(6) A person to whom an order made under this section applies, including an order that is varied under this section, shall comply with the conditions (if any) to which the operation of the order is subject.

Penalty: \$5 000.

(7) This section does not apply to Part III.

**PART II — LICENCES**

***Division 1 — Requirement to be licensed***

**Travel agent to be licensed**

7. (1) Subject to this Act, a person shall not carry on business as a travel agent unless the person is the holder of a licence.

Penalty: a fine of \$50 000 or 12 months' imprisonment or both, with a minimum fine of \$5 000 in the case of a second or subsequent offence.

(2) Subject to this Act, a person shall not carry on business as a travel agent in partnership with a person who is not the holder of a licence.

Penalty: a fine of \$50 000 or 12 months' imprisonment or both, with a minimum fine of \$5 000 in the case of a second or subsequent offence.

(3) Subject to this Act, an individual shall not hold himself out, and a body corporate shall not hold itself out, as carrying on business as a travel agent unless the individual or body corporate, as the case requires, is a licensee.

Penalty: \$25 000 or 6 months' imprisonment or both, with a minimum fine of \$2 500 in the case of a second or subsequent offence.

**Unauthorized use of licence**

8. (1) The holder of a licence shall not transfer or lend, or attempt to transfer or lend, the licence to another person or allow another person to use the licence.

Penalty: \$5 000.

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(2) A person shall not obtain the transfer of, or borrow or use, or attempt to obtain the transfer of, or attempt to borrow or use, a licence of which the person is not the holder.

Penalty: \$5 000.

***Division 2 — Licensing Provisions***

**Application for licence**

**9.** (1) An application for a licence may be made to the Tribunal —

- (a) by an individual of or over the age of 18 years; or
- (b) by a body corporate if all individuals concerned in the management of the body corporate are of or over the age of 18 years.

(2) An application shall be in writing in a form approved by the Minister, shall be accompanied by the prescribed fee and shall be signed —

- (a) if the application is made by an individual, by the individual; or
- (b) if the application is made by a body corporate —
  - (i) having only 2 directors, by those directors; or
  - (ii) having more than 2 directors, by not fewer than 2 of those directors.

(3) An application shall specify —

- (a) the name and address —
  - (i) if the application is made by an individual, of the individual; or

- (ii) if the application is made by a body corporate, of each director of the body corporate;
- (b) the address of each place in the State at which, and the name or names under which, the applicant intends to carry on business as a travel agent;
- (c) whether or not the applicant intends to carry on the business referred to in paragraph (b) in partnership with another person;
- (d) whether or not the applicant is a person whose licence or registration granted under an Act specified in the Schedule has been cancelled or suspended or who has been subjected to any other disciplinary action under that Act in his capacity as a person who is or has been licensed or registered under that Act;
- (e) that the applicant is, or on being licensed will be, a participant in the Compensation Scheme;
- (f) the name, address and such other particulars as are prescribed of the person it is proposed to employ at any address referred to in paragraph (b) in compliance with section 29; and
- (g) such other matters as are prescribed.

(4) When an application is made and, before the application is granted or refused, a change occurs in the particulars specified in the application in accordance with subsection (3), the applicant shall, within 14 days after the occurrence of the change, give to the Tribunal notice in writing signed by the applicant or, if the applicant is a body corporate, by a director of the body corporate specifying particulars of the change.

Penalty: \$1 000.

(5) An applicant shall, if required to do so by the Tribunal or the Registrar, provide the Tribunal with such particulars

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additional to those included in his application as the Tribunal or the Registrar requires.

(6) A person shall not in, or in relation to, an application, a notice given under subsection (4) or any particulars provided under subsection (5), make a statement that is false or misleading by reason of the inclusion therein of any false or misleading matter or the omission therefrom of any material matter.

Penalty: \$5 000.

(7) It is a defence to a prosecution of a person for an offence under subsection (6) if the person proves that, when the relevant application was made, the relevant notice given or the relevant particulars provided, the person —

(a) believed on reasonable grounds that —

(i) the false matter was true; or

(ii) the misleading matter was not misleading;

or

(b) in the case of an omission —

(i) believed on reasonable grounds that no material matter had been omitted; or

(ii) did not know that the omitted matter was material.

**Investigation of application**

**10.** (1) When an application has been made in accordance with section 9, the Registrar shall send a copy of the application to the Commissioner with a request in writing that the Commissioner make such inquiries with respect to the



application and the applicant as the Registrar specifies in that request.

(2) The Commissioner shall make such inquiries as are specified in the request sent to the Commissioner under subsection (1) and such other inquiries as the Commissioner considers necessary and shall, as soon as practicable after making those inquiries, prepare a report on the results of those inquiries and submit the report to the Tribunal.

(3) The Commissioner of Police shall, if the Commissioner so requests, investigate both an application a copy of which is sent to the Commissioner under subsection (1) and the applicant who made that application and, as soon as practicable after completing that investigation, make a report to the Commissioner on that investigation.

(4) As soon as practicable after the Commissioner submits a report to the Tribunal under subsection (2), the Registrar shall publish in a newspaper circulating generally throughout Western Australia a notice giving particulars of the application concerned.

### **Objection to application**

11. (1) At any time before the expiration of the period of 14 days that next succeeds publication of a notice under section 10 (4) with respect to an application, or within such longer period as the Tribunal in a particular case allows, the Commissioner may with the consent of the Minister, and any other person may, lodge with the Tribunal an objection in writing to the granting of the application if that objection complies with subsection (2).

(2) An objection lodged under subsection (1) complies with this subsection if —

- (a) it specifies the ground of that objection;

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- (b) the ground of that objection is a ground on which the Tribunal is required to refuse an application for a licence; and
- (c) the Commissioner or other person making that objection has, before the expiration of the period referred to in subsection (1), served on the applicant a copy of that objection.

**Grant or refusal of licence**

**12.** (1) Subject to subsections (2) and (4), the Tribunal shall grant an application —

- (a) except when a hearing is required by subsection (5) to be held in respect of the application, as soon as practicable after the expiration of the period allowed by or under section 11 (1) for the lodging of an objection to the granting of an application; or
- (b) when a hearing is required by subsection (5) to be held in respect of the application, as soon as practicable after the conclusion of the hearing.

(2) An application made by an individual shall be refused if it appears to the Tribunal that —

- (a) the individual has not attained the age of 18 years;
- (b) the individual is disqualified under section 22 (1) (e) from being a licensee;
- (c) the individual is an insolvent under administration within the meaning of the *Companies (Western Australia) Code*;
- (d) the individual is not a person likely to carry on business honestly and fairly under the authority that

would be conferred by the relevant licence if it were granted;

- (e) the individual does not have such qualifications for carrying on the business referred to in paragraph (d) as are prescribed;
- (f) the individual is a person whose licence or registration granted under an Act specified in the Schedule has been cancelled or suspended;
- (g) the individual is in any other way not a fit and proper person to be the holder of a licence; or
- (h) a person proposed to be employed by the individual for the purposes of section 29 (1) is not of good reputation or character or in any other way would not be a fit and proper person to be the holder of a licence if that person were to apply for a licence personally.

(3) Without affecting the generality of subsection (2) (g), the Tribunal may, in determining whether or not an applicant is a fit and proper person to be the holder of a licence, have regard (if such be the case) to the fact that the applicant —

- (a) has, during the period of 10 years that last preceded the making of his application, been convicted of, or served any part of a term of imprisonment for, an offence in Western Australia or elsewhere involving fraud or dishonesty;
- (b) was, at the time of the making of his application, bound in relation to an offence referred to in paragraph (a) by a recognizance; or
- (c) had, at the time of the making of his application, a charge pending against the applicant in relation to an offence referred to in paragraph (a).

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(4) An application made by a body corporate shall be refused if it appears to the Tribunal that —

- (a) the body corporate is disqualified under section 22 (1) (e) from being a licensee;
- (b) the body corporate does not have, or is not likely to continue to have, sufficient financial resources to enable it to carry on business as a travel agent;
- (c) the body corporate is not likely to carry on business honestly and fairly under the authority that would be conferred by the relevant licence if it were granted;
- (d) the reputation of the body corporate is such that it would not be a fit and proper person to be the holder of a licence;
- (e) an officer of the body corporate is disqualified under section 22 (1) (e) from being an officer of a body corporate that is a licensee;
- (f) an officer of, or an individual concerned in the management of, the body corporate is not of good reputation or character or would in any other way, if he were to apply for a licence personally, have that application refused under subsection (2);
- (g) any individual other than an officer of the body corporate who, in the opinion of the Tribunal, appears to have control, or substantial control, of the body corporate is not of good reputation and character or is not likely to exercise that control honestly and fairly;  
or
- (h) a person proposed to be employed by the body corporate for the purposes of section 29 (2) is not of good reputation or character or in any other way would not be a fit and proper person to be the holder of a licence if that person were to apply for a licence personally.

(5) An application shall not be refused on a ground specified in subsection (2) (d), (g) or (h) or (4) (b), (c), (d), (f), (g) or (h) unless the Tribunal is satisfied that that ground has been made out after it —

- (a) has informed the applicant of that ground and has held a hearing in respect of the application; and
- (b) has afforded the applicant and any person who, in accordance with section 11, has lodged an objection on that ground, an opportunity to appear at the hearing referred to in paragraph (a) and to make submissions and adduce evidence.

(6) When an application is refused, the Registrar shall forthwith, by notice in writing served on the applicant and each objector (if any) to the granting of the application, inform the applicant and each such objector of that refusal and of the ground on which that refusal is based and the Registrar shall, as soon as practicable, refund to the applicant so much of the relevant application fee as is specified by the Tribunal as appropriate to be refunded.

(7) When an application is granted —

- (a) the Registrar shall forthwith by notice in writing inform —
  - (i) the applicant; and
  - (ii) if an objection has been lodged in respect of the application under section 11, the objector,of the granting of the application;
- (b) the Registrar shall not issue the licence granted unless —
  - (i) the prescribed fee for that licence is, or has been, paid to the Registrar; and

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- (ii) a certificate in the prescribed form relating to the participation of the applicant in the Compensation Scheme is, or has been, lodged with the Registrar;

and

- (c) the applicant shall be deemed to be the holder of the licence granted.

(8) Notwithstanding anything in this section, the Tribunal may refrain from granting an application unless —

- (a) if the applicant is not a body corporate, the applicant;  
or
- (b) if the applicant is a body corporate, all of the directors and officers of the body corporate, or such of them as the Tribunal specifies or refers to,

has or have appeared personally before the Tribunal and satisfied the Tribunal as to such relevant matters referred to in this section as the Tribunal thinks appropriate.

**Conditions of licence**

**13.** (1) Subject to this section, the Tribunal may —

- (a) on the granting of an application and at any other time, impose conditions subject to which the licence granted is to be held; and
- (b) on application or of its own motion, at any time vary or revoke any of the conditions referred to in paragraph (a).

(2) A licence is subject to —

- (a) a condition that the licensee shall at all times during the currency of the licence be a participant in the Compensation Scheme;
- (b) a condition that each place at which the licensee carries on business as a travel agent shall at all times comply with such requirements as are prescribed;
- (c) any prescribed conditions; and
- (d) any conditions in force under subsection (1).

(2a) Where a person who is a licensee ceases to participate in the Compensation Scheme —

- (a) that person's licence is suspended until that person again participates in the Compensation Scheme; and
- (b) that person shall return the licence to the Registrar without delay.

(3) Subject to subsection (4), the Tribunal shall not under subsection (1) impose conditions to which a licence is to be subject, or vary conditions to which a licence is subject, unless the Tribunal has first held a hearing with respect to the conditions that are proposed to be imposed or varied and has afforded the applicant for, or, as the case requires, the holder of, the licence an opportunity to appear at the hearing and to make submissions and adduce evidence with respect to the conditions that are proposed to be imposed or varied.

(4) The Tribunal may determine not to hold a hearing under subsection (3) before it imposes, varies or revokes a condition to which a licence is subject on application by the licensee.

*[Section 13 amended by No. 27 of 1989 s.3.]*

**Name under which licensee may operate**

14. (1) Subject to the *Business Names Act 1962*, a licence may authorize its licensee to carry on business as a travel agent under a name or names in addition to or in substitution for the name of the licensee.

(2) A licensee shall not —

- (a) carry on;
- (b) in the case of an individual, hold himself out as carrying on; or
- (c) in the case of a body corporate, hold itself out as carrying on,

business as a travel agent under a name or names other than the name of the licensee or the name or names under which the licensee is authorized so to do in accordance with subsection (1).

Penalty: \$5 000.

**Form of licence**

15. (1) A licence shall —

- (a) be signed and issued by the Registrar;
- (b) be in a form approved by the Minister; and
- (c) if it authorizes its licence to carry on business under a name or names in addition to, or in substitution for, the name of its licensee, bear an endorsement to that effect.

(2) On application made in the prescribed manner, the Tribunal may add, amend or delete an endorsement referred to in subsection (1) (c).



(3) If the Registrar is satisfied that a licence has been lost or destroyed, the Registrar may, on payment of the prescribed fee, issue a duplicate of the licence.

### **Change of address of licensee**

16. (1) If a place at which a licensee carries on, or intends to carry on, business as a travel agent is at an address other than an address which is specified in accordance with section 9 (3) (b) or of which notice has been given under this subsection, the licensee shall, not later than 14 days after commencing to carry on that business at that other address, give to the Registrar notice in writing of that other address.

Penalty: \$1 000.

(2) A licensee shall, not later than 14 days after ceasing to carry on business as a travel agent at an address specified in accordance with section 9 (3) (b) or, if a notice has been given under subsection (1), at an address specified in the notice, give to the Registrar notice in writing that the licensee has ceased to carry on business as a travel agent at that address.

Penalty: \$1 000.

(3) When a licensee is required by subsection (1) to give notice in writing of another address, the licensee shall include in that notice the name, address and such other particulars as are prescribed of the person it is proposed to employ at that address in compliance with section 29.

### **Register of licensees**

17. (1) For the purposes of this Act, the Registrar shall keep a register of licensees that, without limiting the operation of subsection (2), includes the address of every place in the State at which each licensee is authorized to carry on business as a travel agent.

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(2) Subject to this Act, the register referred to in subsection (1) shall contain the prescribed particulars and shall be kept in such form and manner as the Minister thinks fit.

(3) The Registrar may, on the application of a person, issue to the person a certificate stating whether or not a person specified in the certificate is or was, on a date or during a period specified in the certificate, the holder of a licence.

(4) The Registrar may charge such fee, if any, as is prescribed for the issue of a certificate under subsection (3).

(5) A person may, on application in accordance with any regulations made under section 59 and on payment of any prescribed fee, inspect and make a copy of, or take extracts from, the register referred to in subsection (1).

**Term of, and authority conferred by, licence**

18. (1) Except while it is suspended under section 22 (1), a licence continues in force until its holder dies or it is surrendered under section 20 or cancelled under section 19 (6), 22 (1) or (4) or 61 (5).

(2) A licence authorizes the licensee to carry on business as a travel agent under the name or names specified in the licence, subject to and in accordance with this Act and the conditions to which the licence is subject.

(3) For the purposes of this Act, sections 19 and 20 excepted, a person whose licence is suspended under section 22 (1) shall, while that suspension continues, be deemed to be a person who is not a licensee.

*[Section 18 amended by No. 27 of 1989 s.4.]*

**Annual fee and annual statement**

**19.** (1) A licensee shall pay to the Commissioner, in respect of the period prescribed for the purposes of this section, the prescribed fee for the licensee's licence.

(1a) Payment in respect of the period prescribed under subsection (1) shall be made —

- (a) not more than 28 days before the expiry of the current prescribed period; and
- (b) not more than 28 days after the expiry of the previous prescribed period,

and in the case of payment referred to in paragraph (b) shall be accompanied by the amount, if any, prescribed by way of penalty for a late payment.

(2) A person who is or was a licensee during a period prescribed under subsection (1), or part of that period, commencing on the date, or on an anniversary of the date, on which the licence was granted to that person shall lodge with the Registrar a statement in respect of that period or part that is in a form approved by the Minister and is signed by or on behalf of the person.

(3) A person required by subsection (2) to lodge a statement shall lodge the statement within 28 days after the end of the period in respect of which, or part of which, the statement is lodged.

(4) The Registrar may, on the application of a person required to comply with subsection (1), or with subsections (2) and (3), extend or further extend the time for compliance with the applicable subsection or subsections.

(5) When a licensee has failed to pay a fee, or lodge a statement, or pay a fee and lodge a statement, in accordance with this section, the Registrar shall give notice in writing to the

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licensee that, unless the fee is paid or the statement lodged or the fee is paid and the statement lodged, as the case requires, together with the prescribed late fee, before a day specified in the notice, being a day that is not earlier than 14 days after the giving of the notice, the licence will be cancelled under subsection (6).

(6) The Registrar shall cancel the licence of a licensee who fails to pay a fee or lodge a statement, or pay a fee and lodge a statement, in accordance with a notice given under subsection (5).

(7) Subject to subsection (4), a person (not being a licensee) to whom subsections (2) and (3) apply shall comply with those subsections.

Penalty: \$1 000.

(8) If, while a licence is in force, there occurs —

- (a) between the time when the application for the licence was granted and the time when the first statement is lodged under subsection (2), a change in the particulars specified or provided in, or in connection with, that application in accordance with section 9 (3), (4) or (5); or
- (b) between the lodging of 2 successive statements under subsection (2), a change in the particulars specified in the earlier of those statements,

the licensee shall, within 14 days of the occurrence of that change, give to the Registrar notice in writing specifying particulars of that change.

Penalty: \$1 000.

(9) A person shall not, in or in relation to a statement required to be lodged under subsection (2) or a notice required to be given under subsection (8), make a statement that is false or

misleading by reason of the inclusion therein of any false or misleading matter or the omission therefrom of any material matter.

Penalty: \$5 000.

(10) It is a defence to a prosecution of a person for an offence under subsection (9) if the person proves that, when the relevant statement was lodged, or the relevant notice given, the person —

(a) believed on reasonable grounds that —

(i) the false matter was true; or

(ii) the misleading matter was not misleading;

or

(b) in the case of an omission —

(i) believed on reasonable grounds that no material matter had been omitted; or

(ii) did not know that the omitted matter was material.

[Section 19 amended by No. 56 of 1995 s.52.]

### **Surrender of licence**

**20.** (1) Subject to this section, a licensee may, by notice in writing given to the Registrar and accompanied by the relevant licence, surrender that licence.

(2) If the Tribunal has decided to hold an inquiry under section 21 in relation to the holding of a licence, the licence shall not be surrendered under subsection (1) until after a determination is made by the Tribunal as a result of the inquiry.

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(3) If a licence is surrendered under subsection (1), the Commissioner shall refund to the former licensee so much of the fee for the licence last paid under section 19 (1) as the Tribunal, on application by the former licensee, specifies as appropriate to be refunded.

***Division 3 — Disciplinary action***

**Objection to holding of licence, and inquiry**

21. (1) The Commissioner may with the consent of the Minister, and any other person may, at any time lodge with the Tribunal an objection in writing to the holding of a licence by a specified licensee if that objection complies with subsection (2).

(2) An objection lodged under subsection (1) complies with this subsection if —

- (a) it specifies the licensee and the grounds of the objection to the holding of a licence by the licensee; and
- (b) the grounds of the objection referred to in paragraph (a) are such that they could reasonably give rise to a belief on the part of the Chairman sufficient to require the Tribunal to hold an inquiry under subsection (4).

(3) The Chairman may refer to the Commissioner an objection lodged under subsection (1) by a person other than the Commissioner, and the Commissioner shall investigate, and report to the Tribunal on, that objection.

(4) If it appears to the Chairman, whether or not as a result of an objection lodged under subsection (1), that there are grounds for believing that —

- (a) a licence may have been improperly obtained or, at the time when a licence was granted, there may have been grounds for refusing to grant it;

- (b) a licensee may have failed to comply with this Act, a condition to which his licence is subject or an order of the Tribunal made under this Act applicable to the licensee;
- (c) a licensee has, within the period of 10 years that last preceded the grant of the licence, been found guilty of an offence involving fraud or dishonesty punishable on conviction by imprisonment for 3 months or more;
- (d) the business to which a licence relates is being carried on in a dishonest or unfair manner;
- (e) if a person were not the holder of a licence, the Tribunal would be required by section 12 (2) or (4) to refuse an application by the person for a licence;
- (f) a licensee that is a body corporate —
  - (i) is in the course of being wound up;
  - (ii) is under official management;
  - (iii) is a body corporate in respect of which a receiver or manager has been appointed; or
  - (iv) has entered into a compromise or scheme of arrangement with its creditors,or may for any other reason be unable, or is likely to become unable, to meet its liabilities;
- (g) a licensee that is an individual does not have, or is not likely to continue to have, sufficient financial resources to enable that licensee to carry on business as a travel agent;
- (h) a licensee has for a period of 1 month or more ceased to carry on the business to which his licence relates;  
or

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- (i) a licensee is, for any other reason, not a fit and proper person to continue to hold a licence,

the Chairman may arrange for the Tribunal to hold an inquiry to determine whether or not to take action under section 22 (1) in relation to the licence concerned, and the Tribunal shall, subject to this section, hold that inquiry.

(5) An objection to the holding of a licence lodged under subsection (1) may be dismissed by the Tribunal if it is of the opinion, whether before, during or after an inquiry —

- (a) that that objection is frivolous, vexatious, misconceived or lacking in substance; or
- (b) that none of the grounds referred to in subsection (4) has been, or can be, made out.

(6) If, under subsection (4), the Chairman has arranged for the Tribunal to hold an inquiry in relation to a licence, the Registrar shall —

- (a) send to the licensee a notice specifying the grounds for the belief on the part of the Chairman referred to in that subsection and a copy of any objection in writing to the holding of the licence lodged under subsection (1) with the Tribunal; and
- (b) give notice in writing of the day appointed for that inquiry to the licensee and to each person by whom any objection referred to in paragraph (a) has been lodged under subsection (1) with the Tribunal before the day on which the Registrar gives that notice.

(7) The Tribunal shall give to the licensee and each other person referred to in subsection (6) (b) an opportunity to appear at the inquiry concerned and be heard.



**Disciplinary action following inquiry**

**22.** (1) If, after holding an inquiry in relation to a licence, the Tribunal is satisfied that any ground for a belief on the part of the Chairman referred to in section 21 (4) has been made out, the Tribunal may —

- (a) reprimand the licensee;
- (b) impose on the licensee a fine not exceeding \$1 000 payable to the Registrar within a specified time;
- (c) require the licensee to comply within a specified time with a requirement specified by the Tribunal;
- (d) suspend the licence for a period not exceeding 12 months;
- (e) disqualify the licensee or any person concerned in the direction, management or conduct of the business of the licensee from being —
  - (i) a licensee;
  - (ii) concerned in the direction, management or conduct of the business of a travel agent; or
  - (iii) an officer of a body corporate that is a licensee, either permanently or for such period as the Tribunal thinks fit;
- (f) impose a condition to which the licence shall be subject or vary or revoke —
  - (i) such a condition; or
  - (ii) a condition imposed under section 13 (1);

or

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(g) cancel the licence,

or take any 2 or more of the courses of action described in paragraphs (a) to (g).

(2) When the Tribunal —

(a) imposes a fine on a licensee under subsection (1) (b);  
or

(b) requires a licensee to comply with a requirement specified by the Tribunal under subsection (1) (c),

the licensee shall pay the fine or comply with the requirement within the time specified by the Tribunal under that subsection.

Penalty: \$5 000.

(3) A fine imposed under subsection (1) (b) is, if not paid within the time specified by the Tribunal for its payment, a debt due to the Crown.

(4) When the Tribunal disqualifies a licensee under subsection (1) (e), the Tribunal shall cancel his licence.

(5) When the Tribunal or the Registrar —

(a) suspends a licence under subsection (1) (d) the licensee; or

(b) cancels a licence under section 19 (6) or 61 (5) or under subsection (1) (g) or (4) the former licensee,

shall return the licence to the Registrar within a period specified by the Tribunal or the Registrar when suspending or cancelling the licence.

Penalty: \$1 000.

(6) A person disqualified under subsection (1) (e) shall not, while so disqualified —

- (a) be a licensee;
- (b) be concerned in the direction, management or conduct of the business of a travel agent; or
- (c) be an officer of a body corporate that is a licensee,

as the case requires.

Penalty: \$5 000.

(7) If a person has been convicted of an offence and the circumstances of the offence form, wholly or partly, the subject-matter of an inquiry under section 21, the person is not liable to a fine under this section in respect of the conduct giving rise to the offence.

#### ***Division 4 — Appeal***

##### **Appeals to District Court**

**23.** (1) Notwithstanding anything in the *Commercial Tribunal Act 1984*, when the Tribunal refuses to grant an application for, or cancels or suspends, a licence or imposes a condition under section 13 (1) in respect of a licence, or imposes a disqualification under section 22 (1) (e), the applicant for the licence or the person who held or holds the licence or the person disqualified, as the case requires, may appeal to the District Court in accordance with the rules thereof.

(2) If —

- (a) an applicant or a prospective applicant is refused participation in the Compensation Scheme, the applicant or prospective applicant; or

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- (b) the participation of a licensee in the Compensation Scheme has been terminated otherwise than by the licensee, the licensee,

may appeal to the District Court in accordance with the rules thereof.

(3) An appellant under subsection (1) shall, within 28 days after lodging an appeal, give notice in writing of the appeal, together with the grounds of the appeal, to the Registrar.

(4) An appeal under this section does not operate to stay any relevant cancellation or suspension of a licence, imposition of a condition or disqualification, or refusal or termination of participation, as the case requires, unless the District Court otherwise orders and any conditions imposed by the District Court when ordering the stay are complied with.

### **Determination of appeal**

24. (1) The District Court may, in respect of an appeal under section 23 (1) in respect of a refusal to grant an application for, or of the imposition of a condition under section 13 (1) in respect of, a licence —

- (a) dismiss that appeal; or
- (b) make any determination in relation to the matter of that appeal that could have been made by the Tribunal,

and, if the District Court makes a determination under paragraph (b), the determination shall be deemed to be a decision of the Tribunal instead of the decision appealed against and shall be given effect accordingly.

(2) If the District Court, after hearing an appeal under section 23 (1) in respect of the cancellation or suspension of a licence, or of the imposition of a disqualification under

section 22 (1) (e), is satisfied that any ground referred to in section 21 (4) has been made out, it may —

- (a) dismiss the appeal; or
- (b) exercise any one or more of the powers conferred on the Tribunal by section 22 (1),

but, if the District Court declares that it is not so satisfied, the decision of the Tribunal appealed against shall be deemed not to have been made.

(3) Subject to section 25, when the District Court acts under subsection (2) (b), its decision shall be deemed to be a decision of the Tribunal under section 22 (1) instead of the decision appealed against and shall be given effect accordingly.

(4) After hearing an appeal under section 23 (2), the District Court may —

- (a) dismiss the appeal;
- (b) if the appeal is against a refusal referred to in section 23 (2) (a), admit the appellant to participation in the Compensation Scheme conditionally on the appellant being or becoming licensed; or
- (c) if the appeal is against a termination referred to in section 23 (2) (b), annul that termination.

(5) Subject to section 25, a decision by the District Court under subsection (4) (b) or (c) shall be deemed to be a decision made in accordance with the law governing the Compensation Scheme and shall be given effect accordingly.

### **Appeal on question of law**

**25.** (1) A party to an appeal under section 23 may, in accordance with rules of court made under the *Supreme Court*

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*Act 1935*, appeal to the Supreme Court against an order or decision of the District Court on a question of law.

(2) On the hearing of an appeal under subsection (1), the Supreme Court shall —

- (a) remit the matter to the District Court for determination by the District Court in accordance with the decision of the Supreme Court; or
- (b) make such order in relation to the appeal, other than an order of remittal under this subsection, as seems fit.

***Division 5 — Conduct of business***

**Certain particulars to be displayed**

**26.** A licensee shall cause to be displayed at each place at which business is carried on under his licence a legible notice that contains the prescribed particulars and is clearly visible to persons entering that place.

Penalty: \$1 000.

**Advertisements**

**27.** A licensee shall not cause or permit to be published an advertisement relating to the business carried on under his licence unless that advertisement legibly specifies —

- (a) the name of the licensee or, if the licensee is authorized under section 14 (1) by his licence to carry on business under a name other than the name of the licensee, the name so authorized; and
- (b) the number of his licence.

Penalty: \$1 000.

**Name to appear on documents**

28. (1) A licensee shall not, in the course of carrying on business under his licence, issue a letter, statement, invoice, cheque, receipt or other document, or publish an advertisement, on which there does not appear in legible characters the name of the licensee identified as such, whether or not the licensee is authorized under section 14 (1) by his licence to carry on business under a name other than the name of the licensee.

Penalty: \$1 000.

(2) A reference in subsection (1) to the name of a licensee includes, in the case of a licensee who carries on business in partnership with another licensee or other licensees, a reference to the names of all the partners.

**Supervision of conduct of business**

29. (1) If a licensee, being an individual, is not personally present and in charge of the day to day conduct of business at a place at which business is carried on under his licence, the licensee shall employ a person with the prescribed qualifications to be present personally at that place and in charge of the day to day conduct of business at that place.

Penalty: \$1 000.

(2) If a licensee is a body corporate, the licensee shall employ a person with the prescribed qualifications to be present personally at each place at which business is carried on under its licence and in charge of the day to day conduct of business at that place.

Penalty: \$1 000.

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**Employment of disqualified person**

**30.** (1) Except with the approval of the Tribunal, a licensee shall not employ a person for the purposes of the business carried on under his licence if the person —

- (a) is disqualified under section 22 (1) (e) from being a licensee or from being concerned in the direction, management or conduct of that business;
- (b) in the case of a licensee which is a body corporate, is disqualified under section 22 (1) (e) from being an officer of the body corporate;
- (c) has been refused a licence on a ground referred to in section 12 (2) (d) or (g);
- (d) is a person whose adverse qualities were responsible for an individual being refused a licence on the ground referred to in section 12 (2) (h) or for a body corporate being refused a licence on a ground referred to in section 12 (4) (f), (g) or (h); or
- (e) was the holder of a licence that has been cancelled under section 19 (6), 22 (1) (g) or (4) or 61 (5).

Penalty: \$5 000.

(2) It is a defence to a prosecution for an offence under subsection (1) if it is proved that the person responsible for the prohibited employment had no reason to believe that the person employed was within the relevant prohibition.

**Certain fees, etc., not recoverable**

**31.** No action lies for the recovery of any fee, commission or other reward for any service done or performed in the course of the carrying on of business as a travel agent by a person (other than an exempted person) who does not hold a licence.



**Forfeiture of illegal profits**

**32.** (1) A court convicting a person of an offence under section 7 (1) or (2) may, subject to this section, order that any profits derived by the convicted person from carrying on business as a travel agent in contravention of that section be —

- (a) wholly credited to the Consolidated Fund as moneys forfeited to the Crown;
- (b) partly credited to the Consolidated Fund as moneys forfeited to the Crown and partly paid to any person specified in that order as having an interest in those profits; or
- (c) wholly paid to any person specified in that order as having an interest in those profits.

(2) If the whole or any part of any profits referred to in subsection (1) consists of or has been used directly or indirectly to acquire any property, the court concerned may order that that property be sold in the manner specified in that order.

(3) When any property has been sold in accordance with an order made under subsection (2), the court concerned may make an order under subsection (1) in respect of the net proceeds of that sale as if those proceeds were profits derived within the meaning of subsection (1).

(4) Before making an order under subsection (1), the court concerned may require notice to be given to, and hear, any person claiming any interest in the profits concerned or in any property acquired directly or indirectly with those profits or any part thereof.

(5) When an order is made under subsection (1) in respect of any profits derived by a body corporate from carrying on business as a travel agent in contravention of section 7 (1) or (2), any director or other officer concerned in the management of the body corporate is guilty of the like offence by virtue of section 57 and

the whole or any part of those profits is not available for disposal under the order, the court which made the order may order that an amount equal to or less than that whole or part be paid by that director or other officer and credited to the Consolidated Fund as moneys forfeited to the Crown.

(6) A person shall not, if he knows that another person is carrying on business as a travel agent in contravention of section 7 (1) or (2), do an act which assists and is intended by him to assist the other person so to carry on business.

Penalty: \$5 000.

(7) When an order is made under subsection (1) in respect of any profits derived by a person from carrying on business as a travel agent in contravention of section 7 (1) or (2), another person is convicted of an offence under subsection (6) in respect of an act of assistance rendered to the firstmentioned person during the period of that carrying on of business as a travel agent and the whole or any part of those profits is not available for disposal under the order, the court which made the order may order that an amount equal to or less than that whole or part be paid by the other person and credited to the Consolidated Fund as moneys forfeited to the Crown.

(8) The Under Treasurer shall pay to the Compensation Trustees for the purposes of the Compensation Scheme an amount equivalent to any amount credited to the Consolidated Fund as moneys forfeited to the Crown under an order made under subsection (1), (5) or (7).

(9) In this section —

**“property”** means property of any kind whatsoever, whether real or personal, corporeal or incorporeal, other than money.

[Section 32 amended by No. 6 of 1993 s.11; No. 49 of 1996 s.64.]

*Division 6 — Licences generally*

**Death of licensee**

**33.** (1) When a licensee dies, a person who is, or who is named as, or who intends to apply to become, a legal personal representative of the licensee may, within 28 days after that death or such longer period as the Registrar allows, apply to the Registrar for authority to carry on, until the expiration of the period of 180 days that next succeeds that death, the business of the deceased licensee to which the licence relates.

(2) The Registrar —

- (a) shall give a copy of an application made under subsection (1) to the Commissioner who may, within 7 days of that giving, lodge with the Registrar an objection in writing to the granting of that application, which objection specifies the ground of that objection, and, when such an objection is so lodged, the Commissioner shall serve a copy thereof on the applicant; and
- (b) if an objection to the granting of an application made under subsection (1) —
  - (i) is lodged, and a copy thereof is served, under this subsection, shall refer that application to the Tribunal; or
  - (ii) is not lodged under this subsection, shall grant that application.

(3) When an application is referred to the Tribunal under subsection (2) (b) (i), the Tribunal shall grant or refuse the application and, if it grants the application, may impose such conditions as it thinks fit, being conditions subject to which the business to which the application relates may be carried on.

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(4) An applicant whose application is granted under this section shall, subject to this Act and any conditions imposed under subsection (3), be deemed, until —

- (a) the expiration of the period of 180 days that next succeeds the death of the deceased licensee; or
- (b) he ceases to carry on the business of the deceased licensee to which the licence concerned relates,

whichever is the sooner, to be the holder of the licence of the deceased licensee.

**Certain legal representatives temporarily exempted from licensing**

**34.** (1) Nothing in this Act shall be construed as requiring any person appointed or authorized by or under a written law, a law of the Commonwealth or the common law to carry on the business of a travel agent of another person who is prevented by any legal, mental or physical disability other than death from carrying on that business to hold a licence for the purpose of performing his functions under that appointment or authority during the period of 180 days, or such longer period as may be allowed under subsection (2), next following —

- (a) the date on which the firstmentioned person was so appointed or authorized; or
- (b) the appointed day,

whichever is the later date.

(2) The Tribunal may, on the application of a person appointed or authorized within the meaning of subsection (1), allow a period longer than 180 days for the purposes of that subsection on such conditions, if any, as the Tribunal thinks fit and, if any such condition is breached by that person, that longer period shall be deemed to end at the time of that breach.

(3) A person whose appointment or authorization within the meaning of subsection (1) —

- (a) subsisted immediately before the appointed day shall within 14 days after the appointed day; or
- (b) occurred on or after the appointed day shall within 14 days after the day of that occurrence,

notify the Tribunal in writing of that subsistence or occurrence.

Penalty: \$500.

**Endorsement of conditions, etc., of licence**

**35.** When a licensee is required to comply with a requirement specified by the Tribunal under section 22 (1) (c) or to carry on the business to which his licence relates subject to conditions imposed under section 13 (1) or 22 (1) (f), the licensee shall, on being required by the Registrar so to do within a time (being not less than 14 days) specified by the Registrar, produce the licence to the Registrar within that time for endorsement thereon of the requirement or condition.

Penalty: \$1 000.

**PART III — UNJUST CONDUCT BY TRAVEL AGENTS**

**Interpretation in Part III**

**36.** For the purposes of this Part, the conduct of a person who carries on business as a travel agent (whether or not the person is a licensee or is an exempted person) is unjust if it is conduct that —

- (a) is dishonest or unfair;
- (b) consists of anything done, or omitted to be done, in breach of contract, whether or not proceedings in respect of the breach have been brought;
- (c) consists of the contravention of this Act or of any other enactment administered by the Minister; or
- (d) in the case of a licensee, consists of the failure to comply with a condition to which his licence is subject or an order of the Tribunal applicable to the licensee.

**Undertakings by travel agent**

**37.** (1) If it appears to the Commissioner that a person who carries on business as a travel agent has, in the course of business, repeatedly engaged in unjust conduct, the Commissioner may, with the consent of the Minister —

- (a) request the person to execute a deed in terms approved by the Commissioner whereby the person gives undertakings relating to —
  - (i) the discontinuance of the unjust conduct;
  - (ii) the future conduct of the person; and

(iii) the action the person will take to rectify the consequences of his unjust conduct;

or

(b) apply to the Tribunal for an order under section 39 (1).

(2) If the Commissioner makes a request or application under subsection (1), it shall be presumed, unless the contrary is proved, that the Commissioner does so with the consent of the Minister.

(3) If a person executes a deed in compliance with a request made under subsection (1) (a) and observes the undertakings given in the deed —

(a) a notice shall not be given under section 21 (6) or any thing done under section 22; and

(b) the Commissioner shall not apply for an order under section 39 (1),

by reason of any conduct to which those undertakings relate.

### **Register of Undertakings**

**38.** (1) If a person executes a deed containing undertakings referred to in section 37 (1) (a), the Commissioner shall —

(a) lodge a copy of that deed with the Registrar; and

(b) give a copy of that deed to the person who executed it.

(2) The Commissioner shall retain the originals of all deeds referred to in subsection (1) and shall register those deeds in a Register of Undertakings that —

(a) is kept by the Commissioner in such form and manner as the Commissioner thinks fit; and

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(b) contains the prescribed particulars.

(3) The Register of Undertakings referred to in subsection (2) may be inspected, and copies of it and extracts from it may be taken, at any reasonable time by any person free of charge.

(4) A person who gives undertakings in a deed executed in compliance with a request made under section 37 (1) (a) shall observe the undertakings.

Penalty: \$10 000.

(5) A prosecution for an offence under subsection (4) shall not be instituted except by the Commissioner with the leave of the Tribunal given when making an order in accordance with section 39 (2).

**Restraint of unjust conduct**

**39.** (1) If, on the application of the Commissioner, the Tribunal is satisfied after inquiry that a person has repeatedly engaged in unjust conduct, the Tribunal may order the person to refrain from engaging in unjust conduct in the course of carrying on business as a travel agent and the person shall comply with that order.

(2) If, on the application of the Commissioner, the Tribunal is satisfied that a person has failed to observe an undertaking given by the person in a deed executed in compliance with a request made under section 37 (1) (a), the Tribunal may make —

- (a) an order under subsection (1) against the person; and
- (b) in the case of an undertaking referred to in section 37 (1) (a) (iii), an order to observe that undertaking within a time specified by the Tribunal when making that order.



(3) If the Commissioner applies for an order under subsection (1) or (2) against a body corporate and the Tribunal is satisfied that the unjust conduct or breach of undertaking to which that application relates was engaged in with the consent or connivance of a person who, at the time of that conduct or breach, was a director of, or a person concerned in the management of, the body corporate, the Tribunal may, in addition to any order it may make under this section, make an order (in this subsection called "**the prohibitory order**") prohibiting the person from consenting to, or conniving at, engagement in unjust conduct, or a breach of an undertaking referred to in section 37 (1) (a), by the body corporate or by any other body corporate of which the person is a director or in the management of which the person is concerned and the person to whom the prohibitory order relates shall comply with the prohibitory order.

(4) An order under this section may be made subject to such conditions (whether relating to the duration of the order or otherwise) as the Tribunal thinks fit, including conditions relating to the future conduct of the person to whom that order relates and conditions specifying the action to be taken by that person to rectify the consequences of the unjust conduct of that person.

#### **Variation or discharge of restraining order**

40. The Tribunal may, on the application of the Commissioner, vary or discharge an order made under section 39.

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**PART IV — GENERAL**

**Accounts and records to be kept by travel agent**

41. (1) A person who carries on business as a travel agent shall —

- (a) keep such accounting records and other records as correctly record and explain the transactions and financial position of that business;
- (b) keep the records referred to in paragraph (a) in such a manner as will enable true and fair profit and loss accounts, and balance sheets, for that business to be prepared from time to time;
- (c) keep the records referred to in paragraph (a) in such a manner as will enable profit and loss accounts, and balance sheets, for the business to be conveniently and properly audited;
- (d) keep the records referred to in paragraph (a) at his principal place of business in the State or at such other place, whether inside or outside the State, as the Tribunal approves; and
- (e) keep the records referred to in paragraph (a) in the English language or in such manner as will enable them to be readily converted into writing in the English language.

Penalty: \$1 000 or imprisonment for a term of 6 months.

(2) A person does not fail to keep accounting records in compliance with subsection (1) by reason only that those records are kept as part of, or in conjunction with, the records relating to any business, other than business as a travel agent, carried on by him.

**Appointment of inspectors and certificates of authority**

42. (1) The Commissioner may appoint any officer appointed under section 15 (1) of the *Consumer Affairs Act 1971* to assist the Commissioner to be an inspector for the purposes of this Act.

(2) The Commissioner shall issue to each inspector a certificate of authority authorizing him to exercise the powers conferred on an inspector by or under this Act.

(3) Whenever an inspector seeks to exercise any power conferred on an inspector by or under this Act, he shall, if requested to do so by any person —

- (a) apparently in charge of the premises in relation to which; or
- (b) in relation to whom,

as the case requires, that power is sought to be exercised, produce to that person his certificate of authority issued under subsection (2).

**General powers of inspectors**

43. (1) An inspector may for the purpose of ascertaining whether or not a person is, or at any time has been, carrying on business as a travel agent in contravention of this Act, or whether or not a licensee is contravening any provision of this Act that is applicable to him or has contravened any such provision —

- (a) require any person —
    - (i) to give the inspector such information as he requires; or
    - (ii) to answer any question put to that person,
- in relation to any matter under this Act;

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- (b) require any person to produce to him any records to which subsection (6) applies and inspect and make copies of or extracts from any such records;
  - (c) subject to subsection (7), enter at any reasonable time any place at which that person or licensee carries on business as a travel agent or at which the inspector has reasonable grounds for believing that any records to which subsection (6) applies are being kept, search that place and inspect and make copies of or extracts from any such records; and
  - (d) make such examinations and inquiries as he thinks necessary to ascertain whether or not the provisions of this Act are being or have been contravened or complied with.
- (2) A requirement made under subsection (1) (a) —
- (a) may be made orally or by notice in writing served on the person required to give information or answer a question, as the case requires;
  - (b) shall specify the time at or within which the relevant information is to be given or the relevant question is to be answered, as the case requires;
  - (c) may, by its terms, require that the information or answer required —
    - (i) be given orally or in writing;
    - (ii) be given at or sent or delivered to any place specified in that requirement;
    - (iii) in the case of written information or answers, be sent or delivered by any means specified in that requirement; and

- (iv) be given on oath or affirmation or by statutory declaration for which purpose the inspector concerned may administer an oath or affirmation and has the authority of a commissioner for declarations.

(3) A requirement made under subsection (1) (b) —

- (a) shall be made by notice in writing served on the person required to produce the relevant record;
- (b) shall specify the time at or within which the relevant record is to be produced; and
- (c) may, by its terms, require that the relevant record be produced at any place, and by any means, specified in that requirement.

(4) When under subsection (1) (a) an inspector orally requires a person to give any information or answer any question, the inspector shall inform the person that he is required by this Act to give that information or answer that question, as the case requires.

(5) When under paragraph (a) or (b) of subsection (1) a person is required by notice in writing to give any information, answer any question or produce any record, that notice shall state that he is required by this Act to give that information, answer that question or produce that record, as the case requires.

(6) This subsection applies to any record or part thereof kept —

- (a) by or on behalf of a person or licensee referred to in subsection (1) with respect to the carrying on by that person or licensee of the business of a travel agent;
- (b) by a bank so far as that record relates to any business referred to in paragraph (a); or

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- (c) if a person or licensee referred to in subsection (1) is —
  - (i) a body corporate which is being wound up, by the liquidator of that body corporate; or
  - (ii) an individual who is an insolvent under administration within the meaning of the *Companies (Western Australia) Code*, by the trustee, controlling trustee or other person controlling the property of that individual.

(7) An inspector shall not enter residential premises —

- (a) without the consent of the occupier of those premises unless the business of a travel agent is carried on in those premises; or
- (b) unless he does so in accordance with a search warrant granted to him under subsection (8).

(8) A justice of the peace may, on the application of an inspector and if he is satisfied that there are reasonable grounds to suspect that —

- (a) a licensee or other person is, or at any time has been, carrying on business as a travel agent in a manner which contravenes, or in contravention of, any provision of this Act; or
- (b) any records to which subsection (6) applies are being kept,

on any residential premises, grant to the inspector a search warrant empowering the inspector at any time or times within 30 days from the date of that search warrant to enter those premises, search those premises and inspect and make copies of or extracts from any records to which subsection (6) applies.

(9) The expenses of and incidental to —

- (a) the exercise of any power or the performance of any duty conferred or imposed by this section; or

(b) an application under subsection (8), shall be paid by the Department within the meaning of the *Consumer Affairs Act 1971*.

(10) When an inspector has made a copy of a record to which subsection (6) applies or of any part of such a record in the exercise of a power conferred on him by subsection (1) or by a search warrant granted under subsection (8), that copy shall, if certified by him as being a true copy of that record or part, be evidence of the contents of that record or part in the same way as the original of that record.

### **Incrimatory information, answers and records**

44. Without prejudice to section 11 of the *Evidence Act 1906*, a person who is required under section 43 (1) —

- (a) to give any information;
- (b) to answer any question; or
- (c) to produce any record,

shall not refuse to comply with that requirement on the ground that that information, answer or record may tend to incriminate him or render him liable to any penalty, but the information or answer given, or record produced, by him shall not be admissible in evidence in any proceedings against him other than proceedings in respect of an offence under section 45 (1) (b).

### **Failure to give information or answer or to produce record**

45. (1) A person who is required under section 43 (1) to give any information, answer any question or produce any record shall not without reasonable excuse —

- (a) fail to give that information or to answer that question at or within the time specified in that requirement;

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- (b) give any information or answer that is false in any particular; or
- (c) fail to produce that record at or within the time specified in that requirement.

Penalty: \$1 000.

(2) It is a defence in any proceeding for an offence under subsection (1) (a) or (b) for the defendant to show that —

- (a) in the case of an alleged offence arising out of a requirement made orally under section 43, the inspector did not when making that requirement inform the defendant that he was required by this Act to give the relevant information or answer the relevant question, as the case requires;
- (b) in the case of an alleged offence arising out of a requirement made by notice in writing under section 43, that notice did not state that the defendant was required by this Act to give the relevant information, answer the relevant question or produce the relevant record, as the case requires; or
- (c) the time specified in the relevant requirement did not afford the defendant sufficient notice to enable him to comply with that requirement.

**Obstruction of inspector**

**46.** A person shall not without reasonable excuse obstruct or impede an inspector in the exercise of any power conferred on him by section 43.

Penalty: \$1 000.



**Judicial notice of inspector**

47. All courts, judges and persons acting judicially shall take judicial notice of the official signature of every person who is for the time being or has at any time been an inspector and of the fact that that person holds or has held the office of inspector.

**Other rights and remedies not affected by this Act**

48. Nothing in this Act affects any rights or remedies that a person may have in relation to another person who carries on or has carried on business as a travel agent, whether or not that other person is or was the holder of a licence.

**Compensation Trustees to have certain rights by subrogation and otherwise**

49. (1) When a payment is made to a claimant under the Compensation Scheme by reason of an act or omission by a person carrying on business as a travel agent, the Compensation Trustees are subrogated to the rights of the claimant in relation to that act or omission.

(2) If the rights conferred by subsection (1) on the Compensation Trustees are exercisable against a body corporate, those rights are enforceable jointly against the body corporate and the persons who were its directors at the time of the relevant act or omission and severally against the body corporate and each of those directors.

(3) If it is proved that an act or omission by a body corporate occurred without the knowledge or consent of a director of the body corporate, the rights conferred by subsection (1) are not enforceable under subsection (2) against that director in relation to the relevant act or omission.

(4) If an act or omission referred to in subsection (1) is that of a person who is not a licensee or exempted person (in this

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section called “**the unlicensed person**”), a person who aided, counselled or procured the carrying on by the unlicensed person of the business of a travel agent shall for the purposes of subsections (1), (2) and (3) be deemed to have, at the time of that act or omission, carried on business in partnership with the unlicensed person.

(5) Subsection (4) has effect whether or not the person who aided, counselled or procured the carrying on of business by the unlicensed person has for that reason been convicted of an offence by virtue of section 7 of *The Criminal Code*.

**Delegation**

**50.** (1) The Commissioner may, either generally or as otherwise provided by the instrument of delegation, by writing signed by him delegate any of his powers or duties under this Act, except for this power of delegation, to an officer appointed under section 15 (1) of the *Consumer Affairs Act 1971* to assist the Commissioner.

(2) For the purposes of this Act, the exercise of a power or the performance of a duty by a delegate under this section shall be deemed to be the exercise of the power or the performance of the duty by the Commissioner.

(3) A delegation under this section may be made to a specified officer or to officers of a specified class.

(4) In subsection (3) —

“**officer**” means officer referred to in subsection (1).

**Legal action by Compensation Trustees**

**51.** The Compensation Trustees may sue and be sued in the name of the “Travel Agents Compensation Fund” and, in any action brought by the Compensation Trustees, it shall be

presumed, unless the contrary is proved, that any condition precedent to the bringing of that action imposed on the Compensation Trustees by the Compensation Scheme has been complied with.

**Secrecy**

52. (1) This section applies to a person who is or has been —
- (a) the Minister;
  - (b) a member of the Tribunal;
  - (c) the Commissioner;
  - (d) an officer referred to in section 50 (1);
  - (e) the Registrar or a member of the staff assisting him;  
or
  - (f) an inspector.

(2) Subject to subsection (3), a person to whom this section applies shall not, directly or indirectly, make a record of, or divulge or communicate to any person, any information concerning the affairs of any other person acquired by the person to whom this section applies by reason of his office or employment under or for the purposes of this Act.

Penalty: \$2 000.

(3) Nothing in subsection (2) prohibits the recording, divulging or communicating of any information referred to in that subsection —

- (a) in the performance of a function under or in connection with this Act, the *Consumer Affairs Act 1971* or the *Commercial Tribunal Act 1984*;

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- (b) for the purposes of any proceedings under an Act referred to in paragraph (a); or
- (c) in the course of an exchange of information with persons or bodies performing functions under or in connection with a law of the Commonwealth or of another State or of a Territory corresponding to this Act.

### **Injunctions**

**53.** (1) If a person is contravening, has on 2 or more occasions contravened, or threatens to contravene, any provision of this Act whereby an offence is constituted, the Supreme Court or the District Court (in this section called "**the court**") may, on application made by the Commissioner or by a person who has received the written consent of the Attorney General to his making that application, grant an injunction restraining the first-mentioned person from —

- (a) continuing to contravene that provision;
- (b) contravening that provision; or
- (c) engaging in conduct that constitutes or would constitute —
  - (i) attempting to contravene that provision;
  - (ii) aiding, abetting, counselling or procuring a person to contravene that provision;
  - (iii) inducing, or attempting to induce, a person, whether by threats or promises or otherwise, to contravene that provision;
  - (iv) being in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by a person of that provision; or

- (v) conspiring with others to contravene that provision.

(2) When in the opinion of the court it is desirable to do so, the court may on an application under subsection (1) grant an interim injunction pending determination of that application and, if it does so, shall not require the applicant or any other person, as a condition of granting the interim injunction, to give any undertakings in respect of damages.

(3) The court may rescind or vary an injunction granted under subsection (1) or (2).

(4) When an application is made under subsection (1) to the court for the grant of an injunction restraining a person from engaging in conduct of a particular kind, being conduct referred to in that subsection, the court may —

- (a) if it is satisfied that the person has previously engaged in conduct of that kind, grant an injunction under that subsection restraining the person from engaging in conduct of that kind; or
- (b) if in the opinion of the court it is desirable to do so, grant an interim injunction under subsection (2) restraining the person from engaging in conduct of that kind,

whether or not it appears to the court that the person intends to engage again, or to continue to engage, in conduct of that kind.

(5) When an application is made under subsection (1) to the court for the grant of an injunction restraining a person from engaging in conduct of a particular kind, being conduct referred to in that subsection, the court may —

- (a) if it appears to the court that, in the event that an injunction is not granted, it is likely that the person will engage in conduct of that kind, grant an

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injunction under that subsection restraining the person from engaging in conduct of that kind; or

- (b) if in the opinion of the court it is desirable to do so, grant an interim injunction under subsection (2) restraining the person from engaging in conduct of that kind,

whether or not the person has previously engaged in conduct of that kind and whether or not there is an imminent danger of substantial damage to any person if the first-mentioned person engages in conduct of that kind.

**Disobedience to orders of Tribunal**

**54.** The Chairman has, in relation to a person guilty of disobedience to an order made by the Tribunal under this Act, the same powers as are conferred on a Judge by or under the *Supreme Court Act 1935* for punishing a person guilty of disobedience to an order of the Supreme Court.

**Limitation**

**55.** Notwithstanding section 51 of the *Justices Act 1902*, a complaint in respect of an alleged offence under this Act may be made at any time within one year after the Commissioner first becomes aware of the commission of that alleged offence.

**General penalty**

**56.** A person who commits an offence under this Act is liable, if a penalty is not expressly provided for that offence, to a penalty not exceeding \$500 and, in the case of a continuing such offence, to a further penalty not exceeding \$150 for each day during which that offence continues.

**Liability of directors and others when offence committed by body corporate**

57. When a person which is a body corporate commits an offence under this Act, every director or other officer concerned in the management of the body corporate is guilty of the like offence unless he proves that that offence was committed without his consent or connivance and that he exercised all such due diligence to prevent the commission of that offence as he ought to have exercised having regard to the nature of his functions in that capacity and to all the circumstances.

**Annual report**

58. (1) The Commissioner shall, as soon as practicable after 30 June in each year, submit to the Minister a report on the exercise of his powers and the performance of his duties under this Act during the year ending on that date.

(2) The Minister shall cause a report submitted to him under subsection (1) to be laid before each House of Parliament within 14 sitting days of that House after that report was so submitted to him.

**Regulations**

59. (1) The Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed, or are necessary or convenient to be prescribed, for carrying out or giving effect to this Act.

(2) Without derogating from the generality of subsection (1), regulations made under that subsection may —

- (a) prescribe any forms to be used under this Act;
- (b) prescribe the procedure to be followed on applications and other proceedings under this Act;

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- (c) prescribe the functions of the Registrar in relation to this Act;
  - (d) provide that the fee referred to in section 9 (2), 15 (3) or 19 (1), (1a) or (5) is to be of —
    - (i) a specified amount; or
    - (ii) an amount calculated in a specified manner;
  - (e) prescribe the records to be kept by a licensee (in addition to those required to be kept by section 41), and the form and manner of keeping records so prescribed;
  - (f) require licensees to appoint auditors, prescribe the duties and privileges of auditors so appointed, provide for the payment of the fees and expenses of any such auditors, and provide for the resignation and removal of any such auditors;
  - (g) regulate the publication of advertisements offering, or notifying the availability of, the services of travel agents and prescribe the form and content of those advertisements; and
  - (h) prescribe a compensation scheme for compensating persons who suffer loss by reason of an act or omission by a person who carries on, or carried on, business as a travel agent and may for that purpose adopt or incorporate the provisions of the trust deed by which the compensation scheme is established.
- (3) In subsection (2) —

**“specified”** means specified in the regulations made under subsection (1).

(4) Regulations made under subsection (1) may create offences and provide for the imposition in respect of any such



offence of a penalty not exceeding \$500 and, in the case of a continuing such offence, a further penalty not exceeding \$150 for each day that that offence continues.

[Section 59 amended by No. 56 of 1995 s.53.]

### **Amendment of Schedule**

**60.** (1) The Governor may by order published in the *Gazette* amend the Schedule so as to —

- (a) add thereto or delete therefrom any Act;
- (b) delete any Act therein and substitute another Act therefor; or
- (c) alter the short title of any Act therein to accord with that short title as amended by another Act.

(2) Subject to this section, on the publication in the *Gazette* of an order made under subsection (1), the Schedule is amended accordingly and, as so amended, has the same force and effect as if the amendment effected by that order had been effected by an Act amending this Act.

(3) Section 42 of the *Interpretation Act 1984* applies to an order made under subsection (1) as if references in that section to regulations were references to that order.

**PART V — TRANSITIONAL PROVISIONS**

**Grant or refusal of application for licence made before appointed day**

**61.** (1) If an application is made and granted before the appointed day, the licence granted takes effect on the appointed day and shall, subject to section 12 (7) (b), be signed and issued by the Registrar.

(2) If an application is made before the appointed day but the application is not determined until the appointed day or a later day, the applicant shall, subject to section 62, be deemed to be the holder of a licence (being a licence of the class applied for) between the beginning of the appointed day and the time of the granting or, as the case requires, the refusal of the application.

(3) If an application referred to in subsection (2) is granted, an additional fee is payable in respect of the licence granted, being a fee that bears to the fee paid under section 9 (2) the same proportion as the period between the beginning of the appointed day and the day on which that licence is granted bears to one year.

(4) If an application made before the appointed day is granted or refused on or after the appointed day, the Registrar shall notify the applicant and any objector of that granting or refusal and, if that application is granted and an additional fee is payable under subsection (3), give notice in writing to the licensee that, unless the amount of the additional fee, being an amount specified in that notice, is paid before a day so specified, being a day that is not earlier than 14 days after the giving of that notice, the licence granted will be cancelled under subsection (5).

(5) The Registrar shall cancel the licence of a licensee who fails to pay a fee in accordance with a notice given to the licensee under subsection (4), and such a cancellation has the same effect as a cancellation under section 19 (6).

(6) If an application made before the appointed day is refused before, on or after the appointed day, the Registrar shall, as soon as practicable, refund to the applicant so much of the relevant application fee paid under section 9 (2) as is specified by the Tribunal as appropriate to be refunded.

(7) If a licence is cancelled under subsection (5), the Registrar shall refund to the former licensee an amount determined by the Tribunal, being such proportion of the relevant application fee paid under section 9 (2) as the Tribunal considers appropriate having regard to the period that elapsed between the beginning of the appointed day and the day on which the relevant application was granted.

### **Tribunal may give certain directions**

**62.** If the Tribunal on cause shown so directs, section 61 (2) ceases to apply to a person to whom, but for this section and that direction, it would apply.

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Sch.

**SCHEDULE**

[Sections 9 (3) (d)  
and 12 (2) (f)]

**SPECIFIED LICENSING OR REGISTRATION ACTS**

- | <i>Item.</i> | <i>Act.</i>   |
|--------------|---|
| 1.           | <i>Auction Sales Act 1973.</i>  |
| 2.           | <i>Builders' Registration Act 1939.</i>   |
| 3.           | <i>Credit (Administration) Act 1984.</i>  |
| 4.           | <i>Debt Collectors Licensing Act 1964.</i>  |
| 5.           | <i>Employment Agents Act 1976.</i>  |
| 6.           | <i>Finance Brokers Control Act 1975.</i>  |
| 7.           | <i>General Insurance Brokers and Agents Act 1981.</i>   |
| [8.          | <i>deleted]</i>   |
| 9.           | <i>Land Valuers Licensing Act 1978.</i>   |
| 10.          | <i>Motor Vehicle Dealers Act 1973.</i>  |
| 11.          | <i>Painters' Registration Act 1961.</i>   |
| 12.          | <i>Pawnbrokers and Second-hand Dealers Act 1994<sup>1</sup>.</i>                                      |
| 13.          | <i>Real Estate and Business Agents Act 1978.</i>  |
| [14.         | <i>deleted.]</i>  |
| 15.          | <i>Security and Related Activities (Control) Act 1996<sup>1</sup> or an Act repealed by that Act.</i> |
| 16.          | <i>Settlement Agents Act 1981.</i>  |

[Schedule amended by No. 88 of 1994 s.100; No. 27 of 1996 s.96.]

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### NOTES

<sup>1.</sup> This reprint is a compilation as at 22 April 1997 of the *Travel Agents Act 1985* and includes the amendments effected by the other Acts referred to in the following Table.

**Table of Acts**

Act	Number and Year	Assent	Commencement	Miscellaneous
<i>Travel Agents Act 1985</i>	120 of 1985	30 December 1985	1 February 1987 (see <i>Gazette</i> 16 January 1987 p.82)	
<i>Travel Agents Amendment Act 1989</i>	27 of 1989	12 December 1989	9 January 1990	
<i>Financial Administration Legislation Amendment Act 1993, Part 4</i>	6 of 1993	27 August 1993	Deemed operative 1 July 1993 (see section 2 (1))	
<i>Pawnbrokers and Second-hand Dealers Act 1994, section 100</i>	88 of 1994	5 January 1995	1 April 1996 (see section 2 and <i>Gazette</i> 29 March 1996 p.1495)	
<i>Business Licensing Amendment Act 1995, Part 10</i>	56 of 1995	20 December 1995	1 January 1996 (see section 2 (3))	Transitional <sup>2</sup>
<i>Security and Related Activities (Control) Act 1996, section 96</i>	27 of 1996	27 March 1997	1 April 1997 (see section 2 and <i>Gazette</i> 27 March 1997 p.1693)	
<i>Financial Legislation Amendment Act 1996, section 64</i>	49 of 1996	25 October 1996	25 October 1996 (see section 2 (1))	

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<sup>2</sup> Section 54 of Act No. 56 of 1995 reads as follows —

“ **Transitional**

**54.** The prescribed period under section 19 (1) of the principal Act as amended by this Act for the period commencing on an anniversary of a licence in 1996 is to be —

- (a) if the licence was granted between 1 January and 30 April in any year, a period of 3 years;
- (b) if the licence was granted between 1 May and 31 August in any year, a period of 2 years; and
- (c) if the licence was granted between 1 September and 31 December in any year, a period of one year.

”