

Western Australia

## **Travel Agents Regulations 1986**

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## Travel Agents Regulations 1986

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### CONTENTS

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1.	Citation	1
2.	Interpretation	1
3.	Commencement	1
4.	Prescribed conveyances in section 4(1)	1
4A.	Prescribed activities under section 4(1)	2
4B.	Prescribed activities and circumstances under section 4(3)(c)	2
5.	Prescribed public statutory authorities in section 5(2)(c)	2
6.	Prescribed fees in sections 9(2) and 12(7)(b)(i)	2
7.	Particulars prescribed in section 9(3)(f)	3
8.	Prescribed qualifications in sections 12(2)(e) and 29	4
8AA.	Qualifications	6
8AB.	Transitional qualifications	8
8A.	Forms	8
9.	Prescribed fee in section 15(3)	8
10.	Prescribed particulars and prescribed fees in section 17	8
11.	Prescribed period under section 19(1)	9
11A.	Prescribed fees under section 19	9
12.	Prescribed particulars in section 26	12
14.	Prescribed particulars in section 38(2)(b)	13
15.	Prescribed compensation scheme in section 59(2)(h)	13
16.	Infringement notices	13

**Schedule 1 — Forms**

**Schedule 1A**

**Qualifications for carrying on a  
business offering international  
air travel**

**Schedule 1B — Prescribed offences  
and modified penalties**

**Schedule 2**

**Trust Deed establishing  
Compensation Scheme (Travel  
Agents Compensation Fund)**

**Schedule 3**

**Resolution of the Trustees**

**Schedule 4**

**Resolution of the Trustees**

**Schedule 5**

**Resolution of the Trustees**

**Schedule 6**

**Resolution of the Trustees**

**Schedule 7**

**Resolution of the Trustees**

**Schedule 8**

**Resolution of the Trustees**

**Schedule 9**

**Resolution of the Trustees**

**Schedule 10**

**Resolution of the Trustees**

**Schedule 11**

**Resolution of the Trustees**

**Schedule 12**

**Resolution of the Trustees**

**Schedule 13**

**Resolution of the Trustees**

**Schedule 14**

**Resolution of the Trustees**

**Notes**

Compilation table

73



Western Australia

Travel Agents Act 1985

## **Travel Agents Regulations 1986**

### **1. Citation**

These regulations may be cited as the *Travel Agents Regulations 1986*<sup>1</sup>.

### **2. Interpretation**

In these regulations —  
“**section**” means section of the Act.

### **3. Commencement**

These regulations shall come into operation on the day on which the Act comes into operation<sup>1</sup>.

### **4. Prescribed conveyances in section 4(1)**

For the purpose of section 4(1)(a) and (c), while a conveyance on land or water or in the air is used solely for the purpose of carrying passengers from a place and returning them to the same place on the same day that conveyance is a prescribed conveyance.

**r. 4A**

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**4A. Prescribed activities under section 4(1)**

For the purposes of section 4(1)(d) “travel-related arrangements” as defined in Schedule 14 are prescribed activities.

*[Regulation 4A inserted in Gazette 23 Jun 1989 p. 1853-4; amended in Gazette 22 Dec 1995 p. 6175.]*

**4B. Prescribed activities and circumstances under section 4(3)(c)**

For the purposes of section 4(3)(c), a person who carries on an activity that falls within the Schedule 14 definition of “travel related arrangements” does not carry on business as a travel agent if that activity is carried on in circumstances that are unrelated to other activities described in section 4(1)(a), (b), (c) and (e).

*[Regulation 4B inserted in Gazette 9 Mar 2004 p. 734.]*

**5. Prescribed public statutory authorities in section 5(2)(c)**

For the purposes of section 5(2)(c), The Rural and Industries Bank of Western Australia established by the *Rural and Industries Bank of Western Australia Act 1987*<sup>2</sup> is a prescribed public statutory authority.

*[Regulation 5 amended in Gazette 23 Jun 1989 p. 1853-4.]*

**6. Prescribed fees in sections 9(2) and 12(7)(b)(i)**

- (1) For the purposes of sections 9(2) and 12(7)(b)(i), the prescribed fee is —
  - (a) in the case of an individual who —
    - (i) is a member of more than one partnership; or
    - (ii) is not a member of any partnership,an amount of \$950 and, if the application concerned relates to more than one place of business and subject to subregulation (2), an additional amount of \$200 for each place of business beyond one;



- (b) in the case of an individual who is a member of one partnership only, an amount which bears to the amount of \$950 the same proportion as the value of his share in the net assets of that partnership bears to the value of those net assets and, if the application concerned relates to more than one place of business and subject to subregulation (2), an amount which bears that proportion to the amount of \$200 for each place of business beyond one; and
  - (c) in the case of a body corporate, an amount of \$1 400 and, if the application concerned relates to more than one place of business and subject to subregulation (2), an additional amount of \$200 for each place of business beyond one.
- (2) The additional amounts referred to in subregulation (1)(a), (b) or (c) shall not exceed \$2 000 in total in any one prescribed fee.
- (3) In subregulation (1) —
- “partnership”** means partnership each member of which carries on, or proposes to carry on, as the case requires, business as a travel agent.

*[Regulation 6 amended in Gazette 4 Sep 1987 p. 3520; 13 Dec 1991 p. 6163; 14 Aug 1992 p. 4013-14; 30 Nov 1993 p. 6410; 29 Dec 1995 p. 6339; 28 Jun 2002 p. 3059; 27 Jun 2003 p. 2555-6; 27 Jun 2006 p. 2260.]*

**7. Particulars prescribed in section 9(3)(f)**

For the purposes of section 9(3)(f) the applicant shall specify —

- (a) whether or not the applicant proposes to be personally present and in charge of the day to day conduct of business at a place specified by the applicant under section 9(3)(b); and
- (b) the qualifications of any person the applicant proposes to employ under section 29.

*[Regulation 7 inserted in Gazette 27 Mar 1987 p. 1018-19.]*

**8. Prescribed qualifications in sections 12(2)(e) and 29**

- (1a) This regulation does not have effect after 31 December 2005.
- (1) For the purposes of these regulations a person carrying on a business described in column 2 of the Table to this regulation carries on a business as a travel agent of a category described in column 1 of that Table.
- (2) The qualifications prescribed for —
- (a) the purposes of section 29(1) or (2); and
  - (b) an individual referred to in section 12(2)(e) who specifies in his application that he proposes to be personally present and in charge of the day to day conduct of business at a place specified by him in that application,
- are the qualifications described in column 3 of the Table to this regulation opposite the category of business carried on, or proposed to be carried on, at the relevant place of business.
- (3) A person who is entitled to carry on, or to conduct under section 29 —
- (a) Category 1 business may do so in relation to Category 2, 3 and 4 business;
  - (b) Category 2 business may do so in relation to Category 3 and 4 business; and
  - (c) Category 3 business may do so in relation to Category 4 business.
- (4) For the purposes of this regulation —
- “selling tickets”** means —
- (a) selling, offering for sale or advertising that the person will sell or offer to sell a ticket entitling another person to travel;

- (b) arranging, offering to arrange or advertising that the person will arrange or offer to arrange for another person a right of passage.

**Table**

<b>Column 1 Category of business</b>	<b>Column 2 Description of business that may be carried on</b>	<b>Column 3 Qualifications</b>
Category 1 business	selling tickets entitling persons to travel by air to or from places which are outside Australia.	<p>(a) at least 5 years experience, in the 10 years preceding the application or employment, in selling tickets entitling persons to travel by air to or from places which are outside Australia; or</p> <p>(b) at least 2 years' experience in selling such tickets and the successful completion of —</p> <p>(i) a course referred to in Schedule 1A;</p> <p>(ii) a course, or courses, recognized by the Australian Tourism Training Review Panel, or any similar national body that succeeds that Panel, at the time of completion of the course or courses, as being at least equivalent to any of the courses referred to in Schedule 1A; or</p> <p>(iii) a course, or courses, approved from time to time by the Minister as being at least</p>

**r. 8AA**

<b>Column 1 Category of business</b>	<b>Column 2 Description of business that may be carried on</b>	<b>Column 3 Qualifications</b>
Category 2 business	selling tickets entitling persons to travel otherwise than by air to or from places which are outside Australia.	equivalent to any of the courses referred to in Schedule 1A.  at least 2 years' experience in selling tickets entitling persons to travel to or from places which are outside Australia.
Category 3 business	selling tickets entitling persons to travel by air between places within Australia.	at least 1 year's experience in selling tickets entitling persons to travel to or from places which are outside Australia or tickets for travel by air between places within Australia.
Category 4 business	any business as a travel agent other than Category 1, 2 or 3 business.	no qualifications.

*[Regulation 8 inserted in Gazette 27 Mar 1987 p. 1018-19; amended in Gazette 14 Oct 1988 p. 4203; 6 Sep 1996 p. 4421; 31 Dec 2004 p. 7136.]*

**8AA. Qualifications**

- (1) This regulation is to be read with regulation 8.
- (2) In this regulation —  
**“State or Territory”** means a State or Territory of Australia.
- (3) The qualifications prescribed for —
  - (a) the purposes of section 29(1) or (2); and
  - (b) an individual referred to in section 12(2)(e) who specifies in his application that he proposes to be

personally present and in charge of the day to day conduct of business at a place specified by him in that application,

are the qualifications described in subregulation (4) or (5), which are prescribed in relation to the category and type of business carried on, or proposed to be carried on, at the relevant place of business.

- (4) For “**Category A**” business, being any business involving the sale of tickets, or the arrangement of rights of passage, for international travel, or international travel and accommodation, the qualifications required are —
- (a) successful achievement of Unit of Competence THTSOP20A, delivered or assessed by an organisation registered by a State or Territory recognition authority to deliver training and/or conduct assessments and issue nationally recognised qualifications in accordance with the Australian Quality Training Framework; or
  - (b) one years’ full-time experience (or equivalent), in the 5 years preceding the application —
    - (i) in the selling of tickets, or the arrangement of rights of passage, for international travel, or international travel and accommodation; or
    - (ii) in employment as a person in charge of the day to day conduct of a place of business of a licensed travel agent in a State or Territory selling tickets, or arranging of rights of passage, for international travel, or international travel and accommodation.
- (5) For “**Category B**” business, being any business involving the sale of tickets, or the arrangement of rights of passage, for any travel, or travel and accommodation, other than Category A business, no qualifications are required.

*[Regulation 8AA inserted in Gazette 31 Dec 2004 p. 7136-7.]*

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**8AB. Transitional qualifications**

Where prescribed qualifications are required under section 29(1) or (2), or section 12(2)(e), of the Act, the requirement is satisfied if —

- (a) on or after 1 January 2005; or
- (b) on or before 31 December 2005,

either the qualification requirements prescribed in regulation 8 or the qualification requirements prescribed in regulation 8AA are met.

*[Regulation 8AB inserted in Gazette 31 Dec 2004 p. 7137.]*

**8A. Forms**

The forms set out in Schedule 1 are prescribed in relation to the matters specified in those forms.

*[Regulation 8A inserted in Gazette 22 Sep 2006 p. 4143.]*

**9. Prescribed fee in section 15(3)**

For the purposes of section 15(3), the prescribed fee is an amount of \$22.30.

*[Regulation 9 amended in Gazette 14 Aug 1992 p. 4014; 30 Nov 1993 p. 6410; 28 Jun 2002 p. 3060; 27 Jun 2003 p. 2556.]*

**10. Prescribed particulars and prescribed fees in section 17**

- (1) For the purposes of section 17(2), the prescribed particulars are —

- (a) the full names;
- (b) the trading name or names; and
- (c) the number of the licence,

of each licensee registered in the register referred to in section 17(1).

- (2) For the purposes of section 17(4), the prescribed fee is an amount of \$14.
- (3) For the purposes of section 17(5), the prescribed fee —
- (a) for an inspection of the register kept under section 17(1) is \$14;
  - (b) for a copy or extract of an individual registration in the register kept under section 17(1) is \$14 for the first page and \$3 for each subsequent page; and
  - (c) for a copy or extract of all registrations in the register kept under section 17(1) is \$170.

*[Regulation 10 amended in Gazette 30 Jun 1989 p. 1978; 1 Aug 1990 p. 3654; 13 Dec 1991 p. 6163; 14 Aug 1992 p. 4014; 30 Nov 1993 p. 6410; 28 Jun 2002 p. 3060; 27 Jun 2003 p. 2556; 27 Jun 2006 p. 2260.]*

#### **11. Prescribed period under section 19(1)**

For the purposes of section 19(1) of the Act, (and subject to the transitional provisions in section 54 of the *Business Licensing Amendment Act 1995*), the prescribed period is 3 years.

*[Regulation 11 inserted in Gazette 29 Dec 1995 p. 6339.]*

#### **11A. Prescribed fees under section 19**

- (1) For the purposes of section 19 and subject to subregulation (3), the prescribed fee in the case of an individual who is a member of more than one partnership, or is not a member of any partnership, is an amount calculated as follows —
- (a) for a 3 year period —
    - (i) \$666 and, if the application concerned relates to more than one place of business and subject to subregulation (3), an additional amount of \$144 for each place of business beyond one;
    - (ii) in the case of an individual who is a member of one partnership only, an amount which bears to

**r. 11A**

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the amount of \$666 the same proportion as the value of his share in the net assets of that partnership bears to the value of those net assets and, if the application concerned relates to more than one place of business and subject to subregulation (3), an amount which bears that proportion to the amount of \$144 for each place of business beyond one;

(b) for a 2 year period —

(i) \$444 and, if the application concerned relates to more than one place of business and subject to subregulation (3), an additional amount of \$96 for each place of business beyond one;

(ii) in the case of an individual who is a member of one partnership only, an amount which bears to the amount of \$444 the same proportion as the value of his share in the net assets of that partnership bears to the value of those net assets and, if the application concerned relates to more than one place of business and subject to subregulation (3), an amount which bears that proportion to the amount of \$96 for each place of business beyond one;

and

(c) for a one year period —

(i) \$222 and, if the application concerned relates to more than one place of business and subject to subregulation (3), an additional amount of \$48 for each place of business beyond one;

(ii) in the case of an individual who is a member of one partnership only, an amount which bears to the amount of \$222 the same proportion as the value of his share in the net assets of that partnership bears to the value of those net assets and, if the application concerned relates to more



than one place of business and subject to subregulation (3), an amount which bears that proportion to the amount of \$48 for each place of business beyond one.

- (2) For the purposes of section 19 and subject to subregulation (3), the prescribed fee in the case of a body corporate is an amount calculated as follows —
- (a) for a 3 year period — \$1 000 and, if the application concerned relates to more than one place of business and subject to subregulation (3), an additional amount of \$144 for each place of business beyond one;
  - (b) for a 2 year period — \$666 and, if the application concerned relates to more than one place of business and subject to subregulation (3), an additional amount of \$96 for each place of business beyond one;
  - (c) for a one year period — \$333 and, if the application concerned relates to more than one place of business and subject to subregulation (3), an additional amount of \$48 for each place of business beyond one.
- (3) The additional amounts referred to —
- (a) in subregulations (1)(a) and (2)(a) shall not exceed \$1 440 in total in any one prescribed fee;
  - (b) in subregulations (1)(b) and (2)(b) shall not exceed \$960 in total in any one prescribed fee;
  - (c) in subregulations (1)(c) and (2)(c) shall not exceed \$480 in total in any one prescribed fee.
- (4) In this regulation —
- “partnership”** means partnership each member of which carries on, or proposes to carry on, as the case requires, business as a travel agent.
- (5) For the purposes of section 19(5), the prescribed late fee is an amount equal to one quarter of the total amount of the

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prescribed fee referred to in subregulation (1) or (2), as the case requires, payable by the relevant licensee.

*[Regulation 11A inserted in Gazette 29 Dec 1995 p. 6340-1.]*

**12. Prescribed particulars in section 26**

- (1) The particulars to be contained in the legible notice for the purposes of section 26 are the particulars set out in the travel agent's licence a copy of which shall be displayed together with the following form —



- (2) the form referred to in subregulation (1) shall be —
- (a) in a size that is not less than 110 mm in height;
  - (b) of which the background colour is white;
  - (c) on which the lines of latitude and longitude in the symbol are in black;
  - (d) on which the horizontal lines, the words and the lower arrow in the symbol are in green; and
  - (e) on which the crest of the State of Western Australia, and the upper arrow and the outlines of coastlines in the symbol are in gold.

*[Regulation 12 inserted in Gazette 25 Sep 1987 p. 3748.]*

**[13. Repealed in Gazette 27 Mar 1987 p. 1019.]**

**14. Prescribed particulars in section 38(2)(b)**

For the purposes of section 38(2)(b), the prescribed particulars are, in relation to each of the deeds referred to in section 38(1) —

- (a) the full names of the person who executed;
- (b) the date of execution of; and
- (c) a description of the nature of the undertakings contained in,

that deed.

**15. Prescribed compensation scheme in section 59(2)(h)**

For the purposes of section 59(2)(h), the 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 is the compensation scheme contained in the trust deed set out in Schedule 2 as amended by the resolutions of the trustees set out in Schedules 3 to 14.

*[Regulation 15 amended in Gazette 23 Jun 1989 p. 1853; 13 Jul 1990 p. 3371; 23 Aug 1991 p. 4357; 22 Dec 1995 p. 6175.]*

**16. Infringement notices**

- (1) The offences specified in Schedule 1B are offences for which an infringement notice may be issued under Part 2 of the *Criminal Procedure Act 2004*.
- (2) The modified penalty specified opposite an offence in Schedule 1B is the modified penalty for that offence for the purposes of section 5(3) of the *Criminal Procedure Act 2004*.
- (3) The Commissioner may, in writing, appoint persons or classes of persons to be authorised officers or approved officers for the purposes of Part 2 of the *Criminal Procedure Act 2004*.

**r. 16**

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- (4) The Commissioner is to issue to each authorised officer a certificate, badge or identity card identifying the officer as a person authorised to issue infringement notices.

*[Regulation 16 inserted in Gazette 22 Sep 2006 p. 4143-4.]*

**Schedule 1 — Forms**

[r. 8A]

*[Heading inserted in Gazette 22 Sep 2006 p. 4144.]*

**Form 1 Certificate of Participation of applicant in Compensation Scheme**

WESTERN AUSTRALIA

*TRAVEL AGENTS ACT 1985*

*TRAVEL AGENTS REGULATIONS 1986*

CERTIFICATE OF  
PARTICIPATION IN COMPENSATION SCHEME  
(TRAVEL AGENTS COMPENSATION FUND)

This is to certify that.....  
of.....  
is a participant in the Compensation Scheme referred to in the *Travel Agents Act 1985* and otherwise known as the Travel Agents Compensation Fund.  
Dated.....

.....  
for the Trustees of the Travel  
Agents Compensation Fund.

*[Form 1 amended in Gazette 22 Sep 2006 p. 4144.]*

**Form 2 Infringement notice**

<i>Travel Agents Act 1985</i>		Infringement notice no.	
<b>Infringement notice</b>			
<b>Alleged offender</b>	Name: Family name _____		
	Given names _____		
	or Company name _____		
	ACN _____		
Address _____			
Postcode _____			
<b>Alleged offence</b>	Description of offence _____		
	<i>Travel Agents Act 1985 s.</i> _____		
	Date      /      /20	Time	a.m./p.m.
	Modified penalty \$ _____		

<b>Officer issuing notice</b>	Name
	Signature
	Office
<b>Date</b>	Date of notice      /      /20
<b>Notice to alleged offender</b>	<p>It is alleged that you have committed the above offence.          If you do not want to be prosecuted in court for the offence, pay the modified penalty within 28 days after the date of this notice.</p> <p><b>How to pay</b>  <b>By post:</b> Send a cheque or money order (payable to ‘Approved Officer — <i>Travel Agents Act 1985</i>’) to:          Approved Officer — <i>Travel Agents Act 1985</i>          Department of Consumer and Employment Protection          Locked Bag 14 Cloisters Square          Perth WA 6850</p> <p><b>In person:</b> Pay the cashier at:          Department of Consumer and Employment Protection          219 St George’s Terrace, Perth WA</p>
	<p><b>If you do not pay</b> the modified penalty within 28 days, you may be prosecuted or enforcement action may be taken under the <i>Fines, Penalties and Infringement Notices Enforcement Act 1994</i>. Under that Act your driver’s licence and/or vehicle licence may be suspended.</p> <p><b>If you need more time</b> to pay the modified penalty, you can apply for an extension of time by writing to the Approved Officer at the above postal address.</p> <p><b>If you want this matter to be dealt with by prosecution in court</b>, sign here _____          and post this notice to the Approved Officer at the above postal address within 28 days after the date of this notice.</p>

[Form 2 inserted in Gazette 22 Sep 2006 p. 4144-5.]

**Form 3 Withdrawal of infringement notice**

<i>Travel Agents Act 1985</i>		Withdrawal no.
<b>Withdrawal of infringement notice</b>		
<b>Alleged offender</b>	Name: Family name	
	Given names	
	or Company name	
	_____ ACN	
	Address	
	_____ Postcode	
<b>Infringeme</b>	Infringement notice no.	

<b>nt notice</b>	Date of issue / /20
<b>Alleged offence</b>	Description of offence _____
	<i>Travel Agents Act 1985 s.</i>
	Date / /20 Time a.m./p.m.
<b>Officer withdrawing notice</b>	Name
	Signature
	Office
<b>Date</b>	Date of withdrawal / /20
<b>Withdrawal of infringement notice</b>  <i>[*delete whichever is not applicable]</i>	The above infringement notice issued against you has been withdrawn. If you have already paid the modified penalty for the alleged offence you are entitled to a refund. * Your refund is enclosed. <i>or</i>
	* If you have paid the modified penalty but a refund is not enclosed, to claim your refund sign this notice and post it to: Approved Officer — <i>Travel Agents Act 1985</i> Department of Consumer and Employment Protection Locked Bag 14 Cloisters Square Perth WA 6850 Signature / /20

*[Form 3 inserted in Gazette 22 Sep 2006 p. 4145.]*

*[Schedule 1 amended in Gazette 23 Jan 1987 p. 229; 27 Mar 1987 p. 1019; 22 Sep 2006 p. 4144-5.]*

**Schedule 1A**

[Regulation 8]

**Qualifications for carrying on a business offering international air travel**

The successful completion of a course itemized in column 3, which is conducted by the corresponding institution in column 2, is a qualification for carrying on a business offering international air travel.

<b>Item</b>	<b>Institution</b>	<b>Course</b>
1	AFTA Travel College.....	International Travel Consultant Course.
1a	Alexander College.....	(a) Travel & Tourism Diploma-International; or (b) Associate Diploma of Business (Travel & Tourism).
1b	Ansett.....	International Fares and Ticketing I.
2	Australian Airlines, Melbourne.....	Fares and Ticketing II Course.
3	Australian Business College (Perth).....	(a) Travel and Tourism Diploma — International; or (b) Travel and Tourism Diploma — Management.
4	Australian College of Travel and Hospitality.....	Travel Consultancy Skills Course.
5	Australian Institute of Travel and Tourism.....	Class L Membership.
6	Australian Travel Training Review Panel.....	The Business of Retail Travel Certificate.
7	Australian Travel Training.....	The Advanced Fares and Ticketing Course.
8	Bill Healy (TIES).....	Travel Consultant Certificate.
9	Bill Healy Travel Training.....	Advanced Travel Course.
10	Careers College.....	Travel Diploma Course.
11	Careers College (Brisbane), The....	(a) Small Agency Manager Diploma; (b) Fares and Ticketing I; (c) Fares and Ticketing II; or (d) Fares and Ticketing I and II.
12	City Training and Education.....	Travel and Tourism Training Course.
13	Hales Commercial College.....	(a) Combination of Fares I and International Ticketing Course; or (b) Combination of Fares II and Tourism Diploma Course.
14	Hayton Travel Training.....	The Fares and Ticketing Course.



<b>Item</b>	<b>Institution</b>	<b>Course</b>
15	IATA/UFTAA.....	(a) International Travel Agents Training Programme (Standard); or (b) International Travel Agents Training Programme (Advanced).
16	Jetset Travel Training.....	(a) Diploma of Travel Fares; (b) Fares and Ticketing I; or (c) Fares and Ticketing II.
16a	Perth Commercial College.....	Travel & Tourism Course.
17	Prides Business College (Adelaide).....	(a) Travel and Tourism Diploma — International; or (b) Travel and Tourism Diploma — Management.
18	P & D Travel Training.....	DM Edwards Fares and Ticketing.
19	Qantas Airways Limited.....	(a) Fares and Ticketing Level I; or (b) Fares and Ticketing Level II.
20	Queensland Travel Academy.....	Travel Consultant Certificate.
21	St. George Travel Training (formerly Elsa Britton Travel College).....	Travel Consultant Certificate.
22	Stott's Correspondence Course.....	Travel Consultant Certificate.
23	TAFE, ACT.....	Travel Consultants Diploma Course.
24	TAFE, NSW.....	Travel and Tourism Associate Diploma.
25	TAFE Queensland, College of.....	(a) Travel Consultant Certificate; (b) Consultants Advanced Certificate; or (c) Associate Diploma in Business (Travel and Tourism).
26	TAFE South Australia, College.....	(a) Certificate in Travel Operations, Senior Travel Consultant; or (b) Associate Diploma in Tourism.
27	TAFE Tasmania, College of.....	(a) Diploma in Travel and Tourism (Stage 1); or (b) Diploma in Travel and Tourism (Stage 2).
28	TAFE Victoria, College of.....	(a) Ticketing I; (b) Ticketing II; or (c) Certificate of Business Studies (Travel and Tourism).
29	TAFE, Western Australia.....	(a) Advanced Certificate of Travel Consulting; (b) Certificate in Travel Operations; (c) Fares and Ticketing I; or (d) Fares and Ticketing II.
30	Thomas Cook.....	Fares and Ticketing I.

**Travel Agents Regulations 1986**

**Schedule 1A** Qualifications for carrying on a business offering international air travel

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<b>Item</b>	<b>Institution</b>	<b>Course</b>
31	Travel Academy Sydney, The.....	Travel Consultant Certificate.
32	Travel Course WA.....	(a) Fares & Ticketing I & II; or (b) Travel Consultant Certificate.
33	Travel Industry Training Centre, Adelaide.....	Travel Consultant Certificate.
34	Travel Performance.....	(a) Fares and Ticketing I; or (b) Fares and Ticketing II.
35	Travel Training Centre.....	Travel Consultant Certificate.
36	United Permanent Travel Academy.....	Travel Consultant Certificate.
37	United Travel Agents Group.....	(a) Fares and Ticketing I; or (b) Fares and Ticketing II.
38	Williams Business College.....	Travel and Tourism Diploma.

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*[Schedule 1A inserted in Gazette 14 Dec 1990 p. 6133-5; amended in Gazette 7 Oct 1994 p. 5077-8.]*

**Schedule 1B — Prescribed offences and modified penalties**

[r. 16]

*[Heading inserted in Gazette 22 Sep 2006 p. 4146.]*

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<b>Offences under <i>Travel Agents Act 1985</i></b>	<b>Modified penalty</b>
s. 9(4)      Applicant failing to notify change of particulars ....	\$200
s. 14(2)      Carrying on business as travel agent under unlicensed name .....	\$1 000
s. 16(1)      Failing to notify change of address .....	\$200
s. 16(2)      Failing to notify cessation of business from licensed address .....	\$200
s. 19(7)      Former licensee failing to lodge annual statement ..	\$200
s. 19(8)      Licensee failing to notify change of particulars .....	\$200
s. 22(5)      Failure to return cancelled licence .....	\$200
s. 26          Failing to display particulars at place of business ..	\$200
s. 27          Failing to include name and licence number in advertisement .....	\$200
s. 28(1)      Using business documents not showing licensed name .....	\$200
s. 29          Failing to employ qualified supervisor .....	\$200
s. 35          Failing to produce licence for endorsement .....	\$200
s. 41          Failing to keep records .....	\$200

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*[Schedule 1B inserted in Gazette 22 Sep 2006 p. 4146.]*

**Schedule 2**

[Regulation 15]

**Trust Deed establishing Compensation Scheme (Travel Agents Compensation Fund)**

THIS DEED is made the twelfth day of December 1986 by DEIRDRE MARY GRUSOVIN of 1 Oxford Street, Darlinghurst in the State of New South Wales (being the Minister for Consumer Affairs in that State) for the Crown in the right of that State.

PETER CORNELIS SPYKER of 500 Bourke Street, Melbourne in the State of Victoria (being the Minister for Consumer Affairs in that State) for the Crown in the right of that State.

CHRISTOPHER JOHN SUMNER of 25 Grenfell Street, Adelaide in the State of South Australia (being the Minister for Public and Consumer Affairs in that State) for the Crown in the right of that State.

KEITH JAMES WILSON of 600 Murray Street, West Perth in the State of Western Australia (being the Minister for Consumer Affairs in that State) for the Crown in the right of that State, hereinafter referred to as "the settlors".

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 carrying on business as travel agents and the regulation of their operations;
- B. Reference is made in the Participation Agreement to a compensation fund;
- C. The settlors are the Ministers of the Crown who will be respectively responsible for the Act in each State;
- D. The settlors by this Deed appoint the persons named in this Deed to act as trustees of the trust to be created upon the terms set out in this Deed in respect of a fund to be known as the Travel Compensation Fund and to be responsible for administration of the Scheme provided for in this Deed with a view to the Fund becoming the fund referred to in the Participation Agreement:

NOW THIS DEED WITNESSES as follows —

- I. The settlors hereby declare that the Trust shall be established on the terms and conditions which are set out in the Schedule hereto and that this Deed includes that Schedule (as it may be amended from time to time).
- II. The settlors hereby appoint the following persons to act as Trustees:
  - (i) as the nominee of the New South Wales Minister under clause 4.2, John William Andrew Holloway of 39 Carcoola Avenue, Chipping Norton in the State of New South Wales;
  - (ii) as the nominee of the Victorian Minister under clause 4.2, John David Hall of 70 Scott Street, Beaumaris in the State of Victoria;
  - (iii) as the nominee of the South Australian Minister under clause 4.2, Philip Herschel Nicholls of 5 Robert Street, Unley in the State of South Australia;
  - (iv) as the nominee of the Western Australian Minister under clause 4.2, Paul Richard Glanville of Unit 5, 286 Mill Point Road, South Perth in the State of Western Australia;
  - (v) as the nominees of the Ministers under clause 4.3, Osmond Francis William Pitts of 18 Greenfield Avenue, Middle Cove in the State of New South Wales;  
Allan Charles Corbett of 2 Singleton Road, North Balwyn in the State of Victoria; Michael Anthony Gilmour Thompson of 103 Monmouth Street, North Perth in the State of Western Australia; Francis William O’Gorman of 77 Rugby Street, Malvern in the State of South Australia; and
  - (vi) as the nominee of the Ministers under clause 4.5, Neil Francis Francey of Unit 6, 59 Kirribilli Avenue, Kirribilli in the State of New South Wales.
- III. This Deed shall come into force and effect when it is executed by each of the settlors and when the persons appointed to act as Trustees under clause II have consented so to act.
- IV. As soon as this Deed comes into force and effect the settlors shall lodge with the Trustees the sum of one hundred dollars to be held by them on the trusts set out in this Deed.

**Travel Agents Regulations 1986**

**Schedule 2** Trust Deed establishing Compensation Scheme (Travel Agents Compensation Fund)

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IN WITNESS WHEREOF the settlors have executed this Deed as follows.

SIGNED, SEALED AND DELIVERED by  
the said DEIRDRE MARY  
GRUSOVIN on 11 December 1986  
in the presence of: M Roelandts

SIGNED, SEALED AND DELIVERED by  
the said PETER CORNELIS  
SPYKER on 12 December 1986 in  
the presence of: J O'Neill

SIGNED, SEALED AND DELIVERED by  
the said CHRISTOPHER JOHN  
SUMNER on 10 December 1986 in  
the presence of: Alan Martin

SIGNED, SEALED AND DELIVERED by  
the said KEITH JAMES WILSON  
on 9 December 1986 in the presence  
of: E Russell

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Schedule

1. Interpretation.....
2. Title and Objects of the Trust.....
3. Purposes of the Trust.....
4. Trustees.....
5. The Fund.....
6. Fixing Contributions to the Fund.....
7. Fees.....
8. Investment of Moneys.....
9. Initial Application.....
10. Exempt Participants.....
11. Obligations on and Review of Participants.....
12. Determinations Regarding Financial Resources.....
13. Hearings and Appeals.....
14. Register of Participants.....

15.	Payment of Compensation by the Trustees.....
16.	Time for and Manner of Making a Claim.....
17.	Amount of Compensation.....
18.	Emergency Compensation.....
19.	Appeal Committees.....
20.	Proceedings of Trustees.....
21.	Powers and Duties of the Trustees.....
22.	Committees.....
23.	Secrecy.....
24.	Accounts and Audit.....
25.	Annual Report.....
26.	Notices.....
27.	Service.....
28.	Termination of the Trust.....
29.	Trust Funds not to be Paid to Participants.....
30.	Amendment of Trust Deed.....
31.	Governing Law and Jurisdiction.....

1 INTERPRETATION

1.1 In this Deed and in all documents and statements issued under it, except where a different meaning is expressly indicated or the context clearly otherwise requires —

“An Act” or “the Act” means the *Travel Agents Act* or *Travel Agents Ordinance* in a State.

“Bank” means a bank as defined in the *Banking Act 1959* of the Commonwealth of Australia or a bank that carries on banking business on behalf of a State under the authority of the laws of that State.

“Beneficiary” means a person on trust for whom, pursuant to clause 2.2, the Fund is held.

“Client” means a person who enters into travel arrangements directly with a participant.

“Fund” means the Fund established by Part 5.

“Licensing Authority” means the person or body in a State responsible for licensing under the Act.

“Minister” means the Minister of the Crown responsible for the Act.

“Ministerial Council” means the Ministerial Council created by the Participation Agreement.

“Participant” means a person —

- (a) who is —
  - (i) for the time being, in the Trustees’ determination eligible to be a contributor to the Fund; and
  - (ii) licensed or deemed to be licensed under an Act; or
- (b) who is a participant by virtue of Part 10.

“Principal” means, subject to clause 1.4, the owner or operator of a transport system or transport facility, hotel, lodging house or other place of accommodation, restaurant or eating or drinking place, place of entertainment, leisure or study or any other facility or place in respect of which travel arrangements are made.

“State” means a State or Territory of Australia which is a party to the Participation Agreement.

“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.

“Trust” means the trust created by this Deed.

“Trustees” means the trustees of the Trust from time to time.

“Year” means the period from any 1st July to the next succeeding 30th June.

1.2 For the purposes of this Deed, a person carries on business as a travel agent in a State if that person is, within the meaning of the Act of that State, carrying on business as a travel agent in the State.

1.3 Subject to this Deed —

- (a) a person is eligible to be a contributor to the Fund if the person has and is likely to continue to have sufficient financial resources to enable the person to carry on business as a travel agent; and
- (b) the only matter which the Trustees may take into account in determining whether a person is eligible to be a contributor to the Fund is whether the person has and is likely to continue to have sufficient financial



resources to enable the person to carry on business as a travel agent.

- 1.4 For the purposes of this Deed, where a person enters into a contract with another person to provide services of which some are travel arrangements and others are provided by the firstnamed person as a principal, that person is deemed not to be a principal in respect of any of the services referred to in that contract.
- 1.5 Where a word or phrase is given a particular meaning in this Deed, other parts of speech and grammatical forms of that word or phrase have, unless the contrary intention appears, corresponding meanings.
- 1.6 In this Deed, words in the singular number include the plural number and vice versa, and words denoting persons include legal persons.
- 1.7 A reference in this Deed to “Parts” and “clauses” is a reference to Parts and clauses (including subclauses and paragraphs) of this Deed.
- 1.8 A reference in this Deed to a statute is a reference to the statute as amended, consolidated or replaced by any other statute from time to time and to all orders, ordinances, regulations, rules and by-laws made under or pursuant to the statute.
- 1.9 a heading or index in this Deed shall not affect the construction of the Deed.

## 2 TITLE AND OBJECTS OF THE TRUST

- 2.1 The trust established by this Deed shall be known as the Travel Compensation Fund.
- 2.2 The Trustees shall hold the Fund on the terms and conditions relating to the Trust contained in this Deed on trust for —
  - (a) the Crown in right of the States; and
  - (b) every person who entrusts money or other valuable consideration to another person (or an employee or agent of the other person) in the course of the other person’s carrying on business as a travel agent in a State where, arising from the act or omission of the other person (or an employee or agent of the other person), the other person fails to account for the money or consideration.

3 PURPOSES OF THE TRUST

3.1 The purposes of the Trust are —

- (a) to further the intention expressed by the settlors in the Participation Agreement to establish a Co-operative Scheme for the regulation of travel agents in Australia, and for the protection of certain people who deal with those agents;
- (b) to establish and provide for the operation of a fund (in terms of and within the limits prescribed by this Deed) to compensate persons who have suffered or may suffer a pecuniary loss by reason of a failure to account in respect of travel arrangements by a person who carries on, or carried on, business as a travel agent and to make emergency payments for the benefit of persons who may suffer such a pecuniary loss; and
- (c) to ensure that only those persons who have sufficient financial resources to enable them to carry on business as a travel agent are participants.

3.2 Nothing in clause 3.1 limits or affects any right or power of the Trustees, whether arising under this Deed or otherwise.

4 TRUSTEES

4.1 There shall be not less than three trustees.

4.2 Each Minister may nominate a trustee.

4.3 There shall be nominated, in a number equal to the number of trustees who may be nominated under clause 4.2, trustees who have knowledge of the travel industry.

4.4 Except for the appointments made on settlement of this Trust, the trustees nominated pursuant to clause 4.3 shall be selected from the persons whose names are submitted by the trustees pursuant to clause 4.8 and shall be nominated by the Ministers jointly.

4.5 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.

- 4.6 The nomination or appointment of a person under clauses 4.3 or 4.5 shall not be avoided, invalidated or impugned by reason of the person's knowledge or degree of knowledge of the matters of which, under those clauses, the person is required to have knowledge.
- 4.7 A person nominated as a trustee pursuant to clause 4.2, 4.3 or 4.5 may not, at the same time, be nominated pursuant to another of those clauses.
- 4.8 When a trustee is to be nominated pursuant to clause 4.3, the Trustees shall submit to the Ministers the names of two persons suitable for nomination within four weeks of the occasion for the nomination arising.
- 4.9 Where there is more than one trustee to be nominated pursuant to clause 4.3 the Trustees shall, pursuant to clause 4.8, submit to the Ministers two names in respect of each vacant position.
- 4.10 Subject to this Part, a trustee shall hold office for three years from the date of appointment and shall be eligible for reappointment.
- 4.11 A trustee may resign by notice to the Trustees.
- 4.12 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 to the Trustees cause the trustee to be removed.

4.13 Two trustees, one from each of —

- (a) those appointed by paragraphs (i), (ii), (iii) and (iv) of covering Clause II of the Deed of Settlement; and
- (b) those appointed by paragraph (v) of Clause II of the Deed of Settlement —

to be determined (failing agreement among them) by lot, shall retire on the first anniversary of the settlement of this Deed, and two other trustees, one from each of —

- (c) those appointed by paragraphs, (i), (ii), (iii) and (iv) of Clause II of the Deed of Settlement; and
- (d) those appointed by paragraph (v) of Clause II of the Deed of Settlement —

to be determined (failing agreement among them) by lot, shall retire on the second anniversary of the settlement of this Deed.

4.14 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.

4.15 Upon execution by the Trustees of a deed pursuant to clause 4.14 —

- (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 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.

4.16 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.

## 5 THE FUND

5.1 There shall be established a fund called the Travel Compensation Fund which shall be held and applied by the Trustees for the purposes of this Trust.

5.2 The Fund shall consist of —

- (a) all sums paid to the Trustees to be held on the Trusts of this Deed;
- (b) moneys paid by applicants pursuant to clause 9.7;
- (c) moneys paid by participants pursuant to a requirement of the Trustees under clause 6.4;
- (d) the application fees paid pursuant to clause 9.3;
- (e) administration fees paid pursuant to clauses 9.3 and 11.3;
- (f) all investments for the time being in the name of the Trust;
- (g) the income earned on moneys invested by the Trust;
- (h) moneys paid by an insurer pursuant to a contract of insurance or indemnity entered into by the Trustees pursuant to this Deed;
- (i) moneys donated to the Trustees for the purposes of the Trust;
- (j) 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;
- (k) all moneys rights and property of any description transferred to or acquired or received by the Trustees in their capacity as such; and
- (l) all other moneys lawfully paid into the Fund.

6 FIXING CONTRIBUTIONS TO THE FUND

- 6.1 The Trustees shall fix the amount of the initial contribution to be made by participants.
- 6.2 The Trustees may at any time fix as the amount of the initial contribution an amount greater than that last fixed under clause 6.1 or this clause.
- 6.3 Subject to clause 9.7, an applicant for participation shall pay into the Fund the initial contribution in the manner determined by the Trustees.

- 6.4 If, in the opinion of the Trustees, the Fund is or may be insufficient to meet the existing or potential liabilities of the Trust, the Trustees may require at any time that every participant pay into the Fund an additional contribution.
- 6.5 Where the Trustees require an additional contribution under clause 6.4, they shall determine the amount of the contribution and the manner in which it is to be paid.
- 6.6 The Trustees may in their absolute discretion allow time for the payment of the whole or part of a contribution.
- 6.7 A reference in clauses 9.7 and 11.6 to a contribution is a reference to so much of the contribution as is, at the relevant time, required to be paid pursuant to this Part.
- 6.8 For the purposes of clauses 6.1 and 6.4, the Trustees may fix as a contribution an amount that is a specified amount or an amount calculated in a specified manner.
- 7 FEES
- 7.1 The Trustees shall fix the amount of the application fee and administration fee to be charged under this Deed.
- 7.2 The Trustees may fix as the administration fee an amount that is a specified amount or that is an amount calculated in a specified manner.
- 7.3 A reference in this Deed to the current administration fee is a reference to the level of the fee fixed in accordance with this Part as it applies to the particular applicant or participant.
- 7.4 The Trustees may at any time vary the amount of the application or administration fees or the manner in which those fees are to be calculated.
- 8 INVESTMENT OF MONEYS
- 8.1 All moneys received by the Trustees from any source shall be paid by the Trustees into one or more of a current account or savings account with a bank or an account with a financial institution determined by the Trustees.
- 8.2 The Trustees shall invest in authorized investments, with power from time to time to realize investments and re-invest, any of the Fund which the Trustees consider is not required for the immediate purposes of the Trust.

- 8.3 For the purposes of clause 8.2, “authorized investments” means —
- (a) bank accepted bills and interest bearing deposits with banks;
  - (b) bonds or securities issued or guaranteed by a State Government in Australia or the Commonwealth Government;
  - (c) units in cash trusts or other negotiable investment forms if those trusts or investments are guaranteed by or have full recourse to a bank or consist solely of investments guaranteed by a bank or investments specified in paragraphs (a) and (b); and
  - (d) any other investments which trustees may lawfully make in the State where the investment is made.
- 8.4 Subject to clause 8.5, all documents requiring signature in connexion with operating on or dealing with the accounts referred to in clause 8.1 and the investments referred to in clause 8.2 shall be signed by at least two trustees.
- 8.5 The Trustees may authorize any person to make deposits to the accounts referred to in clause 8.1.

9 INITIAL APPLICATION

- 9.1 A person may apply in writing to the Trustees for a determination by them that the person is eligible to be a contributor to the Fund.
- 9.2 The Trustees may specify a form for applications under clause 9.1.
- 9.3 An applicant shall pay, at the time of application, the current application and administration fee.
- 9.4 An applicant shall provide to the Trustees any information that they reasonably require about the applicant’s financial resources.
- 9.5 The Trustees may require an applicant to supply further information, or to supply information in a particular form, or both, where they consider that the information or form is reasonably necessary to enable them to determine whether the applicant is eligible to be a contributor to the Fund.
- 9.6 The Trustees shall determine whether an applicant is eligible to be a contributor to the Fund.

9.7 Where the Trustees determine that an applicant is eligible to be a contributor to the Fund, and when the applicant pays any contribution fixed pursuant to Part 6, the Trustees shall certify to the relevant Licensing Authority that the person is eligible to become a participant.

9.8 Where the Trustees determine that an applicant is not eligible to be a contributor to the fund, they shall —

- (a) refuse the application; and
- (b) give notice to the relevant Licensing Authority and to the applicant of the refusal and of the matters they took into account in making their determination.

**10 EXEMPT PARTICIPANTS**

10.1 Where a person who is exempt from the requirement to hold a licence by virtue of section 3(2) of the Act in New South Wales or an equivalent provision in another Act —

- (a) gives notice to the Trustees that the person wishes to be a participant; and
- (b) pays any contribution fixed pursuant to Part 6 —

the Trustees shall declare that the person is a participant.

10.2 Where a person who has been declared to be a participant under clause 10.1 —

- (a) ceases to be exempt from the requirement to hold a licence under an Act;
- (b) fails to pay a contribution or (where permitted) part of a contribution when it is due; or
- (c) gives notice to the Trustees that the person wishes to cease to be a participant —

the Trustees shall declare that the person is no longer a participant.

10.3 A person who is a participant by virtue of this Part is not required to comply with a provision of this Deed which is not in this Part.

10.4 In this Part, “person” includes a department of state or a government agency, whether or not it is a legal person.

10.5 Notwithstanding the provisions of clause 29.1, nothing in this Part shall operate to prevent the payment of any balance of the Fund to the Crown in right of a State pursuant to clause 28.2.



11 OBLIGATIONS ON AND REVIEW OF PARTICIPANTS

- 11.1 A participant shall provide to the Trustees annually, before a date and in a form determined by the Trustees, any information that the Trustees reasonably require as to the participant's financial resources.
- 11.2 The Trustees may vary the date on which a participant is required to provide information under clause 11.1.
- 11.3 A participant shall, at the time of providing information pursuant to clause 11.1, pay the current administration fee.
- 11.4 The Trustees may at any time, whether or not it is a time specified by them under clause 11.1 or 11.2, require a participant to supply information, or to supply information in the form, or both, which they reasonably consider necessary to enable them to determine whether the participant remains eligible to be a contributor to the Fund.
- 11.5 The Trustees shall on receiving information pursuant to clauses 11.1 or 11.4, and may at any other time, determine whether a participant remains eligible to be a contributor to the Fund.
- 11.6 Where under clause 11.5 the Trustees determine that a participant remains eligible to be a contributor to the Fund, and when the participant pays any contribution required to be paid pursuant to Part 6, the Trustees shall certify to the relevant Licensing Authority that the participant remains eligible to continue to be a participant.
- 11.7 Where the Trustees determine that a participant is no longer eligible to be a contributor to the Fund, they shall give notice to the relevant Licensing Authority and to the participant of the determination and of the matters they took into account in making it, and the person shall cease to be a participant at the time when the determination is made.
- 11.8 The Trustees may determine that a participant who fails to pay a current administration fee, or the whole or (where permitted) part of a contribution, at a time when it is due is no longer a participant.
- 11.9 Where the Trustees determine that a person is no longer a participant pursuant to clause 11.8 they shall give notice of their determination to the relevant Licensing Authority and to the participant.

12 DETERMINATIONS REGARDING FINANCIAL RESOURCES

12.1 The Trustees shall publish from time to time guidelines as to the criteria which they may use to determine whether a person has and is likely to continue to have sufficient financial resources to enable the person to carry on business as a travel agent.

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 —

- (a) that the person maintain and operate the person's business as a travel agent, or the accounts of the business, in a manner specified by the Trustees; or
- (b) that the person's business be guaranteed in a way, or by a person or class of persons, specified by the Trustees.

13 HEARINGS AND APPEALS

13.1 Before the Trustees —

- (a) determine that an applicant is not eligible to be a contributor to the Fund under clause 9.8;
- (b) determine under clause 11.5 that a participant is no longer eligible to be a contributor to the Fund; or
- (c) pursuant to clause 12.2, make their determination that an applicant or participant is eligible to be a contributor to the Fund conditional on any conduct —

they shall allow the applicant or participant a reasonable opportunity to be heard.

13.2 Notwithstanding any other provision of this Deed, where the Trustees make any determination or take any action referred to in paragraphs (a) to (c) of clause 13.1, and where an Act creates in or confers on the person a right so to do, a person who was the applicant or participant may —

- (a) if the person was an applicant or participant in New South Wales, appeal to the Commercial Tribunal of that State;
- (b) if the person was an applicant or participant in Victoria, apply for a review of the decision to the Administrative Appeals Tribunal of that State;
- (c) if the person was an applicant or participant in South Australia, appeal to the Commercial Tribunal of that State; and

- (d) if the person was an applicant or participant in Western Australia, appeal to the District Court of that State.

13.3 The Trustees shall give effect forthwith to a decision of a court or tribunal referred to in clause 13.2, notwithstanding that an appeal or application to another court or tribunal named in that clause remains to be determined.

14 REGISTER OF PARTICIPANTS

14.1 The Trustees shall keep a register of participants, including details of names and addresses, and record in it any variation or change in the name or trading name of a participant that is approved and notified by the Licensing Authority.

15 PAYMENT OF COMPENSATION BY THE TRUSTEES

15.1 Subject to this Deed, the Trustees shall pay compensation out of the Fund to a beneficiary —

- (a) who is a client; and
- (b) who has suffered or may suffer pecuniary loss arising directly from a failure to account for money or other valuable consideration by a participant —

where —

- (c) the failure to account arises from an act or omission by the participant or an employee or agent of the participant; and
- (d) the client is not protected against the loss by a policy of insurance.

15.2 The Trustees may in their absolute discretion pay compensation to a beneficiary to whom they are not required to pay compensation by virtue of clause 15.1.

15.3 Notwithstanding any other provision of this Deed, the Trustees shall not pay compensation to a person in respect of loss arising from a failure to account for money or valuable consideration entrusted to a person in a State before the proclamation of the Act in the State.

15.4 A principal or a person who carries on or carried on a business comprising or including the provision of travel arrangements may be paid compensation in respect of a pecuniary loss suffered or incurred in connexion with that business by reason of a failure to account only where the principal or person is exercising a right of a

beneficiary to claim or receive compensation out of the Fund which has been assigned to the principal or person.

**16 TIME FOR AND MANNER OF MAKING A CLAIM**

16.1 A claim for compensation shall be made in writing to the Trustees.

16.2 Subject to clause 16.3 and to the provisions of Part 18, a person shall not be entitled to compensation from the Fund unless the person makes a claim in the manner provided for in this Deed within 12 months of the failure to account in respect of which the claim arises.

16.3 The Trustees may accept a claim made more than 12 months after the failure to account in respect of which it arises.

16.4 The Trustees may require, where it is reasonable and necessary to do so, that a person provide them with information relating to the person's claim and with copies of any documents in the possession or under the control of the person that relate to a claim.

16.5 Where the Trustees require that information or documents be provided under clause 16.4 they may require —

- (a) that the information be provided by statutory declaration or in some other manner; and
- (b) that copies of documents be verified in a particular manner.

16.6 Notwithstanding any provision in this Part, the Trustees shall not be liable to make any payment for compensation under this Deed to a person who has not provided information or verified copies of documents as required by this Part.

16.7 The Trustees may make the payment of compensation to a beneficiary in consideration of, or subject to, the assignment to the Trustees of the beneficiary's right and entitlement against another person.

16.8 The Trustees may decide to admit the claim in whole or in part or to reject it.

16.9 Within 14 days of making a decision under clause 16.8 the Trustees shall give notice of the decision to the person who made the claim.

16.10 Where the Trustees reject a claim or admit it only in part, they shall, when notifying a person pursuant to clause 16.9, advise the person in writing of the right of appeal under Part 19 and of the method of appeal.

17 AMOUNT OF COMPENSATION

- 17.1 The Trustees shall not pay to a person as compensation an amount exceeding the pecuniary loss suffered directly by the person by reason of the failure to account in respect of which the claim was made.
- 17.2 For the period of two years from the commencement of this Deed —
- (a) the total amount which the Trustees may pay in respect of any one transaction between a client and a person carrying on business as a travel agent is \$20 000; and
  - (b) the aggregate sum which may be applied in compensating all persons who have or may have suffered a pecuniary loss as a result of a failure to account by any one person carrying on business as a travel agent shall not exceed \$400 000.

18 EMERGENCY COMPENSATION

- 18.1 Notwithstanding any other provision in this Deed but subject to Part 17 and to this Part, the Trustees may make the payments specified in clause 18.2.
- 18.2 If a participant fails to meet, or in the opinion of the Trustees is unable to meet, an obligation to a beneficiary, the Trustees may pay out of the Fund any amount which they determine is necessary to meet in whole or in part the emergency requirements of the beneficiary arising from the failure or inability.
- 18.3 The Trustees may not under this Part make a payment prohibited by or outside the terms of the provisions in Part 15.
- 18.4 The Trustees shall not be liable for anything done in good faith pursuant to clause 18.2.

19 APPEAL COMMITTEES

- 19.1 Within one month of being notified of a decision under clause 16.8, a claimant may, by notice in writing to the Trustees, appeal to an Appeal Committee from a decision of the Trustees under clause 16.8 other than a decision in respect of a claim under clause 15.2.
- 19.2 An Appeal Committee shall have three members appointed by the Minister in the relevant State.

- 19.3 One member of an Appeal Committee shall be a barrister or solicitor of the relevant State of not less than seven years' standing and shall be the Chairman of the Committee.
- 19.4 A trustee may not be a member of an Appeal Committee.
- 19.5 A member of an Appeal Committee is entitled to the expenses, fees and allowance which the Trustees fix from time to time for members of Appeal Committees.
- 19.6 An Appeal Committee shall consider *de novo* the claim in respect of which it is constituted and shall have all the powers of the Trustees under Part 16 in respect of the claim.
- 19.7 Subject to clause 19.8, a decision of an Appeal Committee may be by majority and shall have effect as if it were the decision of the Trustees.
- 19.8 The Chairman of an Appeal Committee shall determine all questions of law.
- 19.9 An Appeal Committee may determine its own rules and procedures.
- 19.10 In this Part, "the relevant State" means —
- (a) where the person bringing the appeal resides in a State, that State; and
  - (b) where the person bringing the appeal does not reside in a State, the State in which the failure to account is alleged to have taken place.

**20 PROCEEDINGS OF TRUSTEES**

- 20.1 The Trustees shall meet together at least once a year.
- 20.2 Except as otherwise provided by this Deed, the Trustees may determine the procedure for the calling of meetings and conduct of business at those meetings.
- 20.3 The Trustees may meet either in person or by telephone or other electronic means of conferring for the despatch of business.
- 20.4 For the purpose of clause 20.7, where the meeting is conducted by telephone or other electronic means of conferring, a trustee shall be regarded as being present if the trustee is able to hear the entire meeting and to be heard by all others attending the meeting.
- 20.5 A meeting conducted by telephone or other electronic means of conferring shall be deemed to be held at a place, to be agreed by the Trustees present at the meeting, where at least one of the Trustees present at the meeting was during the whole of the meeting.

- 20.6 Any three Trustees may at any time by notice to all the Trustees for the time being require a meeting of the Trustees to be convened.
- 20.7 The quorum at a meeting of the Trustees shall be one half of the total number of the Trustees at that time plus one or, if that is not a whole number, the next highest whole number.
- 20.8 The Trustees shall elect a Chairman whose period of office may be decided, altered or terminated from time to time by the Trustees.
- 20.9 If the Chairman is absent from a meeting of the Trustees, the Trustees may elect a trustee who is present to chair the meeting.
- 20.10 The Trustees may adjourn and otherwise regulate their meetings as they think fit.
- 20.11 Questions arising at a meeting of Trustees shall be decided by a majority of votes of the trustees present and voting.
- 20.12 The person chairing a meeting shall have a deliberative as well as a casting vote.
- 20.13 A resolution in writing signed by all the Trustees shall be as valid and effectual as if it had been passed at a meeting of the Trustees duly convened and held.
- 20.14 A resolution for the purposes of clause 20.13 may consist of several identical copies of the same document each signed by one or more of the Trustees.
- 20.15 The Trustees shall cause to be kept full and accurate minutes of their proceedings at meetings.
- 20.16 A Trustee shall be entitled to expenses, fees and allowances for attending meetings and transacting the business of the Trust.
- 20.17 The amounts which a trustee is entitled to seek under clause 20.16 shall be the amounts fixed from time to time by the Ministerial Council.
- 21 **POWERS AND DUTIES OF THE TRUSTEES**
- 21.1 The Trustees shall, in addition to the powers and duties otherwise conferred upon them by this Deed and by law, have the following powers and duties:
- (a) to pay out of the Fund all claims approved under this Deed;
  - (b) to draw, make, accept, endorse, discount, execute and issue promissory notes, bills of exchange and other negotiable or transferable instruments;

- (c) for the purpose of conducting the affairs of the Trust, to raise money and to secure over the whole or any part of the Fund by mortgage assignment floating charge or in any other way the payment of money to any person firm bank or governmental or municipal body and upon such terms as the Trustees shall think fit;
- (d) to give a guarantee or indemnity for the payment of money or the performance of a contract, obligation or undertaking by a person, firm or association, and to give any security over the assets of the Fund for the guarantee or indemnity;
- (e) to hold, use, purchase, construct, demolish, maintain, repair, renovate, reconstruct, develop, improve, sell, transfer, convey, assign, surrender, let, lease, exchange, alienate, mortgage, charge, pledge, reconvey, release or discharge or otherwise deal with any real or personal property or any interest in it including the benefit of any leasing or other contracts to which the Trustees are a party;
- (f) to pay out of the Fund all costs, charges and expenses incidental to the management of the Fund or to the exercise of any power, authority or discretion in this Deed or to carrying out or performing the trusts of this Deed which the Trustees may at any time incur, including the costs of establishing and winding up the Trust and the legal costs of the trustees and of any other party relating to the legal proceedings or appeal referred to in paragraphs (e) and (m) of this clause;
- (g) to employ any person in connexion with anything required or permitted to be done by the Trustees pursuant to this Deed, including the receipt and payment of money, and to decide the remuneration to be allowed and paid to such a person and to create (or arrange) and contribute from the Fund to a superannuation, retirement, benefit or pension scheme for the benefit of a person so employed;
- (h) to open and operate upon an account or accounts with any bank or other financial institution;



- (i) to give effectual receipts and discharges for money received by or on behalf of the Trustees or otherwise relating to any of the acts, matters and things provided for in this Deed;
- (j) to take such action as the Trustees shall think fit for the adequate protection of the whole or any part of the Fund and to do all such other things as may be incidental to the exercise of the powers and authorities conferred on the Trustees by this Deed;
- (k) without limiting the generality of paragraph (j), to take all such action as the Trustees consider necessary to recover a debt owing to them and to release or compound that debt and to give time for the payment of that debt with or without taking security;
- (l) to institute or defend legal proceedings in the name of the Trust;
- (m) to appear in an appeal brought in any forum or tribunal against a decision made by the Trustees under this Deed;
- (n) to make arrangements and enter into contracts to underwrite any part of the liabilities of the Trust;
- (o) to insure or re-insure the Trustees against any claims made upon or against them for compensation or otherwise as provided in this Deed and to settle the terms of all such insurance and to pay from the Fund the premiums and charges for that insurance;
- (p) to permit any asset of the Fund to be held or registered in the name of any nominee of the Trustees and to deposit securities included in the Fund with a bank;
- (q) to appoint a person to administer or assist with the administration of the Trust in accordance with the requirements of the Trustees and to remunerate the person for the administration or assistance;
- (r) to appoint actuaries, accountants, solicitors, barristers and other professional advisers to represent, advise and act on behalf of the Trustees;
- (s) to pay a trustee the expenses, fees and allowances to which the trustee is entitled;

- (t) to pay a member of an Appeal Committee the expenses, fees and allowances to which the member is entitled; and
- (u) to pay the expenses or costs, whether incurred before or after the date on which this Deed comes into force and effect, not otherwise provided for in this Deed that the Trustees determine in their discretion to be a reasonable claim on the Fund.

21.2 A trustee shall not be answerable for any losses except losses arising from the trustee's own wilful neglect or default, nor shall a trustee be answerable for the acts or defaults of one or more co-trustees or for an act done bona fide in conformity with the decisions of the Trustees.

21.3 The Trustees shall not be liable for the neglect or default of a solicitor, banker, accountant or other agent employed bona fide by the Trustees.

21.4 A trustee shall be indemnified against all liabilities incurred in execution of the duties of the trustee, other than when they arise from the trustee's wilful neglect or default, and shall have a lien on the Fund for that indemnity.

## 22 COMMITTEES

22.1 Subject to this Part, the Trustees may by instrument in writing delegate any of their powers, duties and obligations conferred or created under this Deed to a committee or committees consisting of at least three Trustees.

22.2 The Trustees may vary the membership of a committee from time to time as they see fit.

22.3 The Trustees may not delegate their powers, duties and obligations under clauses 4.8, 6.1, 6.2, 6.4, 6.5, 7.1, 7.4, 12.1, 20.8, 22.1, 22.5, 24.1, 24.2, 25.1, 28.1, 30.1.

22.4 A committee to which powers have been delegated under clause 22.1 shall exercise those powers in accordance with any directions and subject to such conditions which the Trustees may specify and a power so exercised shall be deemed to have been exercised by the Trustees.

22.5 The Trustees shall appoint one member of each committee to be the chairman of that committee (in this Part called "the Chairman").

- 22.6 Where at a meeting of a committee the Chairman is not present within 10 minutes of the time appointed for the holding of the meeting or is unable or unwilling to act, the members present may elect one of their number to chair that meeting.
- 22.7 A committee may meet and adjourn as it thinks proper.
- 22.8 The quorum at a meeting of a Committee shall be one half of the total number of members of the Committee or, if that is not a whole number, the next highest whole number.
- 22.9 Questions arising at a meeting of a committee shall be determined by a majority of votes of the members present and voting.
- 22.10 In the case of an equality of votes, the Chairman has a casting vote in addition to a deliberative vote.
- 22.11 A person chairing a meeting who is not the Chairman shall not have a casting vote.
- 22.12 Except as otherwise specifically provided in this Deed or directed by the Trustees the meetings and proceedings of a committee shall be governed by the provisions contained in this Deed regulating the meetings and proceedings of the Trustees.

23 **SECRECY**

- 23.1 A person who is or has been a trustee shall not either directly or indirectly make a record of, divulge or communicate information concerning the affairs of a person which was acquired through the firstnamed person's office or employment under or for the purposes of this Deed, unless the information is recorded, divulged or communicated —
  - (a) in the performance of a function or the exercise of a power under this Deed;
  - (b) when the person is communicating for the purposes of an Act or this Deed with a person charged with or employed in the administration of the Act;
  - (c) when the person is giving evidence or producing a document to a person or body which is entitled to hear or determine an application for a licence under an Act or an appeal from or with respect to such an application; or
  - (d) when the person is giving evidence or producing a document to a court of law which is hearing any

criminal or civil proceedings connected with or arising under this Deed or an Act;

- (e) when it is requested by and provided to an agency of the Commonwealth of Australia or a State of the Commonwealth for the purpose of an investigation by the agency into a breach or an alleged breach of a law of the Commonwealth or of a State of the Commonwealth; or
- (f) with the written authority of the second-named person.

23.2 Where the Trustees enter into a contract with a person by which the person is employed in or concerned with the administration of the Trust, the Trustees shall in the contract require the person —

- (a) to be bound by and observe the provisions of clause 23.1 in the same manner and to the same extent as if the person was a trustee; and
- (b) if the person enters in turn into a subcontract with a third person, to be bound by and observe the provisions of this clause in the same manner and to the same extent as if the person was the Trustees and the third person was the person.

24 ACCOUNTS AND AUDIT

24.1 The Trustees shall cause proper books of account to be kept in relation to all of the dealings and operations of the Trustees and shall cause the accounts of the Trust to be audited and a balance sheet, funds statement, supporting information and an auditor's certificate to be presented to the Trustees not more than 60 days after the end of each year.

24.2 The Trustees shall have power to appoint and to determine the remuneration of the auditors of the Trust.

25 ANNUAL REPORT

25.1 The Trustees shall, within three months of the conclusion of each year, forward to each Minister a report of the financial and operational activities of the Trust for that year.

26 NOTICES

26.1 A reference in this Deed to a notice or notification or other like communication is (in the absence of a clear contrary intention) a reference to a notice notification or communication in writing.

27 SERVICE

- 27.1 The Trustees shall publish in the *Government Gazette* of each State an address in that State to which notices can be delivered or sent.
- 27.2 A notice or communication to the Trustees shall be deemed to have been duly given if it is delivered or sent by prepaid post to an address for the time being published pursuant to clause 27.1.
- 27.3 A notice sent by post shall be deemed to have been served on the third day following the day on which it was posted and in proving service of the notice, it shall be sufficient to prove that the letter containing the notice was properly addressed and posted.

28 TERMINATION OF THE TRUST

- 28.1 The Trust may be terminated at any time by unanimous resolution of the Trustees or of the Ministerial Council or by order of the Supreme Court of New South Wales.
- 28.2 Upon termination of the Trust the Fund shall be applied first in paying all the liabilities of the Trust (including any liability arising from a failure to account after the termination of the trust for money or other valuable consideration entrusted to another person before the termination of the Trust), and any balance after the payment of the Trust's liabilities shall be paid to the States in proportions equivalent to the total number of participants in each State at the date of termination.

29 TRUST FUNDS NOT TO BE PAID TO PARTICIPANTS

- 29.1 The Trustees shall not in any circumstances distribute among or pay to all or any of the participants any part of the Fund otherwise than as provided for by this Deed.

30 AMENDMENT OF TRUST DEED

- 30.1 Subject to this Part, this Deed may be amended by a resolution (in this Part called "an amendment resolution") passed by not less than 75 per centum of the Trustees.
- 30.2 Part 13 (except by adding or deleting paragraphs in clause 13.2), clauses 30.1 and 31.3 and this clause may not be amended.
- 30.3 Immediately upon the passing of an amendment resolution the Trustees shall notify each Minister of it.
- 30.4 Where, within four weeks of an amendment resolution being passed, the Ministerial Council resolves that the amendment is rejected by

**Travel Agents Regulations 1986**

**Schedule 2** Trust Deed establishing Compensation Scheme (Travel Agents Compensation Fund)

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the Ministerial Council, the amendment resolution lapses and is of no effect for any purpose.

30.5 An amendment resolution shall specify a date which shall be no earlier than six weeks after the date on which it is passed as the date on which the amendment is to take effect and this Deed shall be amended in accordance with that resolution as from and including that date.

30.6 An amendment to this Deed may be made and expressed so as to save from being void or of no effect a matter or thing done prior to the amendment.

31 GOVERNING LAW AND JURISDICTION

31.1 The Trust Fund shall be maintained in New South Wales.

31.2 The Trust shall be administered in New South Wales.

31.3 This Deed shall be governed by and construed in accordance with the laws of New South Wales.

31.4 A legal action or proceeding relating to this Deed or arising out of an action taken or omitted to be taken by the Trustees under this Deed may be brought in any State and the Trustees shall not raise any objection in regard to such an action or proceeding on the ground of venue or *forum non conveniens* or a similar ground.

### Schedule 3

[Regulation 15]

#### Resolution of the Trustees

**Amendment resolution**

The Travel Agents Compensation Trust Fund Deed set out in Schedule 2 is amended —

- (a) in clause 1.1 by —
  - (i) deleting the definition of “Client” and substituting the following definition —

“      **“Client”** means a person who enters into travel arrangements or incidental arrangements directly or indirectly with a participant.      ”;
  - and
  - (ii) inserting after the definition of “Fund” the following definition —

“      **“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.      ”;
  
- (b) in clause 1.3 —
  - (i) in paragraph (a) by deleting “agent; and” and substituting the following —

“      agent; ”;
  - (ii) in paragraph (b) by deleting “agent.” and substituting the following —

“      agent entering into travel arrangements or incidental arrangements; and      ”;
  - and
  - (iii) after paragraph (b) by inserting the following paragraph —

“      (c) without limiting the factors which the Trustees may take into account in respect

- of the matter referred to in paragraph (b), the Trustees may have regard to any previous experience that any person concerned with the management of the business may have had in managing the financial affairs of a business and also to the financial resources of any legal entity with which the first mentioned person is or has been associated. ”;
- (c) in clause 5.2 —
- (i) after paragraph (e) by inserting the following paragraph —
- “ (f) additional fees paid pursuant to clauses 7.4 and 7.7; ”;
- and
- (ii) by deleting the paragraph designations “(f), (g), (h), (i), (j), (k) and (l)” and substituting the following paragraph designations respectively —
- “ (g), (h), (i), (j), (k), (l) and (m) ”;
- (d) in clause 7 by deleting clause 7.4 and substituting the following clauses —
- “ 7.4 The Trustees shall fix an additional fee which may be charged to participants who fail to meet their obligations under clause 11.1, 11.2, 11.3 or 11.4 of this Deed.
- 7.5 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 50% of the current administration fee.
- 7.6 The Trustees may at any time vary the amount of the application, administration or additional fees or the manner in which those fees are to be calculated.
- 7.7 A participant shall pay any additional fee at such time as the Trustees may specify. ”;
- (e) in clause 11.8 by inserting after “contribution,” the following —
- “ or an additional fee, ”;



- (f) in clause 21.1 —
- (i) in paragraph (t) by deleting “entitled; and” and substituting the following —  
    “     entitled;     ”;
  - (ii) in paragraph (u) by deleting “Fund.” and substituting the following —  
    “     Fund; and     ”; and
  - (iii) after paragraph (u) by inserting the following paragraph —  
    “     (v) to publish from time to time information  
            concerning the operations of the Fund.     ”;
- and
- (g) in clause 22 by deleting clause 22.2 and substituting the following clause —
- “     22.2 The Trustees may vary the membership of a committee from time to time as they see fit and may nominate one or more Trustees who may act in the absence of a Trustee appointed to such committee and who for that purpose shall be deemed to have been delegated the powers, duties and obligations referred to in clause 22.1.     ”.

Made by resolution of the Trustees on 5 May 1989.

*[Schedule 3 inserted in Gazette 23 Jun 1989 p. 1853-4.]*

## **Schedule 4**

[Regulation 15]

### **Resolution of the Trustees**

#### **Amendment resolution**

The Travel Agents Compensation Trust Fund Deed set out in Schedule 2 and amended in Schedule 3 is amended in clause 1.1 by deleting the definition of “Client” and substituting the following definition —

“ **“Client”** means a person who enters into travel arrangements or incidental arrangements directly or indirectly with a participant, but does not include a person who is not resident in Australia and its Territories to the extent that the arrangements relate to the provision of services outside Australia and its Territories. ”.

Made by resolution of the Trustees on 8 December 1989.

*[Schedule 4 inserted in Gazette 13 Jul 1990 p. 3371.]*

## Schedule 5

[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 and 4 is amended in clause 2.2 by deleting paragraph (b) and substituting the following paragraph —

- “      (b) every person who entrusts money or other valuable consideration to a participant (or an employee or agent of the participant) in the course of the participant’s carrying on business as a travel agent in a State where —
- (i) arising from the act or omission of the participant (or any employee or agent of the participant); or
  - (ii) arising from the act or omission of any other participant (or employee or agent of such participant) who has received all or part of that money or valuable consideration otherwise than as a principal from the first-mentioned principal,
- the participant or other participant fails to account for the money or other consideration.      ”.

Made by resolution of the Trustees on 7 June 1990.

*[Schedule 5 inserted in Gazette 14 Dec 1990 p. 6135.]*

## **Schedule 6**

[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 5 is amended in clause 8.4 by deleting “at least two trustees” and substituting the following —

“ two Trustees or by one Trustee and any person so authorized in writing by any two Trustees. Such authority may be revoked at any time in writing by any two Trustees ”.

Made by resolution of the Trustees on 27 July 1987 and resolved by the Trustees that the amendment come into operation on and from 8 September 1987.

*[Schedule 6 inserted in Gazette 23 Aug 1991 p. 4357.]*

## Schedule 7

[Regulation 15]

### Resolution of the Trustees

#### **Amendment resolution**

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

- (a) in clause 1.1 in the definition of “year” by deleting “1st July to the next succeeding 30th June” and substituting the following —  
“ 1st January to the next succeeding 31st December ”;  
and
- (b) in clause 13.2 —
  - (i) by deleting “and” at the end of paragraph (c);
  - (ii) by deleting the full stop at the end of paragraph (d) and substituting a semi colon; and
  - (iii) by inserting after paragraph (d) the following paragraph —
    - “ (e) if the person was an applicant or participant in Tasmania, appeal to a Magistrate of that State. ”.

Made by resolution of the Trustees on 10 February 1988 and resolved by the Trustees that the amendments come into operation on and from 31 March 1988.

*[Schedule 7 inserted in Gazette 23 Aug 1991 p. 4358.]*

## **Schedule 8**

[Regulation 15]

### **Resolution of the Trustees**

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

- (a) in clause 13.2 —
  - (i) by deleting the full stop at the end of paragraph (e) and substituting a semi colon; and
  - (ii) by inserting after paragraph (e) the following paragraph —
    - “ (f) if the person was an applicant or participant in Queensland, appeal to the District Court in that State. ”;
- and
- (b) in clause 15.3 by deleting all the words after “loss” and substituting the following —
  - “ that is a loss within the meaning of clause 15 and arises before the proclamation of the Act in the State or Territory ”.

Made by resolution of the Trustees on 16 June 1988 and resolved by the Trustees that the amendments come into operation on and from 1 August 1988.

*[Schedule 8 inserted in Gazette 23 Aug 1991 p. 4358.]*

## Schedule 9

[Regulation 15]

### Resolution of the Trustees

#### **Amendment resolution**

The Travel Agents Compensation Fund Trust Deed set out in Schedule 2 and amended in later schedules is amended in clause 2.2 by deleting paragraph (b) and substituting the following paragraph —

- “      (b) every person who entrusts money or other valuable consideration to another person (or an employee or agent of the other person) in the course of the other person’s carrying on business as a travel agent in a State if either:
- (i) that other person; or
  - (ii) any third or subsequent person who carries on business as a travel agent in a State and who, in turn, receives directly or indirectly through an employee or agent of the third or subsequent person all or part of that money or consideration, other than as a principal,
- fails to account for the relevant money or consideration, whether due to an act or to an omission of that person (or of an employee or agent of that person).      ”.

Made by resolution of the Trustees on 17 October 1990 and resolved by the Trustees that the amendment come into operation on and from 21 December 1990.

*[Schedule 9 inserted in Gazette 23 Aug 1991 p. 4358.]*

## **Schedule 10**

[Regulation 15]

### **Resolution of the Trustees**

#### **Amendment resolution**

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

- (a) in clause 24.1 by deleting “60” and substituting the following —  
“ ninety ”; and
- (b) in clause 25.1 by deleting “three” and substituting the following —  
“ four ”.

Made by resolution of the Trustees on 5 February 1991 and resolved by the Trustees that the amendments come into operation on 31 March 1991.

*[Schedule 10 inserted in Gazette 23 Aug 1991 p. 4359.]*



## **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 11 inserted in Gazette 22 Dec 1995 p. 6176-7.]*

## **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 12 inserted in Gazette 22 Dec 1995 p. 6177-81.]*



## 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 —

#### Page 2

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

Page 5

- 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.

Page 6

- 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.

Page 1

- 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;

**Travel Agents Regulations 1986**  
**Schedule 13** Resolution of the Trustees

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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 13 inserted in Gazette 22 Dec 1995 p. 6181-3.]*

## 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.

*[Schedule 14 inserted in Gazette 22 Dec 1995 p. 6183-4.]*

**Notes**

- <sup>1</sup> This is a compilation of the *Travel Agents Regulations 1986* and includes the amendments made by the other written laws referred to in the following table. The table also contains information about any reprint.

**Compilation table**

<b>Citation</b>	<b>Gazettal</b>	<b>Commencement</b>
<i>Travel Agents Regulations 1986</i>	19 Dec 1986 p. 4926-38	1 Feb 1987 (see r. 3 and <i>Gazette</i> 16 Jan 1987 p. 82)
<i>Travel Agents Amendment Regulations 1987</i>	23 Jan 1987 p. 229	1 Feb 1987 (see r. 2)
<i>Travel Agents Amendment Regulations (No. 2) 1987</i>	27 Mar 1987 p. 1018-19	27 Mar 1987
<i>Travel Agents Amendment Regulations (No. 3) 1987</i>	19 Jun 1987 p. 2411	19 Jun 1987
<i>Travel Agents Amendment Regulations (No. 4) 1987</i>	4 Sep 1987 p. 3520	4 Sep 1987
<i>Travel Agents Amendment Regulations (No. 5) 1987</i>	25 Sep 1987 p. 3748	25 Sep 1987
<i>Travel Agents Amendment Regulations 1988</i>	12 Aug 1988 p. 2770 (erratum 19 Aug 1988 p. 2970)	12 Aug 1988
<i>Travel Agents Amendment Regulations (No. 4) 1988</i>	14 Oct 1988 p. 4203	14 Oct 1988
<i>Travel Agents Amendment Regulations (No. 5) 1988</i>	14 Oct 1988 p. 4203	14 Oct 1988
<i>Travel Agents Amendment Regulations (No. 2) 1988</i>	21 Oct 1988 p. 4257	21 Oct 1988
<i>Travel Agents Amendment Regulations 1989</i>	23 Jun 1989 p. 1853-4	23 Jun 1989
<i>Travel Agents Amendment Regulations (No. 2) 1989</i>	30 Jun 1989 p. 1978-9	1 Jul 1989 (see r. 2)
<i>Travel Agents Amendment Regulations 1990</i>	13 Jul 1990 p. 3371	13 Jul 1990
<i>Travel Agents Amendment Regulations (No. 2) 1990</i>	1 Aug 1990 p. 3654	1 Aug 1990
<i>Travel Agents Amendment Regulations</i>	14 Dec 1990	14 Dec 1990

**Travel Agents Regulations 1986**

<b>Citation</b>	<b>Gazettal</b>	<b>Commencement</b>
<i>(No. 3) 1990</i>	p. 6133-5	
<i>Travel Agents Amendment Regulations 1991</i>	23 Aug 1991 p. 4357-9	23 Aug 1991
<i>Travel Agents Amendment Regulations (No. 2) 1991</i>	13 Dec 1991 p. 6162-4	13 Dec 1991
<i>Travel Agents Amendment Regulations 1992</i>	14 Aug 1992 p. 4013-14	14 Aug 1992
<i>Travel Agents Amendment Regulations (No. 2) 1993</i>	30 Nov 1993 p. 6410-11	30 Nov 1993
<i>Travel Agents Amendment Regulations 1994</i>	7 Oct 1994 p. 5077-8	7 Oct 1994
<i>Travel Agents Amendment Regulations 1995</i>	22 Dec 1995 p. 6175-84	22 Dec 1995
<i>Travel Agents Amendment Regulations (No. 2) 1995</i>	29 Dec 1995 p. 6339-41	1 Jan 1996 (see r. 2)
<i>Travel Agents Amendment Regulations 1996</i>	6 Sep 1996 p. 4421	6 Sep 1996
<b>Reprint of the Travel Agents Regulations 1986 as at 20 May 1997</b> (includes amendments listed above)		
<i>Travel Agents Amendment Regulations 2002</i>	28 Jun 2002 p. 3059-60	1 Jul 2002 (see r. 2)
<i>Travel Agents Amendment Regulations 2003</i>	27 Jun 2003 p. 2555-6	1 Jul 2003 (see r. 2)
<b>Reprint 2: The Travel Agents Regulations 1986 as at 14 Nov 2003</b> (includes amendments listed above)		
<i>Travel Agents Amendment Regulations (No. 2) 2003</i>	9 Mar 2004 p. 733-4	9 Mar 2004
<i>Travel Agents Amendment Regulations 2004</i>	31 Dec 2004 p. 7136-7	1 Jan 2005 (see r. 2)
<i>Travel Agents Amendment Regulations (No. 2) 2006</i>	27 Jun 2006 p. 2259-60	1 Jul 2006 (see r. 2)
<i>Travel Agents Amendment Regulations 2006</i>	22 Sep 2006 p. 4143-6	22 Sep 2006 (see r. 2(a))

<sup>2</sup> The *Rural and Industries Bank of Western Australia Act 1987* was repealed by the *R and I Bank Act 1990*, the short title of which was changed to the *R and I Holdings Act 1990* by the *Bank of Western Australia Act 1995*.