

Western Australia

## **Travel Agents Act 1985**

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## Travel Agents Act 1985

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Western Australia

## **Travel Agents Act 1985**

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

## Part I — Preliminary

### 1. Short title

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

### 2. Commencement

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

### 3. Interpretation

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

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

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

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

“**bank**” means —

(a) an ADI (authorised deposit-taking institution) as defined in section 5 of the *Banking Act 1959* of the Commonwealth; or

(b) a bank constituted by a law of a State, a Territory or the Commonwealth;

“**books**” means books within the meaning of the *Corporations Act 2001* of the Commonwealth;

“**Commissioner**” means the person for the time being designated as the Commissioner under section 49A;

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

“**Department**” means the department of the Public Service principally assisting in the administration of this Act;

“**director**”, in relation to a body corporate, includes any person occupying or acting in the position of director of the body corporate, by whatever name called and whether or not



validly appointed to occupy, or validly authorised to act in, that position;

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

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

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

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

**“officer”**, in relation to a body corporate, includes person who is an officer of the body corporate within the meaning of the *Corporations Act 2001* of the Commonwealth;

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

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

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

(2) A reference in this Act —

- (a) to carrying on business as, or carrying on the business of, a travel agent is a reference to carrying on business as a travel agent within the meaning of section 4; or
- (b) to a licensee or the holder of a licence includes a reference to a successful applicant under section 33, or to a person referred to in section 34(1), who is lawfully carrying on the business of a travel agent in respect of which a licensee or such a holder holds or held a licence, notwithstanding that that applicant or the person so referred to is not himself the holder of a licence.

**s. 4**

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*[Section 3 amended by No. 57 of 1997 s. 39(10); No. 26 of 1999 s. 107; No. 10 of 2001 s. 221; No. 55 of 2004 s. 1235; No. 28 of 2006 s. 146.]*

**4. Business as a travel agent**

- (1) Subject to this section, a person carries on business as a travel agent for the purposes of this Act if he carries on the activity (whether or not in the course of, or incidentally to, or in connection with, any other activity) of —
  - (a) selling tickets entitling other persons to travel, or otherwise arranging for other persons rights of passage, on conveyances which are not prescribed conveyances;
  - (b) selling to, or arranging or making available for, other persons rights of passage to, and hotel or other accommodation at, places —
    - (i) which are within or outside; or
    - (ii) some of which are within, and others of which are outside,  
Western Australia;
  - (c) purchasing for resale the rights of passage on conveyances which are not prescribed conveyances;
  - (d) carrying on an activity which is prescribed for the purposes of this paragraph; or
  - (e) holding out or advertising that the person is willing to carry on any activity referred to in paragraph (a), (b), (c) or (d).
- (2) An individual does not carry on business as a travel agent by reason only of carrying on in the course of his employment any activity referred to in subsection (1)(a), (b), (c), (d) or (e).
- (3) A person does not carry on business as a travel agent —
  - (a) in respect of an activity referred to in subsection (1)(a) if he carries on that activity in respect of a conveyance of which he is the owner;

- (b) in respect of an activity referred to in subsection (1)(b) if he carries on that activity in respect of —
    - (i) a conveyance; and
    - (ii) a place of accommodation, of which he is the owner;
  - (c) by reason only of carrying on —
    - (i) an activity; or
    - (ii) an activity in circumstances, prescribed for the purposes of this paragraph; or
  - (d) by reason only of holding out or advertising that he is willing to carry on any activity referred to in paragraph (a), (b) or (c).
- (4) In subsection (3), a reference to —
- (a) the owner of a conveyance —
    - (i) includes a person who has lawful possession of, but not the property in, the conveyance; and
    - (ii) does not include a person who has the property in the conveyance but does not have possession thereof by reason of its being the subject of a mortgage, bill of sale, hire-purchase agreement or other hiring agreement, lease, licence or bailment;and
  - (b) the owner of a place of accommodation is a reference to the person who is in possession of the land that is, or on which is situated, the place of accommodation.

**5. Application of Act**

- (1) Subject to this section and to section 6, this Act binds the Crown.
- (2) This Act shall not be construed as requiring —
  - (a) any Minister of the Crown;

**s. 6**

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- (b) any department of the Government;
- (c) any prescribed statutory corporation or public statutory authority; or
- (d) any officer or employee of the Crown or of any Minister, department, corporation or authority referred to in this subsection in the performance of his functions as such an officer or employee,

to hold a licence.

*[Section 5 amended by No. 69 of 2006 s. 38.]*

**6. Variation of application of Act**

- (1) The Governor may by order declare that the provisions of this Act, or such of those provisions as are specified in the order —
  - (a) do not have effect in relation to a specified person or to a specified class of persons;
  - (b) have effect in relation to a specified person or to a specified class of persons to such extent as is specified;
  - (c) do not have effect in relation to a specified transaction or matter or to a specified class of transactions or matters;
  - (d) have effect in relation to a specified transaction or matter or to a specified class of transactions or matters to such extent as is specified;
  - (e) do not have effect in relation to a specified transaction or specified class of transactions entered into by a specified person or specified class of persons, or in relation to specified associated matters; or

- (f) have effect in relation to a specified transaction or specified class of transactions entered into by a specified person or specified class of persons, or in relation to specified associated matters, to such extent as is specified.
- (2) An order made under subsection (1) may —
  - (a) specify the period during which that order shall remain in force; or
  - (b) provide that its operation is subject to such conditions as are specified in the order.
- (3) The Governor may by order revoke or vary an order made under this section.
- (4) An order made under this section shall be deemed to be a regulation for the purposes of section 42 of the *Interpretation Act 1984* and the provisions of that section shall apply accordingly.
- (5) An order in force under this section, including an order that is varied under this section, has effect according to its tenor.
- (6) A person to whom an order made under this section applies, including an order that is varied under this section, shall comply with the conditions (if any) to which the operation of the order is subject.  
Penalty: \$5 000.
- (7) This section does not apply to Part III.

## **Part II — Licences**

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

#### **7. Travel agent to be licensed**

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

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

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

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

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

Penalty: \$25 000 or 9 months' imprisonment or both, with a minimum fine of \$2 500 in the case of a second or subsequent offence.

*[Section 7 amended by No. 50 of 2003 s. 100(2).]*

#### **8. Unauthorised use of licence**

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

Penalty: \$5 000.

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

Penalty: \$5 000.

### **Division 2 — Licensing provisions**

#### **9. Application for licence**

- (1) An application for a licence may be made to the Commissioner —
- (a) by an individual of or over the age of 18 years; or
  - (b) by a body corporate if all individuals concerned in the management of the body corporate are of or over the age of 18 years.
- (2) An application shall be in writing in a form approved by the Minister, shall be accompanied by the prescribed fee and shall be signed —
- (a) if the application is made by an individual, by the individual; or
  - (b) if the application is made by a body corporate —
    - (i) having only 2 directors, by those directors; or
    - (ii) having more than 2 directors, by not fewer than 2 of those directors.
- (3) An application shall specify —
- (a) the name and address —
    - (i) if the application is made by an individual, of the individual; or
    - (ii) if the application is made by a body corporate, of each director of the body corporate;
  - (b) the address of each place in the State at which, and the name or names under which, the applicant intends to carry on business as a travel agent;

- (c) whether or not the applicant intends to carry on the business referred to in paragraph (b) in partnership with another person;
  - (d) whether or not the applicant is a person whose licence or registration granted under an Act specified in the Schedule has been cancelled or suspended or who has been subjected to any other disciplinary action under that Act in his capacity as a person who is or has been licensed or registered under that Act;
  - (e) that the applicant is, or on being licensed will be, a participant in the Compensation Scheme;
  - (f) the name, address and such other particulars as are prescribed of the person it is proposed to employ at any address referred to in paragraph (b) in compliance with section 29; and
  - (g) such other matters as are prescribed.
- (4) When an application is made and, before the application is granted or refused, a change occurs in the particulars specified in the application in accordance with subsection (3), the applicant shall, within 14 days after the occurrence of the change, give to the Commissioner notice in writing signed by the applicant or, if the applicant is a body corporate, by a director of the body corporate specifying particulars of the change.  
Penalty: \$1 000.
- (5) An applicant shall, if required to do so by the Commissioner, provide the Commissioner with such particulars additional to those included in his application as the Commissioner requires.
- (6) A person shall not in, or in relation to, an application, a notice given under subsection (4) or any particulars provided under subsection (5), make a statement that is false or misleading by reason of the inclusion therein of any false or misleading matter or the omission therefrom of any material matter.



Penalty: \$5 000.

- (7) It is a defence to a prosecution of a person for an offence under subsection (6) if the person proves that, when the relevant application was made, the relevant notice given or the relevant particulars provided, the person —
- (a) believed on reasonable grounds that —
    - (i) the false matter was true; or
    - (ii) the misleading matter was not misleading; or
  - (b) in the case of an omission —
    - (i) believed on reasonable grounds that no material matter had been omitted; or
    - (ii) did not know that the omitted matter was material.

*[Section 9 amended by No. 55 of 2004 s. 1236 and 1259(1).]*

#### **10. Investigation of application**

- (1) When an application has been made in accordance with section 9, the Commissioner shall as soon as practicable publish in a newspaper circulating generally throughout Western Australia a notice giving particulars of the application.
- (2) The Commissioner may make such inquiries about the applicant and matters relevant to the application as the Commissioner considers necessary.
- (3) The Commissioner of Police shall, if the Commissioner so requests, investigate matters relevant to an application and the applicant who made that application and, as soon as practicable after completing that investigation, make a report to the Commissioner on that investigation.

*[Section 10 amended by No. 57 of 1997 s. 123(1) and (2); No. 55 of 2004 s. 1237.]*

**11. Objection to application**

- (1) At any time before the expiration of the period of 14 days that next succeeds publication of a notice under section 10(1) with respect to an application, or within such longer period as the Commissioner in a particular case allows, any person may lodge with the Commissioner an objection in writing to the granting of the application if that objection complies with subsection (2).
- (2) An objection lodged under subsection (1) complies with this subsection if —
  - (a) it specifies the ground of that objection;
  - (b) the ground of that objection is a ground on which the Commissioner is required to refuse an application for a licence; and
  - (c) the person making that objection has, before the expiration of the period referred to in subsection (1), served on the applicant a copy of that objection.

*[Section 11 amended by No. 57 of 1997 s. 123(3); No. 55 of 2004 s. 1238 and 1259(1).]*

**12. Grant or refusal of licence**

- (1) Unless subsection (2) or (4) requires it to be refused, the Commissioner shall grant an application as soon as practicable after the expiration of the period allowed by or under section 11(1) for the lodging of an objection to the granting of an application.
- (2) An application made by an individual shall be refused if it appears to the Commissioner that —
  - (a) the individual has not attained the age of 18 years;
  - (b) the individual is disqualified under section 22(1)(e) from being a licensee;
  - (ba) the individual has been found guilty of an offence under section 187 of *The Criminal Code* or section 50DA or 50DB of the *Crimes Act 1914* of the Commonwealth;

- (c) the individual is an insolvent under administration within the meaning of the *Corporations Act 2001* of the Commonwealth;
  - (d) the individual is not a person likely to carry on business honestly and fairly under the authority that would be conferred by the relevant licence if it were granted;
  - (e) the individual does not have such qualifications for carrying on the business referred to in paragraph (d) as are prescribed;
  - (f) the individual is a person whose licence or registration granted under an Act specified in the Schedule has been cancelled or suspended;
  - (g) the individual is in any other way not a fit and proper person to be the holder of a licence; or
  - (h) a person proposed to be employed by the individual for the purposes of section 29(1) is not of good reputation or character or in any other way would not be a fit and proper person to be the holder of a licence if that person were to apply for a licence personally.
- (3) Without affecting the generality of subsection (2)(g), the Commissioner may, in determining whether or not an applicant is a fit and proper person to be the holder of a licence, have regard (if such be the case) to the fact that the applicant —
- (a) has, during the period of 10 years that last preceded the making of his application, been convicted of, or served any part of a term of imprisonment for, an offence in Western Australia or elsewhere involving fraud or dishonesty;
  - (b) was, at the time of the making of his application, bound in relation to an offence referred to in paragraph (a) by a recognizance; or
  - (c) had, at the time of the making of his application, a charge pending against the applicant in relation to an offence referred to in paragraph (a).

- (4) An application made by a body corporate shall be refused if it appears to the Commissioner that —
- (a) the body corporate is disqualified under section 22(1)(e) from being a licensee;
  - (b) the body corporate does not have, or is not likely to continue to have, sufficient financial resources to enable it to carry on business as a travel agent;
  - (c) the body corporate is not likely to carry on business honestly and fairly under the authority that would be conferred by the relevant licence if it were granted;
  - (d) the reputation of the body corporate is such that it would not be a fit and proper person to be the holder of a licence;
  - (e) an officer of the body corporate is disqualified under section 22(1)(e) from being an officer of a body corporate that is a licensee;
  - (f) an officer of, or an individual concerned in the management of, the body corporate is not of good reputation or character or would in any other way, if he were to apply for a licence personally, have that application refused under subsection (2);
  - (g) any individual other than an officer of the body corporate who, in the opinion of the Commissioner, appears to have control, or substantial control, of the body corporate is not of good reputation and character or is not likely to exercise that control honestly and fairly;
  - (h) a person proposed to be employed by the body corporate for the purposes of section 29(2) is not of good reputation or character or in any other way would not be a fit and proper person to be the holder of a licence if that person were to apply for a licence personally; or
  - (i) the body corporate, or any person referred to in paragraph (e), (g) or (h), has been found guilty of an offence under section 187 of *The Criminal Code* or

section 50DA or 50DB of the *Crimes Act 1914* of the Commonwealth.

- (5) An application shall not be refused on a ground specified in subsection (2)(d), (g) or (h) or (4)(b), (c), (d), (f), (g) or (h) unless the Commissioner —
- (a) has informed the applicant of that ground; and
  - (b) has afforded the applicant and any person who, in accordance with section 11, has lodged an objection on that ground, an opportunity to make submissions and adduce evidence.
- (6) When an application is refused, the Commissioner shall forthwith, by notice in writing, inform the applicant and each objector (if any) to the granting of the application of that refusal and of the ground on which that refusal is based and inform the applicant of the right to apply to the State Administrative Tribunal for a review of the refusal, and the Commissioner shall, as soon as practicable, refund to the applicant so much of the relevant application fee as is appropriate to be refunded.
- (7) When an application is granted —
- (a) the Commissioner shall forthwith by notice in writing inform —
    - (i) the applicant of the granting of the application and the right to apply to the State Administrative Tribunal for a review of any condition imposed; and
    - (ii) if an objection has been lodged in respect of the application under section 11, the objector of the granting of the application and the right to apply to the State Administrative Tribunal for a review of the decision to grant the application;
  - (b) the Commissioner shall not issue the licence granted unless —

- (i) the prescribed fee for that licence is, or has been, paid to the Commissioner; and
    - (ii) a certificate in the prescribed form relating to the participation of the applicant in the Compensation Scheme is, or has been, lodged with the Commissioner;
  - and
  - (c) the applicant shall be deemed to be the holder of the licence granted.
- (8) Notwithstanding anything in this section, the Commissioner may refrain from granting an application unless —
- (a) if the applicant is not a body corporate, the applicant; or
  - (b) if the applicant is a body corporate, all of the directors and officers of the body corporate, or such of them as the Commissioner specifies or refers to,

has or have attended personally on the Commissioner and satisfied the Commissioner as to such relevant matters referred to in this section as the Commissioner thinks appropriate.

*[Section 12 amended by No. 10 of 2001 s. 221; No. 4 of 2004 s. 6(2) and (3); No. 55 of 2004 s. 1239, 1259(1) and 1260.]*

**13. Conditions of licence**

- (1) Subject to this section, the Commissioner may —
  - (a) on the granting of an application and at any other time, impose conditions subject to which the licence granted is to be held; and
  - (b) on application or of its own motion, at any time vary or revoke any of the conditions referred to in paragraph (a).
- (2) A licence is subject to —
  - (a) a condition that the licensee shall at all times during the currency of the licence be a participant in the Compensation Scheme;

- (b) a condition that each place at which the licensee carries on business as a travel agent shall at all times comply with such requirements as are prescribed;
  - (c) any prescribed conditions; and
  - (d) any conditions in force under subsection (1).
- (2a) Where a person who is a licensee ceases to participate in the Compensation Scheme —
- (a) that person's licence is suspended until that person again participates in the Compensation Scheme; and
  - (b) that person shall return the licence to the Commissioner without delay.
- (3) The Commissioner shall not under subsection (1) impose conditions to which a licence is to be subject, or vary conditions to which a licence is subject, unless the Commissioner has first afforded the applicant for, or, as the case requires, the holder of, the licence an opportunity to make written submissions with respect to the conditions that are proposed to be imposed or varied.

*[Section 13 amended by No. 27 of 1989 s. 3; No. 55 of 2004 s. 1240, 1259(1) and 1260.]*

**14. Name under which licensee may operate**

- (1) Subject to the *Business Names Act 1962*, a licence may authorise its licensee to carry on business as a travel agent under a name or names in addition to or in substitution for the name of the licensee.
- (2) A licensee shall not —
  - (a) carry on;
  - (b) in the case of an individual, hold himself out as carrying on; or
  - (c) in the case of a body corporate, hold itself out as carrying on,

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

Penalty: \$5 000.

**15. Form of licence and replacement of licence**

- (1) A licence shall —
  - (a) be signed and issued by the Commissioner;
  - (b) be in a form approved by the Minister; and
  - (c) if it authorises its licence to carry on business under a name or names in addition to, or in substitution for, the name of its licensee, bear an endorsement to that effect.
- (2) On application made in the prescribed manner, the Commissioner may add, amend or delete an endorsement referred to in subsection (1)(c).
- (3) If the Commissioner is satisfied that a licence has been lost or destroyed, the Commissioner may, on payment of the prescribed fee, issue a duplicate of the licence.

*[Section 15 amended by No. 55 of 2004 s. 1259(1) and 1260.]*

**16. Change of address of licensee**

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

Penalty: \$1 000.
- (2) A licensee shall, not later than 14 days after ceasing to carry on business as a travel agent at an address specified in accordance with section 9(3)(b) or, if a notice has been given under



subsection (1), at an address specified in the notice, give to the Commissioner notice in writing that the licensee has ceased to carry on business as a travel agent at that address.

Penalty: \$1 000.

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

*[Section 16 amended by No. 55 of 2004 s. 1260.]*

## **17. Register of licensees**

- (1) For the purposes of this Act, the Commissioner shall keep a register of licensees that, without limiting the operation of subsection (2), includes the address of every place in the State at which each licensee is authorised to carry on business as a travel agent.
- (2) Subject to this Act, the register referred to in subsection (1) shall contain the prescribed particulars and shall be kept in such form and manner as the Minister thinks fit.
- (3) The Commissioner may, on the application of a person, issue to the person a certificate stating whether or not a person specified in the certificate is or was, on a date or during a period specified in the certificate, the holder of a licence.
- (4) The Commissioner may charge such fee, if any, as is prescribed for the issue of a certificate under subsection (3).
- (5) A person may, on application in accordance with any regulations made under section 59 and on payment of any prescribed fee, inspect and make a copy of, or take extracts from, the register referred to in subsection (1).

*[Section 17 amended by No. 55 of 2004 s. 1260.]*

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

- (1) Except while it is suspended under section 13(2a) or 22(1), a licence continues in force until its holder dies or it is surrendered under section 20 or cancelled under section 19(6), 22(1) or (4).
- (2) A licence authorises the licensee to carry on business as a travel agent under the name or names specified in the licence, subject to and in accordance with this Act and the conditions to which the licence is subject.
- (3) For the purposes of this Act, sections 19 and 20 excepted, a person whose licence is suspended under section 13(2a) or 22(1) shall, while that suspension continues, be deemed to be a person who is not a licensee.

*[Section 18 amended by No. 27 of 1989 s. 4; No. 55 of 2004 s. 1241.]*

**19. Annual fee and annual statement**

- (1) A licensee shall pay to the Commissioner, in respect of the period prescribed for the purposes of this section, the prescribed fee for the licensee's licence.
- (1a) Payment in respect of the period prescribed under subsection (1) shall be made —
  - (a) not more than 28 days before the expiry of the current prescribed period; and
  - (b) not more than 28 days after the expiry of the previous prescribed period,

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

- (2) A person who is or was a licensee during a period prescribed under subsection (1), or part of that period, commencing on the date, or on an anniversary of the date, on which the licence was

granted to that person shall lodge with the Commissioner a statement in respect of that period or part that is in a form approved by the Minister and is signed by or on behalf of the person.

- (3) A person required by subsection (2) to lodge a statement shall lodge the statement within 28 days after the end of the period in respect of which, or part of which, the statement is lodged.
- (4) The Commissioner may, on the application of a person required to comply with subsection (1), or with subsections (2) and (3), extend or further extend the time for compliance with the applicable subsection or subsections.
- (5) When a licensee has failed to pay a fee, or lodge a statement, or pay a fee and lodge a statement, in accordance with this section, the Commissioner shall give notice in writing to the licensee that, unless the fee is paid or the statement lodged or the fee is paid and the statement lodged, as the case requires, together with the prescribed late fee, before a day specified in the notice, being a day that is not earlier than 14 days after the giving of the notice, the licence will be cancelled under subsection (6).
- (6) The Commissioner shall cancel the licence of a licensee who fails to pay a fee or lodge a statement, or pay a fee and lodge a statement, in accordance with a notice given under subsection (5).
- (7) Subject to subsection (4), a person (not being a licensee) to whom subsections (2) and (3) apply shall comply with those subsections.  
Penalty: \$1 000.
- (8) If, while a licence is in force, there occurs —
  - (a) between the time when the application for the licence was granted and the time when the first statement is lodged under subsection (2), a change in the particulars specified or provided in, or in connection with, that application in accordance with section 9(3), (4) or (5); or

- (b) between the lodging of 2 successive statements under subsection (2), a change in the particulars specified in the earlier of those statements,

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

Penalty: \$1 000.

- (9) A person shall not, in or in relation to a statement required to be lodged under subsection (2) or a notice required to be given under subsection (8), make a statement that is false or misleading by reason of the inclusion therein of any false or misleading matter or the omission therefrom of any material matter.

Penalty: \$5 000.

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

- (a) believed on reasonable grounds that —

- (i) the false matter was true; or  
(ii) the misleading matter was not misleading;

or

- (b) in the case of an omission —

- (i) believed on reasonable grounds that no material matter had been omitted; or  
(ii) did not know that the omitted matter was material.

*[Section 19 amended by No. 56 of 1995 s. 52; No. 55 of 2004 s. 1260.]*

## **20. Surrender of licence**

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

- (2) If the Commissioner makes an allegation under section 21 against the holder of a licence, the licence cannot be surrendered under subsection (1) until after effect has been given to any order made by the State Administrative Tribunal in disposing of the allegation or by the court dealing with an appeal from an order of the State Administrative Tribunal.
- (3) If a licence is surrendered under subsection (1), the Commissioner shall refund to the former licensee so much of the fee for the licence last paid under section 19(1) as the Commissioner, on application by the former licensee, specifies as appropriate to be refunded.

*[Section 20 amended by No. 55 of 2004 s. 1242, 1259(1) and 1260.]*

### **Division 3 — Disciplinary action**

#### **21. Objection to holding of licence, and inquiry**

- (1) Any person may, at any time make to the Commissioner a complaint in writing about the holding of a licence by a specified licensee if the complaint complies with subsection (2).
- (2) For a complaint to comply with this subsection —
  - (a) the complaint has to specify the licensee and the grounds of the complaint; and
  - (b) the grounds of the complaint have to be capable of reasonably giving rise to a belief described in subsection (4).

*[(3) repealed]*

- (4) The Commissioner may, on receiving a complaint under subsection (1) or on the Commissioner's own initiative, make any investigation or inquiry that the Commissioner considers necessary to decide whether there are grounds for believing that —

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

- (4a) If it appears to the Chairman, whether or not as a result of an objection lodged under subsection (1), that there are grounds for believing that a licensee has been found guilty of an offence under section 187 of *The Criminal Code* or section 50DA or 50DB of the *Crimes Act 1914* of the Commonwealth, the Chairman shall arrange for the Tribunal to hold an inquiry into the truth of the matter.
- (5) If the Commissioner decides that it is appropriate to do so, the Commissioner may make an allegation to the State Administrative Tribunal that there are reasonable grounds for a belief described in subsection (4) concerning a specified licensee.
- (6) If the Commissioner decides not to make an allegation concerning a licensee about whom a complaint was made to the Commissioner under subsection (1), the Commissioner is required to notify the person who made the complaint of that decision and the reason for it.

*[Section 21 amended by No. 4 of 2004 s. 6(4) and (5); No. 55 of 2004 s. 1243 and 1259(1).]*

## **22. Disciplinary action following inquiry**

- (1) If the State Administrative Tribunal, on dealing with an allegation under section 21(5), is satisfied that any ground for a belief referred to in section 21(4) has been made out, it may —
- (a) reprimand the licensee;
  - (b) impose on the licensee a fine not exceeding \$1 000 payable within a specified time;
  - (c) require the licensee to comply within a specified time with a requirement specified by the Tribunal;
  - (d) suspend the licence for a period not exceeding 12 months;

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- (e) disqualify the licensee or any person concerned in the direction, management or conduct of the business of the licensee from being —
  - (i) a licensee;
  - (ii) concerned in the direction, management or conduct of the business of a travel agent; or
  - (iii) an officer of a body corporate that is a licensee, either permanently or for such period as the Tribunal thinks fit;
- (f) order the imposition of a condition to which the licence shall be subject or vary or revoke —
  - (i) such a condition; or
  - (ii) a condition imposed under section 13(1);or
- (g) cancel the licence,

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

- (1a) If after holding an inquiry in relation to a licence the Tribunal is satisfied that the licensee has been found guilty of an offence under section 187 of *The Criminal Code* or section 50DA or 50DB of the *Crimes Act 1914* of the Commonwealth it —
  - (a) shall, under subsection (1)(e), disqualify the licensee permanently —
    - (i) from being a licensee;
    - (ii) from being concerned in the direction, management or conduct of the business of a travel agent; and
    - (iii) from being an officer of a body corporate that is a licensee;and



- (b) may, in addition and subject to subsection (4), take any one or more of the other courses of action described in subsection (1).

*[(2), (3) repealed]*

- (4) When the Tribunal disqualifies a licensee under subsection (1)(e), the Commissioner shall cancel his licence.
- (5) When the Tribunal or the Commissioner —
  - (a) suspends a licence under subsection (1)(d) the licensee; or
  - (b) cancels a licence under section 19(6) or under subsection (1)(g) or (4) the former licensee,

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

Penalty: \$1 000.

- (6) A person disqualified under subsection (1)(e) shall not, while so disqualified —
  - (a) be a licensee;
  - (b) be concerned in the direction, management or conduct of the business of a travel agent; or
  - (c) be an officer of a body corporate that is a licensee,

as the case requires.

Penalty: \$5 000.

- (7) If a person has been convicted of an offence and the circumstances of the offence form, wholly or partly, the subject-matter of a proceeding before the State Administrative Tribunal upon an allegation under section 21(5), the person is not liable to a fine under this section in respect of the conduct giving rise to the offence.

*[Section 22 amended by No. 4 of 2004 s. 6(6); No. 55 of 2004 s. 1244, 1259(1) and 1260.]*

**Division 4 — Review**

*[Heading amended by No. 55 of 2004 s. 1245.]*

**23. Application for review**

- (1) A person aggrieved by a reviewable decision may apply to the State Administrative Tribunal for a review of the decision.
- (2) In subsection (1) —  
**“person aggrieved”** means —
  - (a) a person upon whose application a reviewable decision is made or a person who lodged an objection to the application;
  - (b) the holder of the licence to which a reviewable decision relates; or
  - (c) a person referred to in paragraph (d) of the definition of “reviewable decision”;

**“reviewable decision”** means —

- (a) a decision under section 12 to grant or refuse an application for a licence;
- (b) a decision under section 13 to impose or vary a condition;
- (c) a decision under section 33(3) to grant or refuse an application or impose a condition; or
- (d) a decision that either prevents a person from participating in the Compensation Scheme or terminates a person’s participation in the Compensation Scheme, other than a decision of the person whose participation the decision concerns.

*[Section 23 inserted by No. 55 of 2004 s. 1246.]*

**24. Decisions about participation in the Compensation Scheme**

- (1) When the State Administrative Tribunal deals with an application for a review of a decision described in paragraph (d)

of the definition of “reviewable decision” in section 23(2) it may —

- (a) if the decision prevents a person from participating in the Compensation Scheme, order that the person be admitted to participation in the Compensation Scheme conditionally on the appellant being or becoming licensed; or
  - (b) if the decision terminates a person’s participation in the Compensation Scheme, annul that termination.
- (2) An order under subsection (4)(b) or (c) shall be given effect as if the corresponding decision had been made in accordance with the law governing the Compensation Scheme.

*[Section 24 inserted by No. 55 of 2004 s. 1247.]*

*[25. Repealed by No. 55 of 2004 s. 1248.]*

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

#### **26. Certain particulars to be displayed**

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

Penalty: \$1 000.

#### **27. Advertisements**

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

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

(b) the number of his licence.

Penalty: \$1 000.

**28. Name to appear on documents**

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

Penalty: \$1 000.

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

**29. Supervision of conduct of business**

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

Penalty: \$1 000.

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

Penalty: \$1 000.

**30. Employment of disqualified person**

- (1) Except with the approval of the Commissioner, a licensee shall not employ a person for the purposes of the business carried on under his licence if the person —
- (a) is disqualified under section 22(1)(e) from being a licensee or from being concerned in the direction, management or conduct of that business;
  - (b) in the case of a licensee which is a body corporate, is disqualified under section 22(1)(e) from being an officer of the body corporate;
  - (c) has been refused a licence on a ground referred to in section 12(2)(d) or (g);
  - (d) is a person whose adverse qualities were responsible for an individual being refused a licence on the ground referred to in section 12(2)(h) or for a body corporate being refused a licence on a ground referred to in section 12(4)(f), (g) or (h);
  - (da) has been found guilty of an offence under section 187 of *The Criminal Code* or section 50DA or 50DB of the *Crimes Act 1914* of the Commonwealth; or
  - (e) was the holder of a licence that has been cancelled under section 19(6) or 22(1)(g) or (4).

Penalty: \$5 000.

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

*[Section 30 amended by No. 4 of 2004 s. 6(7); No. 55 of 2004 s. 1249 and 1259(1).]*

**31. Certain fees etc. not recoverable**

No action lies for the recovery of any fee, commission or other reward for any service done or performed in the course of the

carrying on of business as a travel agent by a person (other than an exempted person) who does not hold a licence.

**32. Forfeiture of illegal profits**

- (1) A court convicting a person of an offence under section 7(1) or (2) may, subject to this section, order that any profits derived by the convicted person from carrying on business as a travel agent in contravention of that section be —
  - (a) wholly credited to the Consolidated Account as moneys forfeited to the Crown;
  - (b) partly credited to the Consolidated Account as moneys forfeited to the Crown and partly paid to any person specified in that order as having an interest in those profits; or
  - (c) wholly paid to any person specified in that order as having an interest in those profits.
- (2) If the whole or any part of any profits referred to in subsection (1) consists of or has been used directly or indirectly to acquire any property, the court concerned may order that that property be sold in the manner specified in that order.
- (3) When any property has been sold in accordance with an order made under subsection (2), the court concerned may make an order under subsection (1) in respect of the net proceeds of that sale as if those proceeds were profits derived within the meaning of subsection (1).
- (4) Before making an order under subsection (1), the court concerned may require notice to be given to, and hear, any person claiming any interest in the profits concerned or in any property acquired directly or indirectly with those profits or any part thereof.
- (5) When an order is made under subsection (1) in respect of any profits derived by a body corporate from carrying on business as a travel agent in contravention of section 7(1) or (2), any director or other officer concerned in the management of the

body corporate is guilty of the like offence by virtue of section 57 and the whole or any part of those profits is not available for disposal under the order, the court which made the order may order that an amount equal to or less than that whole or part be paid by that director or other officer and credited to the Consolidated Account as moneys forfeited to the Crown.

- (6) A person shall not, if he knows that another person is carrying on business as a travel agent in contravention of section 7(1) or (2), do an act which assists and is intended by him to assist the other person so to carry on business.  
Penalty: \$5 000.
- (7) When an order is made under subsection (1) in respect of any profits derived by a person from carrying on business as a travel agent in contravention of section 7(1) or (2), another person is convicted of an offence under subsection (6) in respect of an act of assistance rendered to the first-mentioned person during the period of that carrying on of business as a travel agent and the whole or any part of those profits is not available for disposal under the order, the court which made the order may order that an amount equal to or less than that whole or part be paid by the other person and credited to the Consolidated Account as moneys forfeited to the Crown.
- (8) The Under Treasurer shall pay to the Compensation Trustees for the purposes of the Compensation Scheme an amount equivalent to any amount credited to the Consolidated Account as moneys forfeited to the Crown under an order made under subsection (1), (5) or (7).
- (9) In this section —  
**“property”** means property of any kind whatsoever, whether real or personal, corporeal or incorporeal, other than money.

*[Section 32 amended by No. 6 of 1993 s. 11; No. 49 of 1996 s. 64; No. 77 of 2006 s. 4.]*

**Division 6 — Licences generally**

**33. Death of licensee**

- (1) When a licensee dies, a person who is, or who is named as, or who intends to apply to become, a legal personal representative of the licensee may, within 28 days after that death or such longer period as the Commissioner allows, apply to the Commissioner for authority to carry on, until the expiration of the period of 180 days that next succeeds that death, the business of the deceased licensee to which the licence relates.
- (2) The Commissioner may make any investigation or inquiry that the Commissioner considers necessary for the purpose of dealing with the application.
- (3) The Commissioner shall grant or refuse the application and, on granting the application, may impose conditions subject to which the business to which the application relates may be carried on.
- (4) An applicant whose application is granted under this section shall, subject to this Act and any conditions imposed under subsection (3), be deemed, until —
  - (a) the expiration of the period of 180 days that next succeeds the death of the deceased licensee; or
  - (b) he ceases to carry on the business of the deceased licensee to which the licence concerned relates,

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

*[Section 33 amended by No. 55 of 2004 s. 1250 and 1260.]*

**34. Certain legal representatives temporarily exempted from licensing**

- (1) Nothing in this Act shall be construed as requiring any person appointed or authorised by or under a written law, a law of the Commonwealth or the common law to carry on the business of a



travel agent of another person who is prevented by any legal, mental or physical disability other than death from carrying on that business to hold a licence for the purpose of performing his functions under that appointment or authority during the period of 180 days, or such longer period as may be allowed under subsection (2), next following —

- (a) the date on which the first-mentioned person was so appointed or authorised; or
- (b) the appointed day,

whichever is the later date.

- (2) The Commissioner may, on the application of a person appointed or authorised within the meaning of subsection (1), allow a period longer than 180 days for the purposes of that subsection on such conditions, if any, as the Commissioner thinks fit and, if any such condition is breached by that person, that longer period shall be deemed to end at the time of that breach.
- (3) A person whose appointment or authorisation within the meaning of subsection (1) —
  - (a) subsisted immediately before the appointed day shall within 14 days after the appointed day; or
  - (b) occurred on or after the appointed day shall within 14 days after the day of that occurrence,

notify the Commissioner in writing of that subsistence or occurrence.

Penalty: \$500.

*[Section 34 amended by No. 55 of 2004 s. 1259(1).]*

### **35. Endorsement of conditions etc. of licence**

When a licensee is required to comply with a requirement specified by the State Administrative Tribunal under section 22(1)(c) or to carry on the business to which his licence relates subject to conditions imposed under section 13(1) or

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22(1)(f), the licensee shall, on being required by the Commissioner so to do within a time (being not less than 14 days) specified by the Commissioner, produce the licence to the Commissioner within that time for endorsement thereon of the requirement or condition.

Penalty: \$1 000.

*[Section 35 amended by No. 55 of 2004 s. 1259(2) and 1260.]*

## **Part III — Unjust conduct by travel agents**

### **36. Interpretation in Part III**

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

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

*[Section 36 amended by No. 55 of 2004 s. 1259(2).]*

### **37. Undertakings by travel agent**

- (1) If it appears to the Commissioner that a person who carries on business as a travel agent has, in the course of business, repeatedly engaged in unjust conduct, the Commissioner may, with the consent of the Minister —
  - (a) request the person to execute a deed in terms approved by the Commissioner whereby the person gives undertakings relating to —
    - (i) the discontinuance of the unjust conduct;
    - (ii) the future conduct of the person; and
    - (iii) the action the person will take to rectify the consequences of his unjust conduct;
  - or
  - (b) apply to the State Administrative Tribunal for an order under section 39(1).

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- (2) If the Commissioner makes a request or application under subsection (1), it shall be presumed, unless the contrary is proved, that the Commissioner does so with the consent of the Minister.
- (3) If a person executes a deed in compliance with a request made under subsection (1)(a) and observes the undertakings given in the deed —
  - (a) the Commissioner cannot make an allegation under section 21(5) to the State Administrative Tribunal; and
  - (b) the Commissioner cannot apply for an order under section 39(1),

by reason of any conduct to which those undertakings relate.

*[Section 37 amended by No. 55 of 2004 s. 1251 and 1259(2).]*

**38. Register of Undertakings**

- (1) If a person executes a deed containing undertakings referred to in section 37(1)(a), the Commissioner shall —
  - [(a) deleted]*
  - (b) give a copy of that deed to the person who executed it.
- (2) The Commissioner shall retain the originals of all deeds referred to in subsection (1) and shall register those deeds in a Register of Undertakings that —
  - (a) is kept by the Commissioner in such form and manner as the Commissioner thinks fit; and
  - (b) contains the prescribed particulars.
- (3) The Register of Undertakings referred to in subsection (2) may be inspected, and copies of it and extracts from it may be taken, at any reasonable time by any person free of charge.
- (4) A person who gives undertakings in a deed executed in compliance with a request made under section 37(1)(a) shall observe the undertakings.

Penalty: \$10 000.

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

*[Section 38 amended by No. 55 of 2004 s. 1252 and 1259(2).]*

**39. Restraint of unjust conduct**

- (1) If, on the application of the Commissioner, the State Administrative Tribunal is satisfied that a person has repeatedly engaged in unjust conduct, the Tribunal may order the person to refrain from engaging in unjust conduct in the course of carrying on business as a travel agent and the person shall comply with that order.
- (2) If, on the application of the Commissioner, the State Administrative Tribunal is satisfied that a person has failed to observe an undertaking given by the person in a deed executed in compliance with a request made under section 37(1)(a), the Tribunal may make —
- (a) an order under subsection (1) against the person; and
  - (b) in the case of an undertaking referred to in section 37(1)(a)(iii), an order to observe that undertaking within a time specified by the Tribunal when making that order.
- (3) If the Commissioner applies for an order under subsection (1) or (2) against a body corporate and the State Administrative Tribunal is satisfied that the unjust conduct or breach of undertaking to which that application relates was engaged in with the consent or connivance of a person who, at the time of that conduct or breach, was a director of, or a person concerned in the management of, the body corporate, the Tribunal may, in addition to any order it may make under this section, make an order (in this subsection called “**the prohibitory order**”) prohibiting the person from consenting to, or conniving at, engagement in unjust conduct, or a breach of an undertaking referred to in section 37(1)(a), by the body corporate or by any

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other body corporate of which the person is a director or in the management of which the person is concerned and the person to whom the prohibitory order relates shall comply with the prohibitory order.

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

*[Section 39 amended by No. 55 of 2004 s. 1253 and 1259(2).]*

**40. Variation or discharge of restraining order**

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

*[Section 40 amended by No. 55 of 2004 s. 1259(2).]*

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## Part IV — General

### 41. Accounts and records to be kept by travel agent

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

Penalty: \$1 000.

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

*[Section 41 amended by No. 50 of 2003 s. 100(3); No. 55 of 2004 s. 1259(1).]*

*[42-47. Repealed by No. 55 of 2004 s. 1254.]*

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

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

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

- (1) When a payment is made to a claimant under the Compensation Scheme by reason of an act or omission by a person carrying on business as a travel agent, the Compensation Trustees are subrogated to the rights of the claimant in relation to that act or omission.
- (2) If the rights conferred by subsection (1) on the Compensation Trustees are exercisable against a body corporate, those rights are enforceable jointly against the body corporate and the persons who were its directors at the time of the relevant act or omission and severally against the body corporate and each of those directors.
- (3) If it is proved that an act or omission by a body corporate occurred without the knowledge or consent of a director of the body corporate, the rights conferred by subsection (1) are not enforceable under subsection (2) against that director in relation to the relevant act or omission.
- (4) If an act or omission referred to in subsection (1) is that of a person who is not a licensee or exempted person (in this section called "**the unlicensed person**"), a person who aided, counselled or procured the carrying on by the unlicensed person of the business of a travel agent shall for the purposes of subsections (1), (2) and (3) be deemed to have, at the time of that act or omission, carried on business in partnership with the unlicensed person.
- (5) Subsection (4) has effect whether or not the person who aided, counselled or procured the carrying on of business by the



unlicensed person has for that reason been convicted of an offence by virtue of section 7 of *The Criminal Code*.

**49A. Commissioner**

- (1) The Minister is required, by notice published in the *Gazette*, to designate a person who is an executive officer of the Department as the Commissioner for the purposes of this Act.
- (2) The Commissioner may be referred to by a title specified by the Minister by notice published in the *Gazette*.
- (3) In this section —  
“**executive officer**” has the meaning given by section 3(1) of the *Public Sector Management Act 1994*.

*[Section 49A inserted by No. 28 of 2006 s. 147.]*

**50. Delegation**

- (1) The Commissioner may, either generally or as otherwise provided by the instrument of delegation, by writing signed by him delegate any of his powers or duties under this Act, except for this power of delegation, to an officer of the Department.
- (2) For the purposes of this Act, the exercise of a power or the performance of a duty by a delegate under this section shall be deemed to be the exercise of the power or the performance of the duty by the Commissioner.
- (3) A delegation under this section may be made to a specified officer or to officers of a specified class.
- (4) In subsection (3) —  
“**officer**” means officer referred to in subsection (1).

*[Section 50 amended by No. 28 of 2006 s. 148.]*

**s. 50A**

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**50A. Protection from liability for wrongdoing**

- (1) A person is not liable for anything that the person has, in good faith, done in the performance or purported performance of a function under this Act.
- (2) The State is also relieved of any liability that it might otherwise have had for another person having done anything as described in subsection (1).
- (3) The protection given by this section applies even though the thing done as described in subsection (1) may have been capable of being done whether or not this Act had been enacted.
- (4) In this section, a reference to the doing of anything includes a reference to an omission to do anything.

*[Section 50A inserted by No. 28 of 2006 s. 149.]*

**51. Legal action by Compensation Trustees**

The Compensation Trustees may sue and be sued in the name of the “Travel Agents Compensation Fund” and, in any action brought by the Compensation Trustees, it shall be presumed, unless the contrary is proved, that any condition precedent to the bringing of that action imposed on the Compensation Trustees by the Compensation Scheme has been complied with.

**52. Secrecy**

- (1) This section applies to a person who is or has been —
  - (a) the Minister;
  - (b) a member of, or the Registrar of, the former Commercial Tribunal that existed under the *Commercial Tribunal Act 1984* before that Act was repealed;
  - (c) the Commissioner; or
  - (d) an officer referred to in section 50(1).
- (2) Subject to subsection (3), a person to whom this section applies shall not, directly or indirectly, make a record of, or divulge or

communicate to any person, any information concerning the affairs of any other person acquired by the person to whom this section applies by reason of his office or employment under or for the purposes of this Act.

Penalty: \$20 000.

- (3) Nothing in subsection (2) prohibits the recording, divulging or communicating of any information referred to in that subsection —
- (a) in the course of duty;
  - (b) under this Act;
  - (c) in the course of an exchange of information with persons or bodies performing functions under or in connection with a law of the Commonwealth or of another State or of a Territory corresponding to this Act;
  - (d) for the purposes of the investigation of any suspected offence or the conduct of proceedings against any person for an offence;
  - (e) in a manner that could not reasonably be expected to lead to the identification of any person to whom the information refers; or
  - (f) with the consent of the person to whom the information relates, or each of them if there is more than one.

*[Section 52 amended by No. 55 of 2004 s. 1255; No. 28 of 2006 s. 150.]*

### **53. Injunctions**

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

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- (a) continuing to contravene that provision;
  - (b) contravening that provision; or
  - (c) engaging in conduct that constitutes or would constitute —
    - (i) attempting to contravene that provision;
    - (ii) aiding, abetting, counselling or procuring a person to contravene that provision;
    - (iii) inducing, or attempting to induce, a person, whether by threats or promises or otherwise, to contravene that provision;
    - (iv) being in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by a person of that provision; or
    - (v) conspiring with others to contravene that provision.
- (2) When in the opinion of the court it is desirable to do so, the court may on an application under subsection (1) grant an interim injunction pending determination of that application and, if it does so, shall not require the applicant or any other person, as a condition of granting the interim injunction, to give any undertakings in respect of damages.
- (3) The court may rescind or vary an injunction granted under subsection (1) or (2).
- (4) When an application is made under subsection (1) to the court for the grant of an injunction restraining a person from engaging in conduct of a particular kind, being conduct referred to in that subsection, the court may —
- (a) if it is satisfied that the person has previously engaged in conduct of that kind, grant an injunction under that subsection restraining the person from engaging in conduct of that kind; or

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

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

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

- (a) if it appears to the court that, in the event that an injunction is not granted, it is likely that the person will engage in conduct of that kind, grant an injunction under that subsection restraining the person from engaging in conduct of that kind; or

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

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

[54. *Repealed by No. 55 of 2004 s. 1256.*]

**55. Limitation period for prosecutions**

A prosecution for an offence against this Act must be commenced within 12 months after the date on which the Commissioner first becomes aware of the commission of the alleged offence.

*[Section 55 inserted by No. 84 of 2004 s. 80.]*

**56. General penalty**

A person who commits an offence under this Act is liable, if a penalty is not expressly provided for that offence, to a penalty

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

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

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

**58. Annual report**

- (1) The Commissioner shall, as soon as practicable after 30 June in each year, submit to the Minister a report on the exercise of his powers and the performance of his duties under this Act during the year ending on that date.
- (1a) The Commissioner's annual report is to include details of —
  - (a) the number, nature, and outcome, of —
    - (i) investigations and inquiries undertaken by, or at the direction of, the Commissioner for the purposes of this Act; and
    - (ii) matters that have been brought before the State Administrative Tribunal under this Act;
  - (b) the number and nature of matters referred to in paragraph (a) that are outstanding;
  - (c) any trends or special problems that may have emerged;
  - (d) forecasts of the workload of the Commissioner in performing functions under this Act in the year after the year to which the report relates; and

- (e) any proposals for improving the performance of the Commissioner's functions under this Act.
- (2) The Minister shall cause a report submitted to him under subsection (1) to be laid before each House of Parliament within 14 sitting days of that House after that report was so submitted to him.

*[Section 58 amended by No. 55 of 2004 s. 1257.]*

## **59. Regulations**

- (1) The Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed, or are necessary or convenient to be prescribed, for carrying out or giving effect to this Act.
- (2) Without derogating from the generality of subsection (1), regulations made under that subsection may —
  - (a) prescribe any forms to be used under this Act;
  - (b) prescribe the procedure to be followed on applications and other proceedings under this Act;
  - (c) prescribe the functions of the Commissioner in relation to this Act;
  - (d) provide that the fee referred to in section 9(2), 15(3) or 19(1), (1a) or (5) is to be of —
    - (i) a specified amount; or
    - (ii) an amount calculated in a specified manner;
  - (e) prescribe the records to be kept by a licensee (in addition to those required to be kept by section 41), and the form and manner of keeping records so prescribed;
  - (f) require licensees to appoint auditors, prescribe the duties and privileges of auditors so appointed, provide for the payment of the fees and expenses of any such auditors, and provide for the resignation and removal of any such auditors;

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- (g) regulate the publication of advertisements offering, or notifying the availability of, the services of travel agents and prescribe the form and content of those advertisements; and
  - (h) prescribe a compensation scheme for compensating persons who suffer loss by reason of an act or omission by a person who carries on, or carried on, business as a travel agent and may for that purpose adopt or incorporate the provisions of the trust deed by which the compensation scheme is established.
- (3) In subsection (2) —  
    “**specified**” means specified in the regulations made under subsection (1).
- (4) Regulations made under subsection (1) may create offences and provide for the imposition in respect of any such offence of a penalty not exceeding \$500 and, in the case of a continuing such offence, a further penalty not exceeding \$150 for each day that that offence continues.

*[Section 59 amended by No. 56 of 1995 s. 53; No. 55 of 2004 s. 1260.]*

**60. Amendment of Schedule**

- (1) The Governor may by order published in the *Gazette* amend the Schedule so as to —
- (a) add thereto or delete therefrom any Act;
  - (b) delete any Act therein and substitute another Act therefor; or
  - (c) alter the short title of any Act therein to accord with that short title as amended by another Act.
- (2) Subject to this section, on the publication in the *Gazette* of an order made under subsection (1), the Schedule is amended accordingly and, as so amended, has the same force and effect



as if the amendment effected by that order had been effected by an Act amending this Act.

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

*[Part V repealed by No. 55 of 2004 s. 1258.]*

**Schedule**

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

**Specified Licensing or Registration Acts**

<b>Item</b>	<b>Act</b>
1.	<i>Auction Sales Act 1973.</i>
2.	<i>Builders' Registration Act 1939.</i>
3.	<i>Credit (Administration) Act 1984.</i>
4.	<i>Debt Collectors Licensing Act 1964.</i>
5.	<i>Employment Agents Act 1976.</i>
6.	<i>Finance Brokers Control Act 1975.</i>
7.	<i>General Insurance Brokers and Agents Act 1981<sup>2</sup>.</i>
[8.	<i>deleted]</i>
9.	<i>Land Valuers Licensing Act 1978.</i>
10.	<i>Motor Vehicle Dealers Act 1973.</i>
10A.	<i>Motor Vehicle Repairers Act 2003.</i>
11.	<i>Painters' Registration Act 1961.</i>
12.	<i>Pawnbrokers and Second-hand Dealers Act 1994.</i>
13.	<i>Real Estate and Business Agents Act 1978.</i>
[14.	<i>deleted]</i>
15.	<i>Security and Related Activities (Control) Act 1996 or an Act repealed by that Act.</i>
16.	<i>Settlement Agents Act 1981.</i>

*[Schedule amended by No. 88 of 1994 s. 100; No. 27 of 1996 s. 96; No. 68 of 2003 s. 117.]*

**Notes**

<sup>1</sup> This is a compilation of the *Travel Agents Act 1985* and includes the amendments made by the other written laws referred to in the following table <sup>1a</sup>. The table also contains information about any reprint.

**Compilation table**

<b>Short title</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>
<i>Travel Agents Act 1985</i>	120 of 1985	30 Dec 1985	1 Feb 1987 (see s. 2 and <i>Gazette</i> 16 Jan 1987 p. 82)
<i>Travel Agents Amendment Act 1989</i>	27 of 1989	12 Dec 1989	9 Jan 1990
<i>Financial Administration Legislation Amendment Act 1993 s. 11</i>	6 of 1993	27 Aug 1993	1 Jul 1993 (see s. 2(1))
<i>Pawnbrokers and Second-hand Dealers Act 1994 s. 100</i>	88 of 1994	5 Jan 1995	1 Apr 1996 (see s. 2 and <i>Gazette</i> 29 Mar 1996 p. 1495)
<i>Business Licensing Amendment Act 1995 Pt. 10</i>	56 of 1995	20 Dec 1995	1 Jan 1996 (see s. 2(3))
<i>Security and Related Activities (Control) Act 1996 s. 96</i>	27 of 1996	22 Jul 1996	1 Apr 1997 (see s. 2 and <i>Gazette</i> 27 Mar 1997 p. 1693)
<i>Financial Legislation Amendment Act 1996 s. 64</i>	49 of 1996	25 Oct 1996	25 Oct 1996 (see s. 2(1))
<b>Reprint of the <i>Travel Agents Act 1985</i> as at 22 Apr 1997</b> (includes amendments listed above)			
<i>Statutes (Repeals and Minor Amendments) Act 1997 s. 39(10) and 123</i>	57 of 1997	15 Dec 1997	15 Dec 1997 (see s. 2(1))
<i>Acts Amendment and Repeal (Financial Sector Reform) Act 1999 s. 107</i>	26 of 1999	29 Jun 1999	1 Jul 1999 (see s. 2(1) and <i>Gazette</i> 30 Jun 1999 p. 2905)
<i>Corporations (Consequential Amendments) Act 2001 s. 221</i>	10 of 2001	28 Jun 2001	15 Jul 2001 (see s. 2 and <i>Gazette</i> 29 Jun 2001 p. 3257 and <i>Cwlth Gazette</i> 13 Jul 2001 No. S285)
<b>Reprint 2: The <i>Travel Agents Act 1985</i> as at 6 Jun 2003</b> (includes amendments listed above)			
<i>Sentencing Legislation Amendment and Repeal Act 2003 s. 100</i>	50 of 2003	9 Jul 2003	15 May 2004 (see s. 2 and <i>Gazette</i> 14 May 2004 p. 1445)

## Travel Agents Act 1985

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Short title	Number and year	Assent	Commencement
<i>Motor Vehicle Repairers Act 2003</i> Pt. 11	68 of 2003	9 Dec 2003	19 Mar 2007 (see s. 2 and <i>Gazette</i> 9 Feb 2007 p. 451)
<i>Criminal Code Amendment Act 2004</i> s. 6	4 of 2004	23 Apr 2004	21 May 2004 (see s. 2)
<i>Courts Legislation Amendment and Repeal Act 2004</i> s. 141	59 of 2004	23 Nov 2004	1 May 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7128)
<i>State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004</i> Pt. 2 Div. 128 <sup>3,4</sup>	55 of 2004	24 Nov 2004	1 Jan 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7130)
<i>Criminal Procedure and Appeals (Consequential and Other Provisions) Act 2004</i> s. 80 and 82 <sup>5</sup>	84 of 2004	16 Dec 2004	2 May 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7129 (correction in <i>Gazette</i> 7 Jan 2005 p. 53))
<b>Reprint 3: The <i>Travel Agents Act 1985</i> as at 14 Oct 2005</b> (includes amendments listed above except those in the <i>Motor Vehicle Repairers Act 2003</i> )			
<i>Machinery of Government (Miscellaneous Amendments) Act 2006</i> Pt. 4 Div. 22 <sup>7</sup>	28 of 2006	26 Jun 2006	1 Jul 2006 (see s. 2 and <i>Gazette</i> 27 Jun 2006 p. 2347)
<i>Consumer Protection Legislation Amendment and Repeal Act 2006</i> Pt. 13	69 of 2006	13 Dec 2006	14 Jul 2007 (see s. 2 and <i>Gazette</i> 13 Jul 2007 p. 3453)
<i>Financial Legislation Amendment and Repeal Act 2006</i> s. 4	77 of 2006	21 Dec 2006	1 Feb 2007 (see s. 2(1) and <i>Gazette</i> 19 Jan 2007 p. 137)

<sup>1a</sup> On the date as at which this compilation was prepared, provisions referred to in the following table had not come into operation and were therefore not included in this compilation. For the text of the provisions see the endnotes referred to in the table.

### Provisions that have not come into operation

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Short title	Number and year	Assent	Commencement
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Short title	Number and year	Assent	Commencement
<i>Criminal Law and Evidence Amendment Act 2008</i> s. 78(2)(e) <sup>8</sup>	2 of 2008	12 Mar 2008	To be proclaimed (see s. 2)

<sup>2</sup> Repealed by the *General Insurance Brokers and Agents Act Repeal Act 1986*.

<sup>3</sup> The *State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004* Pt. 5, the *State Administrative Tribunal Act 2004* s. 167 and 169, and the *State Administrative Tribunal Regulations 2004* r. 28 and 42 deal with certain transitional issues some of which may be relevant for this Act.

<sup>4</sup> The *State Administrative Tribunal Regulations 2004* r. 41 and 64 read as follows:

“

**41. Travel Agents Act 1985**

(1) In this regulation —

“**commencement day**” means the day on which the *State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004* Part 2 Division 128 comes into operation.

(2) If —

- (a) before the commencement day a matter was being dealt with by the Commercial Tribunal of Western Australia under the *Travel Agents Act 1985* Part II Division 3; and
- (b) that matter is transferred to the Tribunal under the Act section 167(4)(b),

despite the Act section 32(2) and (3), the *Evidence Act 1906* and the rules of evidence continue to apply to the matter when it is being dealt with by the Tribunal.

**64. Travel Agents Act 1985**

(1) In this regulation —

“**commencement day**” means the day on which the *State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004* Part 2 Division 128 comes into operation;

“**the TA Act**” means the *Travel Agents Act 1985*.

(2) If before the commencement day —

- (a) an objection has been lodged with the Commercial Tribunal of Western Australia under the TA Act section 21(1); and

- (b) the objection has not been dealt with under the TA Act section 21(3) or (4),

the Commissioner for Fair Trading may have regard to the objection in deciding under the TA Act section 21(5) whether or not it is appropriate to make an allegation to the State Administrative Tribunal.

- (3) If before the commencement day an application has been made under the TA Act section 33(1) and no objection has been lodged under the TA Act section 33(2)(a), on or after the commencement day the application is to be dealt with by the Commissioner for Fair Trading under the TA Act section 33 as if the application had been made to the Commissioner.
- (4) If before the commencement day —
- (a) an application has been made under the TA Act section 33(1); and
- (b) the application has been referred to the Commercial Tribunal of Western Australia under the TA Act section 33(2)(b)(i) but that Tribunal has not dealt with the application,

on or after the commencement day the application is to be dealt with by the Commissioner for Fair Trading under the TA Act section 33 as if the application had been made to the Commissioner.

”.

<sup>5</sup> The amendment in the *Criminal Procedure and Appeals (Consequential and Other Provisions) Act 2004* s. 82 to s. 45(2) is not included because the subsection sought to be amended has been repealed by the *State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004* s. 1254.

<sup>6</sup> Footnote no longer applicable.

<sup>7</sup> The *Machinery of Government (Miscellaneous Amendments) Act 2006* Pt. 4 Div. 23 reads as follows:

“

### **Division 23 — Transitional provisions**

#### **151. Commissioner for Fair Trading**

- (1) On commencement, the person holding the office of Commissioner for Fair Trading immediately before commencement is to be taken to have been designated as the Commissioner or Registrar (as the case requires) for the purposes of each of the following enactments —

- (a) the Associations Incorporation Act 1987;
  - (b) the *Business Names Act 1962*;
  - (c) the *Chattel Securities Act 1987*;
  - (d) the *Companies (Co-operative) Act 1943*;
  - (e) Part 8 of the *Competition Policy Reform (Western Australia) Act 1996*;
  - (f) the *Consumer Affairs Act 1971*;
  - (g) the *Co-operative and Provident Societies Act 1903*;
  - (h) the *Credit Act 1984*;
  - (i) the *Credit (Administration) Act 1984*;
  - (j) the *Employment Agents Act 1976*;
  - (k) the *Hire-Purchase Act 1959*;
  - (l) the *Limited Partnerships Act 1909*;
  - (m) the *Motor Vehicle Dealers Act 1973*;
  - (n) the *Petroleum Products Pricing Act 1983*;
  - (o) the *Petroleum Retailers Rights and Liabilities Act 1982*;
  - (p) the *Residential Tenancies Act 1987*;
  - (q) the *Retirement Villages Act 1992*;
  - (r) the *Travel Agents Act 1985*.
- (2) A thing done or omitted to be done by, to or in relation to, the Commissioner for Fair Trading (including in his or her capacity as the Prices Commissioner) before commencement under a provision of the *Consumer Affairs Act 1971* for the purposes of another enactment listed in subsection (1) has the same effect after commencement, to the extent that it has any force or significance after commencement, as if it had been done or omitted —
- (a) by, to or in relation to, the Commissioner or Registrar (as the case requires) as defined in that other enactment as in force after commencement; and
  - (b) where relevant, under the corresponding provision of that other enactment as in force after commencement.
- (3) To the extent that a thing done or omitted to be done by, to or in relation to, the Commissioner for Fair Trading (including in his or her capacity as the Prices Commissioner) before commencement under, or for the purposes of, an enactment listed in subsection (1) is not covered by subsection (2), it has the same effect after commencement, to the extent that it has any force or significance after commencement, as if it had been done or omitted by, to or in relation to, the Commissioner or Registrar (as the case requires) as defined in that enactment as in force after commencement.

- (4) A thing done or omitted to be done by, to or in relation to, the Commissioner for Fair Trading before commencement under, or for the purposes of, an enactment not listed in subsection (1) has the same effect after commencement, to the extent that it has any force or significance after commencement, as if it had been done or omitted by, to or in relation to, the Commissioner as defined in the *Consumer Affairs Act 1971* as in force after commencement.
- (5) A reference in an enactment to the Commissioner for Fair Trading is to have effect after commencement as if it had been amended to be a reference to —
  - (a) in the case of an enactment listed in subsection (1) or subsidiary legislation made under such an enactment — the Commissioner or Registrar (as the case requires) as defined in the enactment as in force after commencement; or
  - (b) in the case of any other enactment or subsidiary legislation — the Commissioner as defined in the *Consumer Affairs Act 1971* as in force after commencement.

**152. Commissioner for Corporate Affairs and Registrar of Co-operative and Financial Institutions**

- (1) A thing done or omitted to be done by, to or in relation to, the Commissioner for Corporate Affairs before commencement under, or for the purposes of, the *Companies (Co-operative) Act 1943* has the same effect after commencement as if it had been done or omitted by, to or in relation to, the Registrar as defined in that Act as in force after commencement.
- (2) A thing done or omitted to be done by, to or in relation to, the Registrar of Co-operative and Financial Institutions before commencement under, or for the purposes of, the *Co-operative and Provident Societies Act 1903* has the same effect after commencement as if it had been done or omitted by, to or in relation to, the Registrar as defined in that Act as in force after commencement.

**153. Consumer Affairs Act 1971**

Each office in existence immediately before commencement because of section 15(1) of the *Consumer Affairs Act 1971* does not cease merely because that subsection is repealed by this Act.

**154. Petroleum Products Pricing Act 1983**

Each office in existence immediately before commencement because of section 5(2)(b) of the *Petroleum Products Pricing*



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*Act 1983* does not cease merely because that paragraph is deleted by this Act.

**155. Interpretation**

In this Division —

“**commencement**” means the time at which this Division comes into operation;

“**Commissioner for Fair Trading**” means the Commissioner for Fair Trading referred to in section 15 of the *Consumer Affairs Act 1971* as in force before commencement;

“**Prices Commissioner**” means the Prices Commissioner referred to in section 5(1) of the *Petroleum Products Pricing Act 1983* as in force before commencement.

”.

<sup>8</sup> On the date as at which this compilation was prepared, the *Criminal Law and Evidence Amendment Act 2008* s. 78(2)(e) had not come into operation. It reads as follows:

“

**78. Criminal Procedure and Appeals (Consequential and Other Provisions) Act 2004 amended**

- (1) The amendments in this section are to the *Criminal Procedure and Appeals (Consequential and Other Provisions) Act 2004*.
- (2) Section 82 is amended in Table 2 as follows:
  - (e) by deleting the row relating to the *Travel Agents Act 1985*.

”.