



TRAVEL AGENTS ACT, 1986

No. 15 of 1986

SUMMARY OF PROVISIONS

PART I PRELIMINARY

Section

1. Short title
2. Commencement
3. Interpretation
4. Business of travel agent
5. Act to bind Crown
6. Commissioner to be responsible for administration of Act

PART II LICENSING OF TRAVEL AGENTS

DIVISION I—GRANT OF LICENCES

7. Travel agent to be licensed
8. Application for a licence
9. Duration of licence
10. Conditions of licence
11. Unlicensed person may not recover agent's commission, etc.
12. Business may be carried on by unlicensed person where licensee dies

DIVISION II—DISCIPLINARY POWERS

13. Tribunal may exercise disciplinary powers
14. Disqualified persons not to be involved in business of travel agent
15. Record of disciplinary action to be kept

DIVISION III—CONDUCT OF BUSINESS

16. Notice to be displayed
17. Travel agent to use authorized name
18. Accounts to be kept

**PART III
COMPENSATION FUND**

19. Approval of the trust deed
20. Obligation of licensed agent to be a member of the compensation scheme
21. Compensation fund
22. Licensees required to pay contributions
23. Persons entitled to compensation
24. Claims
25. Trustees subrogated to rights of claimant
26. Name in which trustees may sue and be sued

**PART IV
MISCELLANEOUS**

27. Powers of authorized officer
28. Secrecy
29. Investigations
30. Commissioner of Police may appear in proceedings before Tribunal
31. Annual report
32. Service of documents
33. False or misleading information
34. Return of licences suspended or cancelled
35. Offences by bodies corporate
36. Summary proceedings
37. Commencement of prosecutions
38. Regulations.



ANNO TRICESIMO QUINTO

ELIZABETHAE II REGINAE

A.D. 1986

No. 15 of 1986

An Act to provide for the licensing of travel agents; and for other purposes.

[Assented to 20 March 1986]

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

PART I

PRELIMINARY

1. This Act may be cited as the "Travel Agents Act, 1986."

Short title.

2. (1) This Act shall come into operation on a day to be fixed by proclamation.

Commencement.

(2) The Governor may, in a proclamation fixing a day for this Act to come into operation, suspend the operation of specified provisions of this Act until a subsequent day fixed in the proclamation, or a day to be fixed by subsequent proclamation.

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

Interpretation.

"authorized name" in respect of a licensed travel agent means—

(a) the name of the travel agent as it appears in the licence;

or

(b) a name in which the licensee is authorized by the Tribunal to carry on business:

"authorized officer" means a person who is an authorized officer under the Prices Act, 1948:

"the Commissioner" means the Commissioner for Consumer Affairs:

"the compensation fund" means the compensation fund established under Part III:

“corresponding law” means a law of another State, or of a Territory of the Commonwealth declared by regulation to be a corresponding law for the purposes of this Act:

“licence” means a licence under this Act; and “licensee”, “licensed” and “unlicensed” have corresponding meanings:

“office”, of a licensed travel agent, means a place from which the licensee carries on business:

“the Registrar” means the Commercial Registrar under the Commercial Tribunal Act, 1982:

“the Tribunal” means the Commercial Tribunal:

“the trust deed” means the trust deed approved under section 19:

“vehicle” includes a boat, aircraft or other means of transport.

Business of travel agent.

4. (1) Subject to this section, a person carries on business as a travel agent if that person in the course of a business sells, or arranges for the sale of—

(a) rights to travel;

or

(b) rights to travel and accommodation.

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

(a) by reason of anything done by that person in the course of employment;

(b) by reason of selling, or arranging for the sale of, rights to travel in a vehicle owned by that person;

(c) by reason of selling, or arranging for the sale of, rights to accommodation at a place owned by that person.

(3) A person is the owner of a vehicle or place of accommodation for the purposes of this section if that person has lawful possession of the vehicle or place of accommodation.

(4) In this section—

“sale”, in relation to rights, includes the conferral or assignment of the rights; and “to sell” has a corresponding meaning.

Act to bind Crown.

5. (1) This Act binds the Crown not only in right of South Australia but also, so far as the legislative power of Parliament permits, the Crown in all its other capacities.

(2) Nothing in this Act renders the Crown in right of South Australia or in any other capacity liable to be prosecuted for an offence or obliges the Crown in right of South Australia to hold a licence.

Commissioner to be responsible for administration of Act.

6. The Commissioner is responsible, subject to the control and direction of the Minister, for the administration of this Act.

PART II

LICENSING OF TRAVEL AGENTS

DIVISION I—GRANT OF LICENCES

7. (1) An unlicensed person shall not carry on business as a travel agent. Travel agent to be licensed.

Penalty: \$50 000 or 12 months imprisonment.

(2) An unlicensed person shall not hold himself or herself out as a travel agent.

Penalty: \$50 000 or 12 months imprisonment.

(3) An unlicensed person shall not advertise that he or she is prepared to provide services if those services are such as can only be lawfully provided in the course of a business, by a licensed travel agent.

Penalty: \$50 000 or 12 months imprisonment.

8. (1) An application for a licence must—

Application for a licence.

(a) be made to the Tribunal;

(b) be in writing in the prescribed form;

and

(c) be accompanied by the prescribed application fee.

(2) An applicant for a licence must furnish the Tribunal with such information (verified, if the Tribunal so requires, by statutory declaration) as the Tribunal may require.

(3) Where an application is made for a licence, the Registrar shall—

(a) cause the application to be advertised in the prescribed manner and form;

and

(b) cause a copy of the application to be served on the Commissioner and the Commissioner of Police.

(4) Any person (including the Commissioner or the Commissioner of Police) may, within 10 days from the date on which an application is last advertised pursuant to subsection (3), lodge with the Registrar a written objection to the application setting out the grounds of the objection.

(5) The Tribunal may, on the application of any interested person, and subject to such conditions as it thinks fit, extend the period for lodging objections.

(6) Subject to subsection (7), the Registrar shall serve the applicant, the Commissioner and the Commissioner of Police with a copy of an objection lodged under subsection (4).

(7) Where the Commissioner or the Commissioner of Police has lodged an objection, a copy of the objection need not be served on the objector.

(8) Where—

(a) an objection to an application is lodged under subsection (4);

or

(b) the Tribunal does not propose to grant an application on the basis of documentary material alone,

the Tribunal shall conduct a hearing of the application and the Registrar shall give to the applicant, the Commissioner, the Commissioner of Police and any person who has lodged an objection at least 7 days notice of the date of the hearing.

(9) Upon an application under this section, the Tribunal shall, subject to this Act, order that the applicant be granted a licence upon payment of the prescribed licence fee if the Tribunal is satisfied—

(a) that—

(i) where the applicant is a natural person—

(A) the applicant is of or over the age of 18 years;

and

(B) the applicant is a fit and proper person to hold a licence;

or

(ii) where the applicant is a body corporate—every person who is, in the opinion of the Tribunal, in a position to control or influence substantially the affairs of the body corporate is a fit and proper person to exercise such control or influence in respect of a body corporate that is the holder of a licence;

(b) that the applicant has made suitable arrangements to fulfil the obligations that may arise under this Act;

(c) that the trustees under the trust deed have certified—

(i) that the applicant is eligible for membership of the compensation scheme established by the trust deed;

and

(ii) that the applicant will be admitted as a member of the compensation scheme on being licensed;

and

(d) that the applicant has sufficient financial resources to carry on business in a proper manner under the licence.

9. (1) A licence shall, subject to this Act, remain in force until—

(a) the licence is surrendered;

or

(b) the licensee dies or, in the case of a body corporate, is dissolved.

(2) A licensee shall, not later than the prescribed date in each year—

(a) pay to the Registrar the prescribed annual licence fee;

and

(b) lodge with the Registrar an annual return containing the prescribed information.

(3) Where a licensee fails to pay the annual licence fee or lodge the annual return in accordance with subsection (2), the Registrar may, by notice in writing to the licensee, require the licensee to make good the default and, in addition, to pay to the Registrar the amount prescribed as a penalty for default.

(4) Where a licensee fails to comply with a notice under subsection (3) within 14 days after service of the notice, the licence shall, by force of this subsection, be suspended until the licensee complies with the notice.

(5) The Registrar shall cause notice of a suspension under subsection (4) (being notice in the prescribed form) to be published in a newspaper circulating throughout the State.

(6) Where a licence has been suspended by virtue of subsection (4) for a continuous period of 6 months, the licence shall, by force of this subsection, be cancelled.

(7) A licensee may, with the consent of the Tribunal, surrender the licence.

10. (1) A licence is subject to—

Conditions of licence.

(a) a condition that each place at which the licensee carries on business as a travel agent must comply with the prescribed requirements;

(b) any prescribed conditions;

and

(c) any conditions imposed by the Tribunal on granting the licence.

(2) The Tribunal may, by notice in writing given to a licensee, revoke a condition of the licence imposed by the Tribunal or, on the application of the Commissioner, vary such a condition or impose a further condition.

(3) A licensee who contravenes or fails to comply with a condition of the licence is guilty of an offence.

Penalty: \$5 000.

11. An unlicensed person who carries on business as a travel agent is not entitled to recover or retain any fee, commission or other consideration for services performed in the course of that business.

Unlicensed person may not recover agent's commission, etc.

12. Where a person carrying on business in pursuance of a licence dies, the personal representative of the deceased, or some other person approved by the Tribunal—

Business may be carried on by unlicensed person where licensee dies.

(a) shall be deemed to have been licensed (on the same conditions as were applicable to the former licence) as from the date of death of the licensee until the expiration of 6 months from that date or until such later date as may be fixed by the Tribunal;

and

(b) shall be deemed to have been admitted to membership of the compensation scheme on the date of death of the licensee.

DIVISION II—DISCIPLINARY POWERS

Tribunal may
exercise
disciplinary
powers.

13. (1) The Tribunal may hold an inquiry for the purposes of determining whether proper cause exists for disciplinary action against a person who has carried on business as a travel agent (whether with or without a licence).

(2) An inquiry shall not be held under this section except in relation to—

(a) matters alleged in a complaint lodged pursuant to subsection (3);

or

(b) matters disclosed by investigations conducted pursuant to subsection (4).

(3) Any person (including the Commissioner or the Commissioner of Police) may lodge with the Tribunal a complaint in the prescribed form setting out matters that are alleged to constitute grounds for disciplinary action against a person referred to in subsection (1).

(4) Where a complaint has been lodged with the Tribunal pursuant to subsection (3), the Commissioner or the Commissioner of Police shall, at the request of the Registrar, investigate or further investigate any matters to which the complaint relates and report to the Tribunal on the results of the investigations.

(5) Where the Tribunal decides to hold an inquiry under this section, the Tribunal shall give the person to whom the inquiry relates (in this section referred to as "the respondent") reasonable notice of the subject matter of the inquiry.

(6) If, after conducting an inquiry under this section, the Tribunal is satisfied that proper cause exists for disciplinary action, the Tribunal may exercise one or more of the following powers:

(a) it may reprimand the respondent;

(b) it may impose a fine not exceeding \$1 000 on the respondent;

(c) where the respondent is a licensee, it may—

(i) suspend the licence for a specified period or until the fulfilment of stipulated conditions or until further order;

or

(ii) cancel the licence;

(d) it may disqualify the respondent permanently, for a specified period, until the fulfilment of stipulated conditions, or until further order, from holding a licence.

(7) If a person has been convicted of an offence and the circumstances of the offence form, in whole or in part, the subject matter of an inquiry under this section, the convicted person shall not be liable to fine under this section in respect of conduct giving rise to the offence.

(8) There shall be proper cause for disciplinary action under this section against the respondent if the respondent—

(a) has been guilty of conduct that constituted a breach of this Act;

(b) has in the course of carrying on business as a travel agent—

(i) been guilty of conduct that constituted a breach of any other Act or law;

or

(ii) acted negligently, fraudulently or unfairly;

or

(c) being a licensee—

(i) has obtained the licence improperly;

(ii) has insufficient financial resources properly to carry on business as a licensee;

(iii) has not maintained satisfactory arrangements for the fulfilment of the licensee's obligations under this Act;

(iv) has failed to ensure that the business conducted from each office of the licensee is properly supervised by a person with prescribed qualifications;

or

(v) has ceased to be a fit and proper person to hold a licence, or, in the case of a body corporate, is subject to control or influence by a person who is not a fit and proper person to exercise such control or influence.

(9) For the purposes of this section, in determining whether the business of a licensed travel agent has been properly supervised or whether any person has acted unfairly in the course of carrying on business as a travel agent, regard shall be had to the provisions of any code of practice prescribed by regulation under this Act.

14. Where a person who is disqualified from holding a licence is employed or otherwise engaged by a licensee for the purposes of the licensee's business as a travel agent, that person and the licensee are each guilty of an offence and liable to a penalty not exceeding \$5 000.

Disqualified persons not to be involved in business of travel agent.

15. Where the Tribunal takes disciplinary action against a person, the Registrar shall—

Record of disciplinary action to be kept.

(a) make an entry on the register established under the Commercial Tribunal Act, 1982, recording the disciplinary action taken;

and

(b) by notice in writing advise the Commissioner and the Commissioner of Police of the name of the person and the disciplinary action taken.

DIVISION III—CONDUCT OF BUSINESS

Notice to be displayed.

16. A person carrying on business as a travel agent in pursuance of a licence shall maintain in a conspicuous position in each place from which the business is carried on, a notice clearly showing—

(a) the name of the licensee as it appears in the licence;

and

(b) such other matters as may be prescribed.

Penalty: \$1 000.

Travel agent to use authorized name.

17. (1) A licensed travel agent shall not carry on business as a travel agent under any name except an authorized name.

Penalty: \$1 000.

(2) A licensed travel agent shall ensure that the travel agent's authorized name appears—

(a) in any advertisement (other than an advertisement relating solely to the recruiting of staff) published in the course of the travel agent's business;

and

(b) in any letter, statement, invoice, cheque, receipt or other document issued in the course of the travel agent's business.

Penalty: \$1 000.

Accounts to be kept.

18. (1) A person who carries on business as a travel agent shall keep such accounting records as are necessary correctly to record and explain the financial transactions and financial position of the business.

Penalty: \$1 000 or 6 months imprisonment.

(2) The accounting records referred to in subsection (1) must—

(a) contain sufficient information for the preparation and audit of true and fair profit and loss accounts and balance sheets;

(b) be kept at the person's principal place of business in this State;

and

(c) be kept in the English language.

PART III

THE COMPENSATION SCHEME

19. (1) The Minister may for the purposes of this Act—

- (a) approve an instrument as the trust deed;
- (b) approve any amendment to the trust deed.

Approval of the trust deed.

(2) The trust deed and any approved amendment to the trust deed shall be promulgated by regulation.

20. (1) A licensed travel agent must be a member of the compensation scheme established by the trust deed and, consequently, if the membership of a licensee in the compensation scheme is terminated, the licence is, by force of this section, cancelled.

Obligation of licensed agent to be a member of the compensation scheme.

(2) A licensed travel agent shall not cease to be a member of the compensation scheme unless the trustees terminate the licensee's membership in the scheme in accordance with subsection (3).

(3) Where the trustees decide to terminate the membership of a licensee in the compensation scheme, notice of the decision must be given to the licensee and—

- (a) the termination shall not take effect until a date fixed in the notice (being at least 28 days after the date of service of the notice on the licensee) or, if there is an appeal, until the determination of the appeal;

and

- (b) the licence shall, by force of this subsection, be suspended from the date of service of the notice, until the termination takes effect or the decision is reversed by the Tribunal.

(4) If the trustees decide—

- (a) to refuse an application for membership of the compensation scheme;

or

- (b) to terminate the membership of a licensed travel agent in the compensation scheme,

the person affected by the decision may, within 28 days after receiving notice of the decision, appeal against the decision to the Tribunal.

(5) On an appeal under subsection (4) the Tribunal may confirm, vary or reverse a decision of the trustees and make any consequential or ancillary order that the Tribunal thinks just.

(6) An appeal by an applicant who has been refused membership of the compensation scheme may be heard and determined concurrently with an application for a licence.

21. (1) A compensation fund shall be established and administered by trustees appointed under the trust deed.

Compensation fund.

(2) There shall be paid into the compensation fund—

(a) the contributions required to be paid in accordance with this Part;
and

(b) any amounts required to be paid into the compensation fund in accordance with the trust deed and any corresponding law.

(3) There shall be paid out of the compensation fund—

(a) any amount of compensation to which a person is entitled in accordance with this Part;

and

(b) any amounts required to be paid out of the compensation fund in accordance with the trust deed and any corresponding law.

Licenses
required to pay
contributions.

22. (1) Every licensee shall pay to the Commissioner for payment into the compensation fund such contribution as may be required by the regulations.

(2) If a licensee fails to pay a contribution, within the time allowed for payment by the regulations, the licence shall, by virtue of this subsection, be suspended until the contribution is paid.

(3) For the purposes of subsection (1), the Crown in right of South Australia shall be deemed to be a licensee.

Persons entitled
to compensation.

23. (1) Subject to the trust deed, a person who has suffered loss in consequence of—

(a) the dishonesty or negligence of a person carrying on business as a travel agent;

(b) the death, disappearance or insolvency of a person carrying on business as a travel agent;

or

(c) the failure on the part of a person carrying on business as a travel agent to carry out contractual obligations properly,

is entitled to compensation.

(2) A person who is entitled to compensation under subsection (1) may make a claim for compensation in accordance with the trust deed.

Claims.

24. (1) A claim for compensation shall be determined by the trustees in accordance with the trust deed.

(2) Subject to the trust deed, where the amount standing to the credit of the compensation fund is insufficient to meet all valid claims for compensation, the trustees shall apportion that amount between the claimants in such proportions as the trustees think just.

(3) A claimant who is dissatisfied with a decision of the trustees on the claim may, within 28 days after receiving notice of the decision, appeal to the Tribunal against the decision.

(4) On an appeal the Tribunal may confirm, vary or reverse a decision of the trustees.

25. (1) On payment to a claimant out of the compensation fund, the trustees are, to the extent of the payment, subrogated to the rights of the claimant arising from the circumstances to which the claim relates. Trustees subrogated to rights of claimant.

(2) Where rights to which the trustees are subrogated under subsection (1) lie against a licensee or former licensee that is a body corporate, those rights may be enforced, if the trustees so determine, against the members or any one or more of the members of the governing body of the body corporate.

(3) In any proceedings for the enforcement of a right against a member of the governing body of a body corporate under subsection (2) it is a defence to prove that the member could not, by the exercise of reasonable diligence, have prevented the occurrence of the circumstances out of which the claim arose.

26. (1) The trustees may sue and be sued under the name "The Travel Compensation Fund". Name in which trustees may sue and be sued.

(2) In proceedings brought by the trustees it shall be presumed, in the absence of proof to the contrary, that any provisions of the trust deed in relation to the bringing of proceedings have been satisfied.

PART IV

MISCELLANEOUS

27. (1) An authorized officer may, at any reasonable time—

Powers of authorized officer.

- (a) inspect premises at which a person carries on business as a travel agent;
- (b) require a person who has the custody of records required to be kept under this Act to produce those records for inspection;
- (c) take extracts from, or make copies of, those records;
- (d) require a person reasonably suspected of having knowledge concerning any breach of, or failure to comply with, this Act to answer questions in relation to those matters.

(2) A person who, without reasonable excuse—

- (a) hinders an authorized officer in the exercise of powers conferred by this section;
- (b) fails to comply with a requirement of an authorized officer under this section;

or

- (c) fails to answer a question put by an authorized officer under this section to the best of the knowledge, information and belief of that person,

is guilty of an offence.

Penalty: \$1 000.

(3) A person is not required to answer a question or to produce records if the answer to the question or the production of the records would result in or tend towards self-incrimination.

Secrecy.

28. A person shall not divulge or communicate information that is or was acquired by him by reason of being, or having been, employed or engaged in, or in connection with, the administration of this Act except—

(a) with the consent of the person from whom the information was obtained;

(b) in connection with the administration of this Act;

(c) to the Commissioner of Police;

(d) with the approval of the Commissioner—to a person employed in the administration of a corresponding law;

or

(e) for the purposes of legal proceedings.

Penalty: \$2 000.

Investigations.

29. The Commissioner or the Commissioner of Police shall, at the request of the Registrar, cause a member of the police force to investigate and report upon any matter relevant to the determination of—

(a) any application or other matter before the Tribunal;

or

(b) any matter that might constitute proper cause for disciplinary action under this Act.

Commissioner of
Police may
appear in
proceedings
before Tribunal.

30. The Commissioner of Police may, in any proceedings that are before the Tribunal in pursuance of this Act, appear personally or be represented by counsel or a member of the police force.

Annual report.

31. (1) The Commissioner shall, on or before the 31st day of October in each year, submit to the Minister a report upon the administration of this Act during the period of 12 months ending on the preceding 30th day of June.

(2) The Minister shall, as soon as practicable after receipt of the report, cause a copy of the report to be laid before each House of Parliament.

Service of
documents.

32. (1) Any notice or document required or authorized by this Act or the Commercial Tribunal Act, 1982, to be given to or served on any person shall be deemed to have been duly served if it has been—

(a) served on the person personally;

(b) posted in an envelope addressed to the person at his or her last known address, or, in the case of a licensee, his or her address for service;

or

(c) in the case of a licensee, left for the licensee at his or her address for service with a person apparently over the age of 16 years.

(2) The address for service of a licensee is the last address for service of which notice has been given in accordance with the regulations.

33. A person shall not, in furnishing any information required under this Act, make a statement that is false or misleading in a material particular. False or misleading information.
Penalty: \$1 000.

34. Where a licence is suspended or cancelled under this Act, the licensee or former licensee shall, at the direction of the Tribunal or the Registrar, return the licence to the Registrar. Return of licences suspended or cancelled.
Penalty: \$1 000.

35. Where a body corporate is guilty of an offence against this Act, every member of the governing body of the body corporate shall be guilty of an offence and liable to the same penalty as is prescribed for the principal offence unless it is proved that the member could not, by the exercise of reasonable diligence, have prevented the commission of that offence. Offences by bodies corporate.

36. Proceedings for an offence against this Act shall be disposed of summarily. Summary proceedings.

37. (1) Proceedings for an offence against this Act shall be commenced within 12 months after the date on which the offence is alleged to have been committed. Commencement of prosecutions.

(2) Proceedings for an offence against this Act shall not be commenced by a person other than the Commissioner or an authorized officer except with the consent of the Minister.

(3) An apparently genuine document purporting to be a certificate of the Minister's consent to the commencement of proceedings for an offence against this Act shall be accepted, in the absence of proof to the contrary, as proof of the matter so certified.

38. (1) The Governor may make such regulations as are contemplated by this Act or as are necessary or expedient for the purposes of this Act. Regulations.

(2) Without limiting the generality of subsection (1), those regulations may—

(a) exempt conditionally or unconditionally specified persons or persons of a specified class or specified transactions or transactions of a specified class from the application of this Act or a specified provision of this Act;

(b) prescribe a code of practice to be observed by persons who carry on business as travel agents;

(c) prescribe any forms to be used under this Act;

(d) prescribe, or provide for the calculation of, fees for the purposes of this Act;

- (e) prescribe the records to be kept by licensees and the manner in which the records must be kept;
- (f) require periodic audits to be made of the accounts required by this Act to be kept by persons who carry on business as travel agents, and provide for the appointment of auditors;
- (g) regulate the form and content of advertisements concerning the services offered by persons carrying on business as travel agents;
- (h) provide for the furnishing of returns to enable calculation of contributions to the compensation fund;
- (i) prescribe penalties (recoverable summarily) not exceeding \$1 000 for contravention of, or non-compliance with, any regulation.

(3) Any regulations made under this Act may be of a general or limited application and may vary according to the persons or classes of persons, the times, the places or the circumstances to which they are expressed to apply.

(4) A regulation made under subsection (2) (b) may refer to, or incorporate, in whole or in part, and with or without modification, a code of practice for the time being, or from time to time, adopted by a body which, in the opinion of the Governor, represents the interests of a substantial number of persons licensed under this Act.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

D. B. DUNSTAN, Governor