

South Australia



TRAVEL AGENTS (MISCELLANEOUS) AMENDMENT ACT 1996

No. 11 of 1996

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ANNO QUADRAGESIMO QUINTO

ELIZABETHAE II REGINAE

A.D. 1996

No. 11 of 1996

An Act to amend the Travel Agents Act 1986.

[Assented to 11 April 1996]

The Parliament of South Australia enacts as follows:

Short title

1. (1) This Act may be cited as the *Travel Agents (Miscellaneous) Amendment Act 1996*.
- (2) The *Travel Agents Act 1986* is referred to in this Act as "the principal Act".

Commencement

2. This Act will come into operation on a day to be fixed by proclamation.

Amendment of s. 3—Interpretation

3. Section 3 of the principal Act is amended—

(a) by striking out paragraph (b) of the definition of "authorised name" and substituting the following paragraph:

(b) a business name registered by the travel agent under the *Business Names Act 1963* of which the Commissioner has been given prior notice in writing;;

(b) by inserting after the definition of "corresponding law" the following definitions:

"director" of a body corporate includes—

(a) a person occupying or acting in the position of director or member of the governing body of the body corporate, by whatever name called and whether or not validly appointed to occupy or duly authorised to act in the position; and

- (b) any person in accordance with whose directions or instructions the directors or members of the governing body of the body corporate are accustomed to act;

"District Court" means the Administrative and Disciplinary Division of the District Court;;

- (c) by striking out the definitions of "the Registrar" and "the Tribunal".

Amendment of s. 4—Business of travel agent

4. Section 4 of the principal Act is amended—

- (a) by striking out subsection (1) and substituting the following subsection:

(1) Subject to this section, a person carries on business as a travel agent if the person in the course of a business—

- (a) sells or arranges to sell rights to travel; or
(b) sells or arranges to sell rights to travel and accommodation; or
(c) carries out an activity set out in the regulations.;

- (b) by inserting after paragraph (c) of subsection (2) the following paragraph:

- (d) by reason of carrying on an activity set out in the regulations.

Substitution of Part II

5. Part II of the principal Act is repealed and the following Part is substituted:

PART 2
LICENSING OF TRAVEL AGENTS
DIVISION 1—GRANT OF LICENCES

Travel agents to be licensed

7. (1) A person must not—

- (a) carry on business as a travel agent except as authorised by a licence under this Act; or
(b) advertise or otherwise hold himself or herself out as being entitled to carry on business as a travel agent unless authorised to carry on business as such an agent by a licence under this Act.

Maximum penalty: \$50 000.

(2) If a person is convicted of an offence against subsection (1), the court by which the conviction is recorded must order the person to pay to the Crown an amount estimated by the court to be the amount of the profit that has accrued to the convicted person or any other person with whom the convicted person has a business or personal association in consequence of the commission of the offence.

(3) An amount recovered by the Crown under an order must be paid into the compensation fund.

(4) A person required by this Act to be licensed as a travel agent is not entitled to any fee, other consideration or compensation under or in relation to a contract with another on whose behalf the person provided services as a travel agent unless—

- (a) the person was authorised to provide the services under a licence; or
- (b) a court hearing proceedings for recovery of the fee, other consideration or compensation is satisfied that the person's failure to be so authorised resulted from inadvertence only.

Application for licence

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

- (a) be made to the Commissioner in the manner and form approved by the Commissioner; and
- (b) be accompanied by the fee fixed by regulation.

(2) An applicant for a licence must provide the Commissioner with any information required by the Commissioner for the purposes of determining the application.

Entitlement to be licensed

9. (1) A natural person is entitled to be granted a licence if—

- (a) the person is of or above the age of 18 years; and
- (b) the person is not disqualified under this Act or a corresponding law from holding a licence under this Act or the corresponding law or being involved in the direction, management or conduct of the business of a travel agent; and
- (c) the person has made suitable arrangements to fulfil the obligations that may arise under this Act; and
- (d) the trustees under the trust deed have certified that—
 - (i) the person is eligible for membership of the compensation scheme established by the trust deed; and
 - (ii) the person will be admitted as a member of the compensation scheme on being licensed; and
- (e) he or she is a fit and proper person to be the holder of a licence.

(2) A body corporate is entitled to be granted a licence if—

- (a) the body corporate is not disqualified under this Act or a corresponding law from holding a licence under this Act or the corresponding law or being involved in the direction, management or conduct of the business of a travel agent; and

- (b) no director of the body corporate is disqualified under a corresponding law from holding a licence under the corresponding law or being involved in the direction, management or conduct of the business of a travel agent; and
- (c) the body corporate has made suitable arrangements to fulfil the obligations that may arise under this Act; and
- (d) the trustees under the trust deed have certified that—
 - (i) the body corporate is eligible for membership of the compensation scheme established by the trust deed; and
 - (ii) the body corporate will be admitted as a member of the compensation scheme on being licensed; and
- (e) each director of the body corporate is a fit and proper person to be the director of a body corporate that is the holder of a licence.

Conditions of licences

10. (1) A licence is subject to the following conditions:

- (a) a condition that each place at which the licensed travel agent carries on business as a travel agent must comply with the requirements of the regulations; and
- (b) conditions imposed by regulation; and
- (c) conditions imposed by the Commissioner on granting the licence.

(2) Conditions imposed by the Commissioner on the grant of the licence may be varied or revoked by the Commissioner at any time on application by the licensed travel agent.

Appeals

11. (1) An applicant for a licence may appeal to the District Court against a decision of the Commissioner refusing the application.

(2) Subject to subsection (4), an appeal must be instituted within one month of the making of the decision appealed against or such longer period as the District Court may allow.

(3) The Commissioner must, if so required by the applicant, state in writing the reasons for the Commissioner's decision to refuse the application.

(4) If the reasons of the Commissioner are not given in writing at the time of making the decision and the applicant (within one month of the making of the decision) requires the Commissioner to state the reasons in writing, the time for instituting an appeal runs from the time at which the applicant receives the written statement of those reasons.

(5) Except as determined by the District Court, an appeal is to be conducted by way of a fresh hearing and for that purpose the Court may receive evidence given orally or, if the Court determines, by affidavit.

(6) The District Court may, on the hearing of an appeal—

- (a) affirm the decision appealed against or rescind the decision and substitute a decision that the Court thinks appropriate; and
- (b) make any other order that the case requires (including an order for costs).

Duration of licence and annual fee and return

12. (1) A licence remains in force (except for any period for which it is suspended) until—

- (a) the licence is surrendered or cancelled; or
- (b) the licensed travel agent dies or, in the case of a licensed body corporate, is dissolved.

(2) A licensed travel agent must, each year not later than the date fixed by regulation—

- (a) pay to the Commissioner the fee fixed by regulation; and
- (b) lodge with the Commissioner a return in the manner and form required by the Commissioner.

(3) If a licensed travel agent fails to pay the annual fee or lodge the annual return in accordance with subsection (2), the Commissioner may, by notice in writing, require the agent to make good the default and, in addition, to pay to the Commissioner the amount fixed by regulation as a penalty for default.

(4) If the travel agent fails to comply with the notice within 28 days after service of the notice, the agent's licence is cancelled.

(5) The Commissioner must notify the travel agent in writing of the cancellation of the agent's licence.

(6) A licensed travel agent may surrender the licence.

(7) In this section—

"licensed travel agent" includes a licensed travel agent whose licence has been suspended.

Supervision of travel agent's business

13. (1) The business conducted at a place from which a licensed travel agent carries on business must be managed and supervised by a person with qualifications approved by the Commissioner (whether or not that person is the licensed travel agent).

(2) A licensed travel agent who fails to ensure compliance with subsection (1) is guilty of an offence.

Maximum penalty: \$20 000.

Business may be carried on by unlicensed person in certain circumstances

14. If a person carrying on business as a travel agent authorised by a licence dies, the personal representative of the deceased, or some other person approved by the Commissioner—

- (a) will be taken to have been licensed (on the same conditions as were applicable to the former licence) as from the date of death of the agent until the expiration of six months from that date or until such later date as may be fixed by the Commissioner; and
- (b) will be taken to have been admitted to membership of the compensation scheme on the date of death of the agent.

DIVISION 2—DISCIPLINE**Interpretation of Division**

15. In this Division—

"director" of a body corporate includes a former director of a body corporate;

"travel agent" means—

- (a) a person who is carrying on or formerly carried on business as a travel agent (whether or not currently or previously licensed); or
- (b) a licensed travel agent (whether or not carrying on business as a travel agent).

Cause for disciplinary action

16. (1) There is proper cause for disciplinary action against a travel agent if—

- (a) licensing of the agent was improperly obtained; or
- (b) the agent has acted contrary to an assurance accepted by the Commissioner under the *Fair Trading Act 1987*; or
- (c) the agent or another person has acted contrary to this Act or otherwise unlawfully, or improperly, negligently or unfairly, in the course of conducting, or being employed or otherwise engaged in, the business of the agent; or
- (d) the agent has insufficient financial resources properly to carry on business as a travel agent; or
- (e) the agent has not maintained satisfactory arrangements for the fulfilment of the agent's obligations under this Act; or
- (f) events have occurred such that the agent would not be entitled to be licensed as a travel agent if he or she were to apply for a licence.

(2) Disciplinary action may be taken against each director of a body corporate that is a travel agent if there is proper cause for disciplinary action against the body corporate.

(3) Disciplinary action may not be taken against a person in relation to the act or default of another if that person could not reasonably be expected to have prevented the act or default.

(4) This section applies in relation to conduct occurring before or after the commencement of this section.

Complaints

17. The Commissioner or any other person may lodge with the District Court a complaint setting out matters that are alleged to constitute grounds for disciplinary action under this Division.

Hearing by Court

18. (1) On the lodging of a complaint, the District Court must conduct a hearing for the purpose of determining whether the matters alleged in the complaint constitute grounds for disciplinary action under this Division.

(2) Without limiting the usual powers of the District Court, the Court may during the hearing—

- (a) allow an adjournment to enable the Commissioner to investigate or further investigate matters to which the complaint relates; and
- (b) allow the modification of the complaint or additional allegations to be included in the complaint subject to any conditions as to adjournment and notice to parties and other conditions that the Court may think fit to impose.

Participation of assessors in disciplinary proceedings

18A. In any proceedings under this Division, the District Court will, if the judicial officer who is to preside at the proceedings so determines, sit with assessors selected in accordance with the schedule.

Disciplinary action

18B. (1) On the hearing of a complaint, the District Court may, if it is satisfied on the balance of probabilities that there is proper cause for taking disciplinary action against the person to whom the complaint relates, by an order or orders do one or more of the following—

- (a) reprimand the person;
- (b) impose a fine not exceeding \$8 000 on the person;
- (c) in the case of a person who is licensed as a travel agent—
 - (i) suspend the licence for a specified period or until the fulfilment of stipulated conditions or until further order; or
 - (ii) cancel the licence; or
 - (iii) impose conditions as to the conduct of the person or the person's business as a travel agent;
- (d) disqualify the person from being licensed under this Act;

- (e) prohibit the person from being employed or otherwise engaged in the business of a travel agent;
- (f) prohibit the person from being a director or having an interest in a body corporate that is a travel agent.

(2) The District Court may—

- (a) stipulate that a disqualification or prohibition is to apply—
 - (i) permanently; or
 - (ii) for a specified period; or
 - (iii) until the fulfilment of stipulated conditions; or
 - (iv) until further order;
- (b) stipulate that an order relating to a person is to have effect at a specified future time and impose conditions as to the conduct of the person or the person's business until that time.

(3) If—

- (a) a person has been found guilty of an offence; and
- (b) the circumstances of the offence form, in whole or in part, the subject matter of the complaint,

the person is not liable to a fine under this section in respect of conduct giving rise to the offence.

Contravention of orders

18C. If a person—

- (a) is employed or otherwise engages in the business of a travel agent; or
- (b) becomes a director of a body corporate that is a travel agent,

in contravention of an order of the District Court, that person and the agent are each guilty of an offence.

Maximum penalty: \$35 000 or imprisonment for 6 months.

Amendment of s. 21—Appeals

6. Section 21 of the principal Act is amended—

- (a) by striking out from subsection (1) "Tribunal" and substituting "District Court";
- (b) by striking out subsection (2);
- (c) by striking out from subsection (3) "Tribunal" and substituting "District Court".

Amendment of s. 25—Trustees subrogated to rights of claimant

7. Section 25 of the principal Act is amended by striking out subsections (2) and (3) and substituting the following subsections:

(2) If rights to which the trustees are subrogated lie against a licensed travel agent (or former licensed travel agent) that is a body corporate, the trustees may determine that those rights may be enforced against the directors or one or more of the directors of the body corporate.

(3) It is a defence in proceedings to enforce a right against a director of a body corporate under subsection (2), if the director proves that the director could not, by exercise of reasonable care, have prevented the occurrence of the circumstances out of which the claim arose.

Substitution of Part IV

8. Part IV of the principal Act is repealed and the following Part is substituted:

**PART 4
MISCELLANEOUS**

Delegations

27. (1) The Commissioner may delegate any of the Commissioner's functions or powers under this Act—

- (a) to a person employed in the Public Service; or
- (b) to the person for the time being holding a specified position in the Public Service; or
- (c) to any other person under an agreement under this Act between the Commissioner and an organisation representing the interests of persons affected by this Act.

(2) The Minister may delegate any of the Minister's functions or powers under this Act (except the power to direct the Commissioner).

(3) A delegation under this section—

- (a) must be in writing; and
- (b) may be conditional or unconditional; and
- (c) is revocable at will; and
- (d) does not prevent the delegator from acting in any matter.

Agreement with professional organisation

28. (1) The Commissioner may, with the approval of the Minister, make an agreement with an organisation representing the interests of persons affected by this Act under which the organisation undertakes a specified role in the administration or enforcement of this Act.

(2) The agreement—

- (a) must be in writing and executed by the Commissioner and the organisation; and
- (b) may contain delegations by the Commissioner of functions or powers under this Act or the *Fair Trading Act 1987*; and
- (c) must set out any conditions governing the performance or exercise of functions or powers conferred on the organisation; and
- (d) must make provision for the variation and termination of the agreement by the Commissioner with the approval of the Minister or the organisation.

(3) The Commissioner may not delegate any of the following for the purposes of the agreement—

- (a) functions or powers under Part 2;
- (b) power to request the Commissioner of Police to investigate and report on matters under this Part;
- (c) power to commence a prosecution for an offence against this Act.

(4) A delegation by the Commissioner for the purposes of the agreement—

- (a) has effect subject to the conditions specified in the agreement; and
- (b) may be varied or revoked by the Commissioner in accordance with the terms of the agreement; and
- (c) does not prevent the Commissioner from acting in any matter.

(5) The Minister must, within six sitting days after the making of the agreement, cause a copy of the agreement to be laid before both Houses of Parliament.

Exemptions

29. (1) The Minister may, on application by a person, exempt the person from compliance with a specified provision of this Act.

(2) An exemption under this section is subject to the conditions (if any) imposed by the Minister.

(3) The Minister may, at his or her discretion, vary or revoke an exemption under this section.

(4) The grant or a variation or revocation of an exemption under this section must be notified in the *Gazette*.

Registers

30. (1) The Commissioner must keep a register of persons licensed as travel agents.

(2) The Commissioner must record on the register—

- (a) disciplinary action taken against a person under this Act; and
- (b) a note of any assurance accepted by the Commissioner under the *Fair Trading Act 1987* in relation to a licensed travel agent.

(3) A person may inspect a register on payment of the fee fixed by regulation.

Commissioner and proceedings before District Court

31. (1) The Commissioner is entitled to be joined as a party to any proceedings of the District Court under Part 2.

(2) The Commissioner may appear personally in any such proceedings or may be represented at the proceedings by counsel or a person employed in the Public Service.

False or misleading information

32. A person must not make a statement that is false or misleading in a material particular (whether by reason of the inclusion or omission of any particular) in any information provided, or record kept, under this Act.

Maximum penalty: (a) If the person made the statement knowing that it was false or misleading—\$10 000;

(b) In any other case—\$2 500.

Notice to be displayed

33. A person carrying on business as a travel agent authorised by a licence must maintain in a conspicuous position in each place from which the business is carried on a notice clearly showing—

- (a) the name of the licensed travel agent as it appears in the licence; and
- (b) any other information required by regulation.

Maximum penalty: \$2 500.

Travel agent to use authorised name

34. (1) A licensed travel agent must not carry on business as a travel agent under any name except the agent's authorised name.

Maximum penalty: \$2 500.

(2) A licensed travel agent must ensure that the agent's authorised name and any other information required by regulation appears—

- (a) in any advertisement (other than an advertisement relating solely to the recruiting of staff) published in the course of the agent's business; and
- (b) in any letter, statement, invoice, cheque, receipt or other document issued in the course of the agent's business.

Maximum penalty: \$2 500.

Accounts to be kept

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

Maximum penalty: \$2 500.

(2) The accounting records must—

- (a) contain sufficient information for the preparation and audit of true and fair profit and loss accounts and balance sheets; and
- (b) be kept at the person's principal place of business in this State; and
- (c) be kept in the English language.

Statutory declaration

36. If a person is required to provide information to the Commissioner, the Commissioner may require the information to be verified by statutory declaration and, in that event, the person will not be taken to have provided the information as required unless it has been verified in accordance with the requirements of the Commissioner.

Investigations

37. The Commissioner of Police must, at the request of the Commissioner, investigate and report on any matter relevant to—

- (a) the determination of an application under this Act; or
- (b) a matter that might constitute proper cause for disciplinary action under this Act.

General defence

38. It is a defence to a charge of an offence against this Act if the defendant proves that the offence was not committed intentionally and did not result from any failure on the part of the defendant to take reasonable care to avoid the commission of the offence.

Liability for act or default of officer, employee or agent

39. For the purposes of this Act, an act or default of an officer, employee or agent of a person carrying on a business will be taken to be an act or default of that person unless it is proved that the officer, employee or agent acted outside the scope of his or her actual, usual and ostensible authority.

Offences by bodies corporate

40. If a body corporate is guilty of an offence against this Act, each director of the body corporate is, subject to the general defence under this Part, guilty of an offence and liable to the same penalty as may be imposed for the principal offence.

Continuing offence

41. (1) A person convicted of an offence against a provision of this Act in respect of a continuing act or omission—

- (a) is liable, in addition to the penalty otherwise applicable to the offence, to a penalty for each day during which the act or omission continued of not more than one-tenth of the maximum penalty prescribed for that offence; and
- (b) is, if the act or omission continues after the conviction, guilty of a further offence against the provision and liable, in addition to the penalty otherwise applicable to the further offence, to a penalty for each day during which the act or omission continued after the conviction of not more than one-tenth of the maximum penalty prescribed for the offence.

(2) If an offence consists of an omission to do something that is required to be done, the omission will be taken to continue for as long as the thing required to be done remains undone after the end of the period for compliance with the requirement.

Prosecutions

42. (1) Proceedings for an offence against this Act must be commenced within two years after the date on which the offence is alleged to have been committed or, with the authorisation of the Minister, at a later time within five years after that date.

(2) A prosecution for an offence against this Act cannot be commenced except by—

- (a) the Commissioner; or
- (b) an authorised officer under the *Fair Trading Act 1987*; or
- (c) a person who has the consent of the Minister to commence the prosecution.

(3) In any proceedings, an apparently genuine document purporting to be a certificate of the Minister certifying authorisation of, or consent to, a prosecution for an offence against this Act will be accepted, in the absence of proof to the contrary, as proof of the authorisation or consent.

Evidence

43. In any proceedings, an apparently genuine document purporting to be a certificate of the Commissioner certifying that a person was or was not licensed as a travel agent on a specified date will be accepted, in the absence of proof to the contrary, as proof of the matters so certified.

Service of documents

44. (1) Subject to this Act, a notice or document required or authorised by this Act to be given to or served on a person may—

- (a) be served on the person personally; or
- (b) be posted in an envelope addressed to the person—
 - (i) at the person's last known address; or
 - (ii) if the person is a licensed travel agent—at the person's address for service; or
- (c) if the person is a licensed travel agent—be left for the person at the address for service with someone apparently over the age of 16 years; or

- (d) be transmitted by facsimile transmission to a facsimile number provided by the person (in which case the notice or document will be taken to have been given or served at the time of transmission).

(2) The address for service of a licensed travel agent is the address of which the Commissioner has been last notified in writing by the agent as the agent's address for service.

Annual report

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

(2) The Minister must, within six sitting days after receipt of the report, cause a copy of the report to be laid before each House of Parliament.

Regulations

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

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

- (a) require licensed travel agents to comply with a code of conduct;
- (b) fix fees to be paid in respect of any matter under this Act and regulate the recovery, refund, waiver or reduction of such fees;
- (c) exempt (conditionally or unconditionally) classes of persons or activities from the application of this Act or specified provisions of this Act;
- (d) prescribe the records to be kept by licensed travel agents and the manner in which the records must be kept;
- (e) 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;
- (f) regulate the form and content of advertisements concerning the services offered by persons carrying on business as travel agents;
- (g) provide for the furnishing of returns to enable calculation of contributions to the compensation fund;
- (h) impose a penalty (not exceeding a fine of \$2 500) for contravention of, or non-compliance with, a regulation.

(3) Regulations under this Act—

- (a) may be of general application or limited application;
- (b) may make different provision according to the matters or circumstances to which they are expressed to apply;

(c) may provide that a matter or thing in respect of which regulations may be made is to be determined according to the discretion of the Commissioner or the Minister.

(4) The regulations may operate by reference to a specified code as in force at a specified time or as in force from time to time.

(5) If a code is referred to in the regulations—

(a) a copy of the code must be kept available for inspection by members of the public, without charge and during normal office hours, at an office determined by the Minister; and

(b) evidence of the contents of the code may be given in any legal proceedings by production of a document apparently certified by the Minister to be a true copy of the code.

Insertion of schedule

9. The following schedule is inserted at the end of the principal Act:

SCHEDULE

Appointment and Selection of Assessors for District Court

(1) The Minister must establish the following panels of persons who may sit with the District Court as assessors in proceedings under Part 2—

(a) a panel consisting of persons representative of travel agents;

(b) a panel consisting of persons representative of members of the public who deal with travel agents.

(2) A member of a panel is to be appointed by the Minister for a term of office not exceeding three years and on conditions determined by the Minister and specified in the instrument of appointment.

(3) A member of a panel is, on the expiration of a term of office, eligible for reappointment.

(4) Subject to subclause (5), if assessors are to sit with the District Court in proceedings under Part 2, the judicial officer who is to preside at the proceedings must select one member from each of the panels to sit with the Court in the proceedings.

(5) A member of a panel who has a personal or a direct or indirect pecuniary interest in a matter before the District Court is disqualified from participating in the hearing of the matter.

(6) If an assessor dies or is for any reason unable to continue with any proceedings, the District Court constituted of the judicial officer who is presiding at the proceedings and the other assessor may, if the judicial officer so determines, continue and complete the proceedings.

Transitional provisions

10. (1) Subject to this Act, a licence in force under Division I of Part II of the principal Act immediately before the commencement of this Act continues in force as a licence under Division 1 of Part 2 of the principal Act as amended by this Act subject to the same licence conditions (if any).

(2) An approval of qualifications by the Commercial Tribunal in force under section 10a of the principal Act immediately before the commencement of this Act continues as an approval by the Commissioner under section 13 of the principal Act as amended by this Act.

(3) If an order or decision of the Commercial Tribunal is in force or continues to have effect under Division II of Part II of the principal Act immediately before the commencement of this Act, the order or decision has effect as if it were an order of the District Court under Division 2 of Part 2 of the principal Act as amended by this Act.

Further amendments to principal Act

11. The principal Act is further amended as set out in the schedule of this Act.

SCHEDULE
Further Amendments of Principal Act

Provision Amended	How Amended
Section 2	Strike out this section.
Section 3 Definition of "office"	Strike out this definition.
Section 19(2)	Strike out "shall" and substitute "must".

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

ROMA MITCHELL Governor